

## 11 Looting graves/buying and selling artefacts: facing reality in the US

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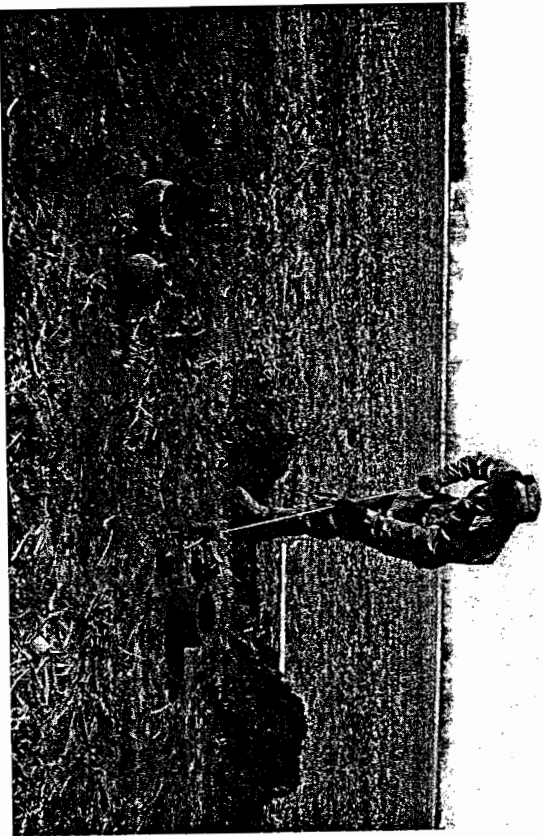
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People in the US have been looting prehistoric graves and buying and selling artefacts from those graves since Europeans first arrived on our shores. In the nineteenth century, it was thought that the large earthen mounds which dotted the landscape in the heartland of America – particularly the Mississippi and Ohio River valleys – must have been built by migrating Mexican Indians or perhaps an unknown 'race' they called 'mound builders'. Most people did not believe that the Native Americans they knew could have made such beautiful artwork as was found buried with the dead. It seems as if the attitude of looters was that these were not graves of 'people' but of an 'extinct race' with no living descendants, so no one cared. (What contemporary looters feel when disturbing skeletons is not known to me, but they are obviously callous about it.) Only in the last fifteen years or so have Native Americans been able to make their voices heard on these matters, and that is changing everything for archaeology and archaeologists, for museum collections, and for dealers and collectors of Native American antiquities.

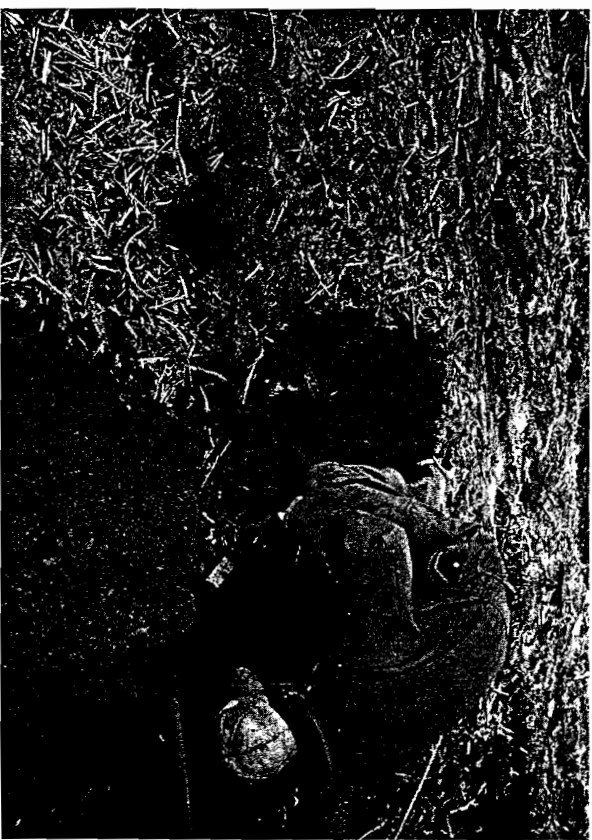
Congress passed the first national law protecting antiquities in 1906. It protected prehistoric sites on federally owned lands and was prompted by vandalism of the spectacular prehistoric pueblo ruins in Arizona, New Mexico and southern Colorado. The laws and regulations issued based on the law, required permits for scientific excavation (no other excavations were allowed), and levied fines for proscribed activities. Over the next seventy years, however, there was little effort to enforce the law; Congress failed to appropriate money to allow extra personnel for surveillance (particularly for the large land managing federal agencies, the National Park Service, Forest Service and the Bureau of Land Management); personnel were not trained in how to gather evidence; when there was an arrest, judges often dismissed the case on the grounds that collecting a few arrowheads or pots was not a serious crime. In addition, most federally owned land is in the western half of the country, and the 1906 Act did nothing to protect sites in the states east of the Great Plains, where land and its contents are largely owned by private individuals. For the most part, landowners can do with their property as they wish. Even now, in several

states, a landowner can bulldoze a mound, plough up a prehistoric cemetery, or lease a site to a commercial digger without recrimination.

Digging prehistoric graves can be a lucrative activity. In Arkansas, during the Great Depression of the 1930s, for example, selling pots and stone tools for cash was sometimes the only way to make enough money to buy food (Harrington 1924). In the major river valleys of the south-eastern US, and the Mississippi and Ohio River valleys in particular, the late prehistoric people produced what are now considered beautiful pieces of art in stone and clay. Some of these bring extremely high prices in today's art market. They were largely made specifically to be placed with the dead; certainly they are normally found in graves, often whole, and not broken in the general village midden. As selling pots became more profitable, so did knowledge of where to find the best objects and how to uncover them to best advantage. Because alluvial valley soil often has no natural stone, those looking for pots developed a probing technique (Figure 11.1) by which they stick a steel rod in the ground. The rod has a small concavity on the end and when they hit bone or pottery, they just dig for the artefacts, although bones were often scattered in the back dirt piles (Figure 11.2). In the 1980s, a 'headpot' (Figure 11.3) from a site in eastern Arkansas was sold for \$25,000; in 1994 another similar one passed from a dealer to a wealthy collector for \$65,000, perhaps the highest price paid for one of these vessels.



**Figure 11.1** A 'pohunter' in north-east Arkansas, having been successful in finding pots in graves, uses a metal probe to locate more, 1970  
Photograph: Arkansas Archaeological Survey

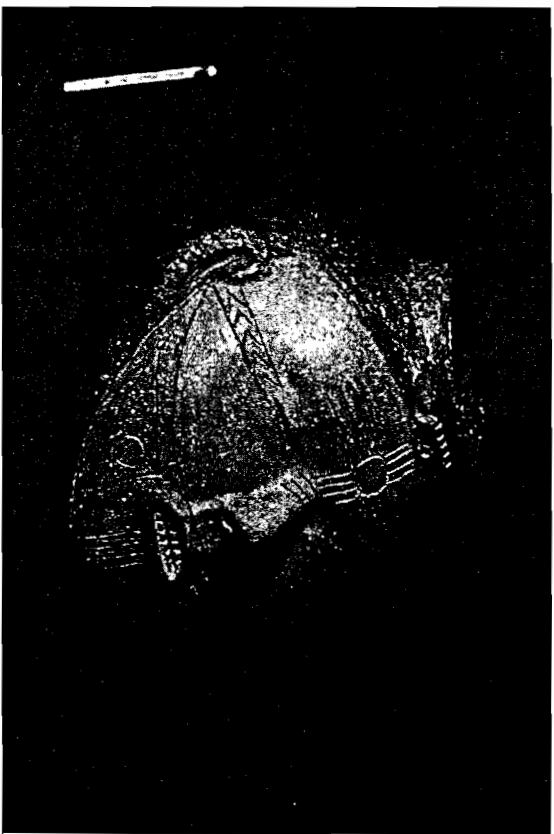


**Figure 11.2** A 'pohunter' at work in north-east Arkansas, 1970. A broken pottery vessel is on the left, and the front of a skull has been thrown out on the back dirt  
Photograph: Arkansas Archaeological Survey

Since the passage of several state laws in the late 1980s and early 1990s, and the federal law called the Native American Grave Protection and Repatriation Act of 1990 (NAGPRA), this activity seems to be lessening. It is still very difficult, however, to find out how much trade on the international art market is going on in Native American artefacts. Buying and selling of private collections to other collectors or through Sotheby's and Christie's auction houses certainly continues, although how much goes directly overseas for sale is not known. One can easily see that buying and selling artefacts on the internet is increasing, but the increased efforts on the legal front and in public education do seem to be having some effect.

In 1979 the Archaeological Resources Protection Act (ARPA) was passed. This law, while dealing with protection of all archaeological and historic sites on federal land, did not actually amend the 1906 Act, but it did serve to strengthen the hand of federal agencies, and it increased the fines and allowed for jail time for violation of the Act. As a result, and because of other federal and presidential mandates, agencies have been able greatly to increase and publicize prosecutions in the last ten years.

Because the federal government can regulate interstate trade, in a forward-looking section of ARPA, it was made illegal to take artefacts from a site contrary to state laws, carry them across state lines, and sell them. This resulted



**Figure 11.3** A headpot from the late prehistoric Bradley site in north-east Arkansas  
 Photograph: University of Arkansas Museum

in an arrest and successful prosecution in a widely publicized case, where an individual dug in a mound in Indiana without permission of the owners of the land, which is an illegal act in Indiana, and took them to Kentucky to sell (Arden 1989). Mr Gerber has served time in jail and is probably still trying to pay off his fine.

There have been a couple of little-known effects of this case that are also hard to document. One of these effects is on one of the major venues for buying and selling artefacts, at least in the eastern US, and that is the 'artefact show'. This is not your 'high end' art market (really beautiful and unusual pieces go directly to a collector or dealer). Most of these are local affairs, statewide or regional at best, but this is where artefacts selling for a few thousand dollars or less can be found (Braden 1999). There is a huge trade at these shows in chipped stone tools – the oldest ones or the largest ones going for the highest prices – and this is where a lot of fakes get into circulation. It was at one of these shows that Mr Gerber tried to sell his illegally gotten goods.

Those who organize these shows, and particularly those selling, are now very wary because of the successful prosecutions, and this has brought about the second effect – at least I *think* it has although I do not know this for a fact. It used to be that artefacts identified as coming from a well-known site could bring more money than those without provenience. Now it may be dangerous to have that information, so what little provenience information

there may be about an artefact is no longer available; this way it is easier to say it comes from a collection made prior to the passage of the recent laws.

During this same ten-year period, over half the states in the US, perhaps as many as three-quarters now, have passed laws making it illegal to dig in unmarked graves. In a few cases, the state of Arkansas being one, this applies to all land, both publicly and privately owned (Davis 1998). A farmer in Arkansas can no longer dig in an unmarked grave on his own property. It has long been illegal to disturb any marked grave, and one of the arguments for the Arkansas bill during its consideration was 'equal protection under the law'. It is our impression that the amount of looting in Arkansas has dropped. We know for a fact that our most notorious commercial dealer now goes to neighbouring Texas to dig, since the archaeologists and Native Americans combined have not been able to get a protective law passed in that state.

That brings me to the major change in the reality of archaeology in the US today – the empowering of the interests and concerns of the Native Americans about their ancestors' graves. I will not go into the details and background of NAGPRA here, but let me touch on how I believe this law, and particularly the new relationships between Native Americans and archaeology, may be affecting looting and trade in artefacts.

There is a good side and a bad side to what I think is happening now and/or may well happen in the future. With regard to looting graves for fun and profit, it is not only state laws that are giving people pause. The commercial diggers know about NAGPRA and they know that as far as digging graves goes, it applies only to federal land. They also know that Native Americans are vocal about anyone digging in any prehistoric grave. Native American concerns and values about grave robbing always get good press. This makes the looters/dealers very nervous, and probably childhood visions of 'Indians on the War Path' come to mind. But more than this, and perhaps more subtle, is that I think many people have changed their attitude toward digging in graves. It may be that the serious looter in the West has not been affected, although, again, a widely publicized conviction in 1995 may be helping, since the defendant was given six and a half years in prison and a large fine (Tardler and Flanagan 1999: 38–9). However, the vast amount of land which is uninhabited and unprotected must make the good return in the market place worth the risk. However, in the Midwest, I perceive that a combination of rumours about the laws, rumours about strong Native American views, and greatly increased teaching and discussion of these issues in public schools is slowly changing the attitude of the general public. They are realizing that the Native Americans who lived on the land before them had the same feeling about burial and disturbance of the dead as they feel today about their own ancestors. This is all to the good.

Another less propitious consequence of NAGPRA has to be the repatriation of artefacts that come from graves to Native American federally recognized tribes. Private collectors now know enough about the law to realize that if they donate their lifelong collection to a museum, it will

undoubtedly be repatriated to one or more tribes. Some think this is appropriate; some people are even contacting tribes themselves for return of pieces. But some collectors, who traditionally would have their collection and their investment recognized by the museum in name and in exhibits, do not want their objects to 'go back to the Indians'. Instead, they will find a dealer and sell the collection, as a whole or piece by piece, which is all perfectly legal. Unless a state law provides for repatriation, repatriation under NAGPRA applies only to institutions or entities which receive federal funds.

I believe, however, that buying and selling of prehistoric artefacts in the US is going to increase, with old collections going newly into circulation. This may, indeed, increase circulation to overseas dealers and collectors as well. Whatever provenience there may have been concerning these pieces is going to be lost. This will mean a loss of a certain level of information which archaeologists have been able to retrieve in the past. Prices are going to go up because the supply of newly dug objects, for the reasons given above, is going to decrease (except perhaps in Texas, where our not-very-friendly Arkansas commercial dealer is still leasing land with known prehistoric cemeteries to dig the graves).

In summary then: we do not have a good handle on the international trade in Native American antiquities, nor do we have a way to document fully how much looting went on before the new laws and therefore how much, if at all, it has decreased. The National Park Service is keeping track of prosecutions under federal and state laws, and these are certainly increasing (Haas 1999: 37). The future for sites with graves and cemeteries looks better, but we must be ever vigilant through prosecutions and through many levels of education – of landowners and of our vast population who receive most of their information about archaeology from watching Indiana Jones movies.

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