

The development of recording and protection of antiquities both within and as part of the landscape in Scotland

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Abstract

Archaeology within the landscape, and its understanding, are seen as the product of three phases of legal and intellectual development. Phase 1 saw the protection, often primitively, of the moveable artefact – a development that has continued with increasing sophistication until the present day. Phase 2, in the 19th century, saw the development of concern for the preservation of immovable artefacts in the landscape – as sites or monuments defined spatially and protected individually. Phase 3 which may be seen as beginning in the 1970's sees the awareness that the immovable and moveable artefact are indissolubly part of, and contributory to, the greater landscape and, that, in NW Europe at least, no part of the landscape is without its expression of human impact. The paper ends with a summary of current legal interdigitation in Scotland and a plea for greater understanding of the holistic concept of landscape, physical, aesthetic and intellectual in the future.

The control of the condition and custodianship of the relics of the national past in Britain has been a feature of Government concern since the middle ages. Broadly speaking it has passed through three stages of an increasing scale of its consideration.

The moveable artefact

By the 12th century the kings of England had established the concept of Treasure Trove (Hill 1936) whereby objects of gold or silver could be claimed for the crown in the absence of any better legal title lying else-

where. In effect the principle of *animus revertendi* was established – that the former owner had concealed the objects with the intention of recovery but had never carried that intention out. In Scotland broader protection is offered for objects of all types and compositions by the civil law principle of *Bona Vacantia* (‘unclaimed goods’) – which revert to the Crown. Successive attempts have been made to introduce more modern (or perhaps one should say less medieval) legislation without success – the only significant alteration to the law affecting moveable antiquities being under the Ancient Monuments and Archaeological Areas Act (AMAA Act 1979) where the use of metal detectors (to search for such objects) on Monuments protected by the Act was rendered illegal (for further details see Longworth 1993).

This early care for the moveable antiquity (quite coincidental in the British case) is, of course, paralleled to far greater effect in Scandinavia and Europe where frequently the State automatically has possession (or at least first option) upon all moveable antiquities unearthed by whatever means.

Indeed the Royal Danish Academy published a paper on archaeological excavations in the first issue of its *Proceedings* (1744). Erik Pontoppidan (1698-1764) reported his work on a megalithic monument in the park at the royal castle at Jægerspris (Klindt-Jensen, 1975, 35-36) and this among other developments led to the development, out of the Royal *Kunstkammer*, of the Royal Museum of Northern Antiquities at Copenhagen under the tutelage of C. J. Thomsen in the years following 1819. His help-mate and successor J. J. A. Worsaae published, in the English edition of his *Primeval Antiquities of Denmark* (1849, vi), the invocation “I hope the day is not far distant when the British people will have formed a national museum of antiquities commensurate with the importance of their remains. It is only in that way that they can be enabled to read the history of their country through its national monuments”.

Daniel Wilson writing scarcely two years later (1851), in the preface to the book in which the term ‘prehistory’ is coined, perhaps understandably, awards the first laurels for the ‘zeal for Archaeological Investigation’ to the Master of Abbotsford, Sir Walter Scott. Having made that obeisance, the rest of his prefacial remarks are, in effect, a polemic in favour of the establishment of a National Museum in Edinburgh, which pay both explicit and implicit homage to Worsaae. The Society of Antiquaries of Scotland (formed in 1780) produced its first volume of *Proceedings* in 1854 and its collections were opened to the public as

the National Museum of Antiquities of Scotland in the winter of 1859 (Piggott, 1983).

Thus the first stage in the control of condition and custodianship of the moveable artefact is established – with progressive improvements in the exercise of the law of *Bona Vacantia* and with massive subsequent developments in provision for conservation and display.

The immoveable artefact

Britain, as a whole, was late in approaching the problem of the control and custodianship of the immoveable artefact. In Denmark (Klindt Jensen 1975, 48) the legal protection of ancient monuments is enshrined in the same Chancellery Order of 1807 that set out the requirement for a National Museum. The order required “that prehistoric monuments which are situated on farmland and are too large and bulky to be shifted must be divided into two groups, those which merit preservation ... and others of lesser importance”. In Britain, where the excesses of the Industrial Revolution, the Second Agricultural Revolution as well as the processes of hyper-Urbanisation were all in train from the beginning of the nineteenth century, no such early protection was afforded. The fact of these processes, as well as the different social and economic structure of land tenure dictated otherwise. Change, at last, came in response to an increasingly broadly based awareness of the massive losses that were being sustained, even in the face of the eloquence of, among others, John Ruskin. In his Manchester lectures of 1857 (Lecture 2. pt.3) (Ruskin, 1860) he inveighed against the wholesale destruction of ancient and historic sites: –

You will perhaps think that all this was necessary for the development of the human race ... but do you think it is *still* necessary for that development? Do you think that in this nineteenth century it is still necessary for the European nations to turn all the places where their principal art-treasures are into battle fields? For that is what they are doing even while I speak; the great firm of the world is managing its business at this moment, just as it has done in past times.

Sir John Lubbock (Liberal Member of Parliament and Chairman of London County Council), for seven consecutive years, up until 1879, placed his “National Monuments Preservation Bill” before the House of

Commons during Disraeli's administration of 1874-1880. With the incoming of Gladstone's Second Ministry in 1880 Lubbock achieved the passage of *The Ancient Monuments Protection Act* onto the Statute Book in 1882 – a severely emasculated measure that provided for only a specified list (or 'schedule') of seventy or so monuments in Britain and Ireland (including the Bass of Inverurie, the Stones of Callanish and Maes Howe, Orkney in Scotland).

Commissioners were appointed who could purchase sites from the schedule into State ownership or accept other sites as a gift through a Deed of Guardianship (designed to overcome the constraint of 'entail' whereby many contemporary estate owners could not alienate land). An Inspector of Ancient Monuments was appointed – Augustus Pitt Rivers – whose daughter, Alice, Lubbock married in 1884 thus uniting the two families who most prominently served British archaeology in the nineteenth century. Pitt Rivers was yet to reach the summit of his career as the 'father of British archaeology' – through his remarkable series of excavations, undertaken on his newly acquired estates in Dorset, and privately published in the seminal royal blue cloth-covered volumes that symbolise the emergence of British archaeology as a science. The fundamental weaknesses of the 1882 Act are perhaps best illustrated by the great henge of Avebury with its multiple ownership by its contained villagers which proved intractable to the law and Lubbock was compelled to purchase it himself. He took the name of the site when elevated to the peerage in 1900.

For further developments in Ancient Monuments legislation the reader is referred to Cleere's brief account (1984, 54-56). Suffice it to say that only in 1913 (*The Ancient Monuments Consolidation Act*) were the owners of sites other than those in Guardianship required to give one month's notice of intention to 'disturb, alter or destroy' the site and there was provision for the issue of compulsory preservation orders to be converted to a compulsory purchase order if required – a provision reinforced in a further Act of 1931 which increased the statutory notice period to three months from one, and allowed, in an initially little-used clause the prosecution of 'rescue excavation' whether a site was scheduled or not.

It was only in 1932 that the first Town and Country Planning Act reached the Statute Book which gave any protection to occupied buildings (as opposed to the unoccupied structures, ruins, earthworks, cavities, and burial sites protected by the Ancient Monuments Acts). Local authorities were enabled to specify buildings as 'of special architectural

or historic interest' and, given the approval of the Minister responsible, these could be subjected to a Preservation Order as was the case with the ancient monuments referred to above. There was, however, no list of buildings against which such proscription could be gauged and this did not become possible until, in the concluding phases of the Second World War in 1944, a revised Town and Country Planning Act laid upon the Minister the responsibility to compose a statutory List of buildings of special historic and architectural interest, a preliminary *sine qua non* that was given greater effect in the encompassing Town and Country Planning Act of 1947 which sought the preservation of entire (or parts of) Listed Buildings whether with the agreement of the owner or not. Grants for the restoration and maintenance of Listed Buildings were made available by the 1953 Ancient Monuments Act which established the Historic Buildings Council for the effective administration of such grants. By 1999 there are some 800,000 Listed Buildings of all categories in England & Wales, 44,600 in Scotland.

One other development in this second phase is important. In Scotland from the early 1890's pressure was mounting for a survey of the country to establish the number and range of antiquities that might merit protection and preservation. This focus upon antiquities in the landscape has a very long pedigree indeed in Scotland beginning, possibly, with the maps of Pont/Blaeu but certainly established with the extraordinary work of Major-General William Roy – the officer responsible for the military survey of Scotland following the severe shock administered to Government by the Highland Rebellion led by Charles Edward Stuart (Bonnie Prince Charlie) in 1745-46. Roy was a soldier who was clearly fascinated by the visible remains of the military campaigns of the Romans who had fought an equally indomitable enemy in North Britain. He carried out a series of immensely detailed and accurate surveys of Roman military works throughout Scotland, alongside his more pragmatic duties, which were published posthumously in 1793 (Roy 1793). No more distinguished antecedent for archaeological survey exists in the World. Thenceforward a tradition of high quality archaeological survey persisted in Scotland (through the surveys conducted of Orcadian tombs in the 1850's and 60's (Davidson & Henshall, 1989, 46) to the work of Christison (1898) and Fred Coles (for references between 1894-1911 see Burl, 1976, 380-1). In 1896 a seminal paper was published by David Murray, a Glasgow lawyer (1896). He took as his start point the foundation of archaeology as a science which he saw lay with C. J. Thomsen's establishment of the National Museum at Copen-

hagen. He states (1896,19) "The first thing to be done in the interest of our ancient monuments ... is to have an Archaeological Survey of the United Kingdom made by, and at the expense of, Government, similar to the Topographical and Geological Surveys which have already been executed". This idea was taken up by Gerard Baldwin Brown (1905), Professor of Fine Art in the University of Edinburgh. He drew attention to the requirement for State "inventory" and "in this matter Great Britain is in an almost isolated position" (1905, 151). He suggested (1905, 60-61) that "material prepared in this manner by various independent agencies "[*supra*]" would probably be found to be most complete in the case of Scotland, for which country a fairly satisfactory inventory of monuments of architecture and art might, with comparatively little difficulty, be compiled ... if ever a national work of inventorisation were set on foot, it is in Scotland that it might be started with the best promise of satisfactory result".

Within two years of this publication Baldwin Brown had joined forces with his friend Sir John Sinclair, Secretary of State for Scotland to create a standing Royal Commission, modelled explicitly on the lines of the Royal Commission on Historical Manuscripts (set up in 1866) (see Baldwin Brown 1905,11).

The RCAHMS was established in February 1908 with its English and Welsh sisters coming into being six months later. Its task was to inventorise all 'monuments and constructions', county by county on the basis of visit and survey. The basis of the survey was the Ordnance Survey basic scale mapping of Scotland which, in terms of its lineage, reaches back ultimately to the survey of William Roy (*supra*). It was, and remained until the mid 1980's quintessentially a *site by site* survey only exceptionally seeking to forge linkages between sites by the comprehension and recording of the landscape that contained them. The results were published county by county in book form with the inclusion, in 1983, of mapping services to the Ordnance Survey.

The landscape context

Within this brief, together with the rapid development of database information technology, the scene was set for a fundamental change in strategy brought about during the late eighties and rapidly accelerated through the last decade. This saw the attempt to create a landscape context for every site and to create a database, updated daily, that reflects

that landscape through the deployment of multiple layers of landscape information through a Geographical Information System. Publication has continued, but as an additional service to "Inventory" to explain and synthesise results for both the professional and the lay reader.

Thus has the Royal Commission entered Stage 3 of the development outlined in this paper – the move from State concern first for the moveable artefact, then (Stage 2) for the immovable artefact (the site or monument), finally to the holistic concern for an archaeological review, record, and conservation and preservation policy for the whole land surface. Only thus can the challenges of modern developmental and conservational movements be met.

If 'inventorisation' in Scotland has endeavoured to offer its own lead in this new and wider context how has the 'sharp end' of conservation, preservation and management gone forward? The best recent published summary of these developments is Macinnes (1993). In this paper Lesley Macinnes commences by making the vital point that 'benign neglect' is not an option for archaeologists in the modern landscape if their aim is the contextualisation of 'sites' within the contemporary and where possible, reconstructable landscape that surrounds them.

The complex, multiple needs of landscape archaeology as we enter the third millennium have met with a series of diverse responses in Britain which reach across the whole gamut of landscape management agencies at governmental level. This is perhaps exactly as it should be, as it is important to remember that the interests of the archaeologist, the naturalist, the forester, the farmer and the 'scenic beauty' manager, among many others are seldom identical and often in direct conflict.

Some initiatives have not been developed with archaeology in mind at all – the 'Landscape Set-Aside' initiative developed within the context of the European Community Agricultural Policy is a measure concerned with the reduction of surplus agricultural production and aimed, therefore, at production sustained at relatively high cost on marginal land. The relinquishment of such land often, however, removes agricultural pressure from archaeological material, undamaged until relatively recent expansion. Sadly such relief can be short-lived as such arrangements are generally of only five years standing.

Of greater value are the European 'environmental impact assessment' initiatives that have their origin in EC Directive 85/337 that have been implemented in Britain for a restricted range of infra-structural developments – including forestry. It is these provisions that led directly to the provision of Planning Policy Guidance to Local Authorities

(for Archaeology PPG16 (NPPG5 in Scotland) PPG15 (NPPG9) for Architecture) by Central Government which has sought to revolutionise the status of archaeology and, indeed, architecture within the local planning process – the prime assumptions being (a) survival and (b) that the developer pays for both assessment and, if necessary, investigation. Whatever its effects upon the profession of archaeologist it has rendered the interests of archaeology within the landscape far more prominent if, often, only crudely catered for.

Other avenues to link archaeology to other landscape interests have also opened in the last decade. Under the *Electricity Act* 1989 and the *Water Resources Act* of 1991 authorities responsible for these public utilities are required “to have regard to the desirability of protecting” sites of archaeological and architectural interests. The Forestry Commission has also imposed upon itself a policy that it should not grant aid tree-planting that would damage archaeological interests while the *Environmental Protection Act* of 1990 required the Nature Conservancy Council to enter into a ‘statement of intent’ with English Heritage and such agreements have been extended to Historic Scotland (*The Natural Heritage (Scotland) Act* 1991) and run also in Wales.

Perhaps most importantly however there are the provisions couched within the *Agriculture Act* 1986 that generally “provides for the conservation and enhancement ... of amenity of the countryside ... and any features of archaeological interest there”, and more specifically for the establishment of Environmentally Sensitive Areas (Scotland now has five that cover 30% of her land area) which stand alongside a series of other initiatives (‘Areas of Outstanding Natural Beauty’ and ‘National Scenic Areas’) to provide a mosaic of measures within which management plans for the protection and proper control of archaeological features can be developed.

Doubtless further improvements to the consideration of archaeological interest in the landscape can be suggested and hopefully, in time, will be implemented. It is this writer’s view, however, that three developments need to take place before full use can be made of existing provision.

1. A complete Historic Land use Assessment of the whole land surface of Scotland ought to be completed – providing a basic index against which the archaeological significance of any area can be immediately judged as a start point in any exercise of protection.
2. An upgraded, holistic National Sites and Monuments Record linked

directly, electronically to all local sites and monuments records should be created with full exchange of appropriate data between records – and with the network of local sites and monuments records made complete (some local authorities in Scotland still do not subscribe to this vital component of Planning expertise) with the parallel provision of archaeologists within planning departments to interpret and curate the local record, and

3. (possibly most important) The construction and dissemination of an holistic, time-depthed, aesthetically sophisticated and intellectually disciplined understanding of the term landscape to achieve a proper understanding in all quarters of the complexity of its interactions, its layering and its evolution from the past and into the future (Mercer, forthcoming).

To this end all our disciplines will have to subscribe – and with an urgency, the need for which, in Scotland, we see all around us.

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