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28 February 2013

**A Presence of the Past: The Legal
Protection of Singapore's
Archaeological Heritage**

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A Presence of the Past: The Legal Protection of Singapore's Archaeological Heritage

Jack Tsen-Ta Lee¹

Singapore is not well known for its archaeological heritage. In fact, chance finds in the early twentieth century and systematic archaeological excavations since the 1980s conducted at sites around the Singapore River have unearthed artifacts shedding light on the island's early history. In addition, the value of archaeology for a deeper knowledge of Singapore's British colonial past is increasingly being recognized. Nonetheless, Singapore law provides only a rudimentary framework to facilitate archaeological investigations and protect cultural artifacts. This article considers how the National Heritage Board Act (Cap 196A, 1994 Rev Ed), the Planning Act (Cap 232, 1998 Rev Ed), and the recent Preservation of Monuments Board Act 2009 (No 16 of 2009, now Cap 239, 2011 Rev Ed) may be strengthened in this regard.

MOST PEOPLE are surprised to hear that there are archaeologists working in Singapore. In fact, systematic archaeological projects have been taking place in this diminutive Southeast Asian island-state since the 1980s, and have uncovered artifacts dating back to the thirteenth and fourteenth centuries. Because of the dearth of written records, it is such finds that have enabled scholars to fill in the blanks in Singapore's precolonial history and conclusively situate Singapore as a port at the confluence of trade routes between China and the Malay world. Increasingly, archaeological digs have been conceptualized and executed to shed light on Singapore's more recent history – its World War II experience and period of rapid industrialization.

These projects have largely taken place in the absence of a comprehensive legal regime. Although provisions exist in the National Heritage Board Act² allowing the Board to enter upon land to carry out an archaeological investigation, an examination of them soon reveals their shortcomings. The occupier of the land may deny permission for anything more intrusive than a surface survey, and can block any investigation relating to a dwelling-house or its surrounding land. There is no obligation on people intending to carry out works on land to conduct heritage impact

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² Below, n 47.

assessments and submit them to the authorities when applying for development permission. In addition, it is submitted that the law relating to ownership of relics is unclear and may in fact deem such items to be private property, which may then be sold abroad and thus lost to the nation. This article seeks to examine these issues and propose legal reforms. By way of background, Part I describes key archaeological projects that have been conducted in Singapore and the impact they have had on our knowledge of Singapore's history. Part II traces the development of the legal regime facilitating archaeology, looking at the original Preservation of Monuments Act 1970,³ the National Heritage Board Act 1994,⁴ the recent Preservation of Monuments Act 2009,⁵ and the Planning Act.⁶ I then examine the deficiencies of the current law and propose reforms in Part III.

I. SETTING THE SCENE: ARCHAEOLOGY IN SINGAPORE

The venerable *Oxford English Dictionary* defines *archaeology* as “[t]he scientific study of the remains and monuments of the prehistoric period”,⁷ but in modern usage the word is applied not only to research into the distant past but the contemporary era as well. For instance, those engaged in industrial archaeology seek to document and understand physical remains of the Industrial Age such as factories and the equipment and machinery associated with them; mills and mines; canals, railways, roads and other systems of communication.⁸ About 50 km northwest of Birmingham, England, where I engaged in doctoral studies, is Ironbridge Gorge. Named after the world's first cast iron bridge constructed at Coalbrookdale in 1779 over the River Severn, Ironbridge is billed as the “birthplace of industry”⁹ as it was in Coalbrookdale that Abraham Darby discovered how iron could be smelted from its ore using coke, thus making it cheaper to extract the metal. This contributed significantly to the Industrial Revolution. With the assistance of archaeological and conservation work,¹⁰ in 1967 the Ironbridge Gorge Museums Trust was established to preserve and interpret remaining traces of the Industrial Revolution in the area. Ironbridge Gorge was inscribed as a UNESCO World Heritage Site in 1986,¹¹ and

³ Below, n 37.

⁴ Below, n 47.

⁵ Below, n 41.

⁶ Below, n 55.

⁷ Or at least its upstart child, the *OED Online*, does: “archaeology, *n.*”, *OED Online* (Oxford: Oxford University Press, November 2010) <<http://www.oed.com/view/Entry/10286>> (accessed 23 March 2011). The word is derived from the Greek ἀρχαῖος (*archaios*: “ancient, primitive”), itself from ἀρχή (*arche*: “beginning”), and λογία (*logia*: “discourse”): *ibid*, and “archaeo-, *comb. form*”, *OED Online* (Oxford: Oxford University Press, November 2010) <<http://www.oed.com/view/Entry/10273>> (accessed 23 March 2011).

⁸ Jane McIntosh, *The Practical Archaeologist: How We Know What We Know About the Past* (London: Thames & Hudson, 1999) at 96.

⁹ See the Ironbridge Gorge Museums website at <<http://www.ironbridge.org.uk>> (accessed 24 March 2011).

¹⁰ See, for example, Richard Hayman, Wendy Horton & Shelley White, *Archaeology and Conservation in Ironbridge* (CBA research report; 123) (York: Council for British Archaeology, 1999); Marion Blockley, “The Ironbridge Gorge: Preservation, Reconstruction, and Presentation of Industrial Heritage” in John H Jameson, Jr (ed), *The Reconstructed Past: Reconstructions in the Public Interpretation of Archaeology and History* (Walnut Creek, Calif: AltaMira Press, 2004), 177–198.

¹¹ “Ironbridge Gorge”, United Nations Educational, Scientific and Cultural Organization (UNESCO) <<http://whc.unesco.org/en/list/371/>> (accessed 24 March 2011, archived at <<http://www.webcitation.org/5xP6IQUk2>>).

currently encompasses Blis Hill Victorian Town and a number of museums, including the Broseley Pipeworks, Coalbrookdale Museum of Iron, Coalport China Museum, and Jackfield Tile Museum, which showcase products manufactured in the region in past decades.¹²

I highlight this to make the point that archaeology, while traditionally associated with unearthing material heritage from beyond recorded history, is equally important for the understanding and preservation of the recent past. But let us first turn the clock back several centuries. In the Singapore context, the practice of archaeology may be traced to a 1949 excavation on Pulau Ubin, a small island northeast of the main landmass of Singapore, which was prompted by the casual finding of Neolithic stone tools; however, nothing else was turned up.¹³ It would be another 35 years before systematic excavations were carried out again. In 1984, a project at Fort Canning Hill proved more successful, leading to the recovery of about 30,000 artifacts from the fourteenth century, including Chinese porcelain sherds; glass beads, fragments of glass vessels and molten lumps of glass; and 16 partial or whole coins, the oldest dating to the Tang Dynasty of China (618–906 CE).¹⁴ Excavations were held at the Parliament House and Empress Place complexes, both by the Singapore River, in 1994 and 1998 respectively. These yielded sherds of blue-and-white ceramic ware dating from the fifteenth century imported from Vietnam; Sawankhalok celadons, underglazed ceramic boxes and lids from Thailand dating from the late fourteenth century; and Chinese stoneware jars thought to have been used to store mercury.¹⁵ Large amounts of copper, bronze and other metal artifacts were also found, including bells, fishhooks, projectile points, and wires. The presence of metal slag and over a hundred Chinese coins, mostly from the Northern Song (960–1126 CE) period, at the Parliament House site suggested metal production and some form of market activity there.¹⁶ A particularly intriguing find was a small, flat

¹² *Ironbridge 2010/2011* (Coalbrookdale, Telford, West Midlands: Ironbridge Gorge Museums Trust, 2010) <http://www.ironbridge.org.uk/uploadedfiles/Ironbridge_lflt_10.pdf> (accessed 24 March 2011, archived at <<http://www.webcitation.org/5xP7baQvz>>). See also W Grant Muter, *The Buildings of an Industrial Community: Coalbrookdale and Ironbridge* (London: Phillimore for the Ironbridge Gorge Museum Trust, 1979); Richard Hayman & Wendy Horton, *Ironbridge: History & Guide* (Stroud, Gloucestershire: Tempus, 1999).

¹³ Alexandra Avieropoulou Choo, *Archaeology: A Guide to the Collections, National Museum Singapore* (Singapore: National Museum, 1987) at 6 and 13.

¹⁴ John N Miksic, “14th-Century Singapore: A Port of Trade” in John N Miksic & Cheryl-Ann Low Mei Gek, *Early Singapore 1300s–1819: Evidence in Maps, Text and Artifacts* (Singapore: Singapore History Museum, 2004), 41–54 at 49–50. See also John N Miksic, *Archaeological Research on the ‘Forbidden Hill’ of Singapore: Excavations at Fort Canning, 1984* (Singapore: National Museum, 1985); Alexandra Avieropoulou Choo, *Report on the Excavation at Fort Canning Hill, Singapore* (Singapore: National Museum, 1986); John N Miksic, “Fourteenth Century Chinese Glass Found in Singapore and the Riau Archipelago” in Rosemary Scott & John Guy (eds), *South East Asia and China: Art, Interaction and Commerce: Colloquies on Art and Archaeology in Asia, No 17, Held June 6th–8th, 1994* (London: University of London, Percival David Foundation of Chinese Art, 1995), 252–273.

¹⁵ Cheryl-Ann Low Mei Gek, “Singapore from the 14th to 19th Century” in Miksic & Low (eds), *Early Singapore 1300s–1819*, *id.*, 14–40 at 20–31; Miksic, “14th-Century Singapore: A Port of Trade”, *id.* at 51. See also Omar Chen, “Ancient Singapore Earthenware Pottery” in Miksic & Low (eds), *Early Singapore 1300s–1819*, *id.*, 55–72.

¹⁶ Low, “Singapore from the 14th to the 19th Century”, *id.* at 31; Miksic, “14th-Century Singapore: A Port of Trade”, *id.* at 50. See also Shah Alam M Zaini, *Metal Finds and Metal-Working at the Parliament House Complex, Singapore* (Ann Arbor, Mich: University of Michigan, 1997); Derek Thiam Soon Heng, “Export Commodity and Regional Currency: The Role of Chinese Copper Coins in the Melaka Straits, Tenth to Fourteenth Centuries” (2006) 37 *J SE Asian Studies* 179–203 (DOI: 10.1017/S0022463406000518).

lead figure of a man wearing a *sarong* on what appears to be a winged horse. It is the first ancient lead statue to have been found in Southeast Asia.¹⁷

Other archaeological digs in the 1990s and 2000s have continued to turn up similar ancient remains and – significantly – the detritus of colonial-era (nineteenth- and twentieth-century) Singapore as well. Between November 1998 and March 1999, a surface survey of Pulau Saigon, an islet in the middle of the Singapore River that has since been reclaimed, resulted in the finding of items made of ceramics, glass, bone, metal, wood, stone, plastic, and rubber, as well as faunal and floral remains.¹⁸ The redevelopment of Istana Kampong Glam, the former palace of the Sultan of Singapore, into the Malay Heritage Centre enabled excavation works to be carried out between 2000 and 2003. The oldest dated artifacts were coins issued by the Vereenigde Oost-Indische Compagnie (VOC, or Dutch East Indies Company) which operated between 1602 and 1798, and other Chinese coins minted in the middle of the Qing Dynasty (1644–1912). There were also nineteenth- and twentieth-century locally made Malay earthenware, European transfer print ceramic and porcelain wares, local and imported Chinese-style porcelain and stoneware, Japanese ceramics, local and imported glassware, metal tools and slag, and the remains of land and sea animals and shellfish.¹⁹ Among the items discovered during an excavation in the grounds of Saint Andrew’s Cathedral held between September 2003 and September 2004 were intact stoneware vessels and porcelain celadon jarlets, which are believed to be the first undisturbed fourteenth-century artifacts yielded by a controlled archaeological excavation in Singapore.²⁰ Much colonial-period and modern material was also found, originating from what appeared to be World War II middens (domestic refuse pits) and an air raid trench. This included a large number of empty tin cans and can opener keys, and intact crockery from the Adelphi Hotel which was across the road from the Cathedral at the time. It is speculated that the crockery may have been intentionally buried to prevent them from falling into the hands of the invading Japanese army or looters.²¹

¹⁷ Miksic, “14th-Century Singapore: A Port of Trade”, above, n 14 at 51. See also John N Miksic, “Sebuah arca timah hitam dari Tebing Sungai Singapura [A Lead Statue Recently Discovered at a Majapahit-Period Site in Singapore]” (paper presented at the 8th Scientific Archaeology Conference, 15–18 February 1999, Yogyakarta, Indonesia) in *Kumpulan Makalah Pertemuan Ilmiah Arkeologi VIII [Collected Papers of Scientific Archaeology Conference VIII]* (Jakarta: Ikatan Ahli Arkeologi Indonesia, 2002), 425–428.

¹⁸ Jennifer Barry, *Pulau Saigon: A Post-Eighteenth Century Archaeological Assemblage Recovered from a Former Island in the Singapore River* (Stamford, Lincs: Rheidol Press, 2000).

¹⁹ “Istana Kampong Glam 2000–2003”, *Southeast Asian Archaeology* <http://www.seaarchaeology.com/v1/html/sg/kampong_galm.html> (accessed 26 March 2011, archived at <http://replay.waybackmachine.org/20090411031922/http://www.seaarchaeology.com/v1/html/sg/kampong_galm.html>). See also Jennifer Barry, *Istana Kampong Glam: European Ceramic from Archaeological Excavations at a Nineteenth Century Malay Palace in Singapore* (Stamford, Lincs: Rheidol Press, 2007); Jennifer Barry, *Istana Kampong Glam: Archaeological Excavations at a Nineteenth Century Malay Palace in Singapore* (Stamford, Lincs: Rheidol Press, 2009).

²⁰ John N Miksic & Lim Chen Sian, *Archaeological Research on the Padang and in the St Andrew’s Cathedral Churchyard: St Andrew’s Cathedral Archaeological Research Project Progress Report Summary September 2003 – June 2004* (Singapore: Asia Research Institute, National University of Singapore, 2004) at 3 <http://www.seaarchaeology.com/v1/html/sg/pdfs/ARI_Project_Report_version_1.5.pdf> (accessed 26 March 2011, archived at <http://replay.waybackmachine.org/20070818192606/http://www.seaarchaeology.com/v1/html/sg/pdfs/ARI_Project_Report_version_1.5.pdf>).

²¹ Lim Chen Sian, “Archaeology as a Critical Source for Reconstructing the Colonial Past” in Derek Heng Thiam Soon, *New Perspectives and Sources on the History of Singapore: A Multi-disciplinary Approach* (Singapore: National Library Board, 2006), 125–133 at 130.

The aim of the 2004–2005 archaeological investigation of Fort Tanjong Katong was to discover more about a late-nineteenth-century defensive structure built by the British but later partially demolished and filled in between 1906 and 1928 to create a public park. The project uncovered portions of the fort, apparently the first in the former British Malaya to be excavated, that had not been reduced to rubble. Artifacts found in the site were mostly modern fill material deposited during land reclamation for the nearby East Coast Parkway, but it has been noted that even items such as bottles and bricks might be studied for information about consumer patterns and trends of the 1960s and 1970s, and construction methods as an element of post-independence²² industrialization of Singapore.²³ In 2005, representatives of the Foot Tet Soo Khek Temple (also known as the Wang Hai Da Bo Gong Temple) at Palmer Road just off Shenton Way approached archaeologists with a proposal to carry out excavations in the building's compound and the vicinity. The temple is the oldest Hakka institution in Singapore, and is said to pre-date the arrival of Sir Stamford Raffles on the island in 1819.²⁴ Notable finds included British-manufactured glass bottles and ceramics, particularly a large number of teacups bearing a Navy, Army, Air Force Institute (NAAFI) mark; and plastic tubes containing antimalarial medication and packets of chemical decontaminant paste bearing Japanese texts, presumably issued to Japanese troops present during their 1942–1945 occupation of Singapore. These finds raised interesting questions about possible associations between the temple and the military during the World War II period.²⁵

January 2009 saw the launch of the Adam Park Project, a collaboration led by Jon Cooper of the Centre for Battlefield Archaeology of the Faculty of Arts, University of Glasgow, and involving the National University of Singapore and the Singapore Heritage Society. The project, which is ongoing, involves excavations at Adam Park, the scene of one of the most intense periods of fighting during the World War II Battle of Singapore. Traces of foxholes and trenches have been found, as well as badges and buttons from military uniforms, military equipment, bullets and cartridges, and coins.²⁶ In response to news that railway lines formerly owned by

²² Singapore became an independent republic on 9 August 1965, after having ceased to be part of the British Empire on 16 September 1963 when it joined the Federation of Malaysia, and leaving the Federation about two years later.

²³ Lim Chen Sian, *Fort Tanjong Katong Raising History Planting Roots Project: Preliminary Site Report version 1.2* (17 May 2006) <http://www.seaarchaeology.com/v1/html/sg/pdfs/ftk_preliminaryreport1.pdf> (accessed 27 March 2011, archived at <http://web.archive.org/web/20070927234205/http://www.seaarchaeology.com/v1/html/sg/pdfs/ftk_preliminaryreport1.pdf>). The report is not paginated.

²⁴ Lim Chen Sian, *Palmer Road Foot Tet Soo Khek Temple Archaeological Research Project: Preliminary Site Report version 1.4* (9 March 2006) at 1–2 <http://www.seaarchaeology.com/v1/html/sg/pdfs/Palmer_Site_Report_version_1.4.pdf> (accessed 27 March 2011, archived at <http://replay.waybackmachine.org/20090205073050/http://www.seaarchaeology.com/v1/html/sg/pdfs/Palmer_Site_Report_version_1.4.pdf>).

²⁵ *Id* at 3–9.

²⁶ Jon Cooper, “Park Life: Revealing a Hidden Battlefield from the Fall of Singapore”, *Britain at War Magazine* (November 2010), issue 43, 75–77 <http://www.gla.ac.uk/media/media_179181_en.pdf> (accessed 26 May 2011, archived at <<http://www.webcitation.org/5ywxRgr8n>>); Jon Cooper, “Making the Most of It”, *Britain at War Magazine* (February 2011), issue 46, 79–81 <http://www.gla.ac.uk/media/media_194440_en.pdf> (accessed 26 May 2011, archived at <<http://www.webcitation.org/5ywxmR3mX>>). See generally *Tigers in the Park: A New Project in Singapore* (2011), Centre for Battlefield Archaeology, Faculty of Arts, University of Glasgow <<http://www.gla.ac.uk/departments/battlefieldarchaeology/centreprojects/singaporewiiiprject/>> (accessed 26 May 2011, archived at <<http://www.webcitation.org/5ywyA4XKQ>>).

Keretapi Tanah Melayu (KTM, or Malayan Railways) running through Singapore might be removed to permit land redevelopment after the relocation of Malaysian customs, immigration and quarantine facilities away from the Tanjong Pagar Railway Station in the city, Cooper called for a study into preserving the section of the line at the west end of Bukit Timah Road including the defunct Bukit Timah Railway Station and a girder bridge as it is “perhaps the most iconic and best preserved section of the World War II battlefield in the area.” In his view, before any redevelopment decisions are made, the “full historical significance” of the area – where “World War II heritage may well be remarkably preserved just a few centimetres under the surface” – should be understood and “Singapore’s industrial and military heritage... duly protected and shared with the people.” This location was the furthest point of advance of the only British counterattack during the Battle of Singapore, during which three battalions (Tomforce) under Lieutenant-Colonel Lionel Thomas advanced up Bukit Timah Road and dug around Bukit Timah Village on 11 February 1942 to try and halt the Japanese Army advancing on the city.²⁷ On 27 May 2011, the Bukit Timah Railway Station was gazetted by the Urban Redevelopment Authority as a conserved building.²⁸ A short portion of the rail tracks adjacent to the station and two steel bridges at Dunearn Road and Upper Bukit Timah Road were also retained. Pursuant to an agreement between the Governments of Malaysia and Singapore, the remaining tracks and associated structures of the KTM railway were dismantled and returned to Malaysia by 31 December 2011.²⁹

The archaeological projects conducted to date have enabled theories to be developed about the pre-colonial history of Singapore. Fort Canning Hill was likely the site of the ritual centre and palace precinct of Temasek,³⁰ a port-settlement existing on Singapore island between the late thirteenth and fourteenth centuries.³¹ The large amount of glass found here suggests glass-making by artisans in the palace precinct.³² The main settlement area of Temasek was the north bank of the Singapore

²⁷ Jon Cooper, “Significance of ‘Green Corridor’: Heritage Should be Understood and Protected in Making Redevelopment Plans”, *Today* (19 May 2011) at 20 <<http://www.todayonline.com/Voices/EDC110519-0000242/Significance-of-Green-Corridor>> (accessed 24 May 2011, archived at <<http://www.webcitation.org/5jwzR53Ma>>).

²⁸ “Bukit Timah Railway Station Conserved” on the Urban Redevelopment Authority (URA) website (27 May 2011) <<http://www.ura.gov.sg/pr/text/2011/pr11-62.html>> (accessed 24 February 2012, archived at <<http://www.webcitation.org/65fnM2Oai>>); Grace Chua, “Parts of KTM Railway to be Retained”, *The Straits Times* (23 July 2011). The intention to conserve the station, as well as the gazettement of the Tanjong Pagar Railway Station as a national monument on 8 April 2011, were announced on the latter date: “Historic Railway Stations to be Kept for Future Generations” on the URA website (8 April 2011) <<http://www.ura.gov.sg/pr/text/2011/pr11-40.html>> (accessed 24 February 2012, archived at <<http://www.webcitation.org/65fo6tOko>>).

²⁹ Jolene Hoon, “Draw of the Railway”, *Skyline* (July–August 2011) <<http://www.ura.gov.sg/skyline/skyline11/skyline11-04/article-02.html>> (accessed 24 February 2012, archived at <<http://www.webcitation.org/65foniPFH>>); “Stripping of KTM railway track completed”, Channel NewsAsia website (31 October 2011) <<http://www.channelnewsasia.com/stories/singaporelocalnews/view/1162591/1/.html>> (accessed 24 February 2012).

³⁰ “Reconstructing the Lion City” in Kwa Chong Guan, Derek Heng & Tan Tai Yong, *Singapore: A 700-year History: From Early Emporium to World City* (Singapore: National Archives, 2009), 33–52 at 39. *Temasek*, or *Tumasik*, means “sea town,” and is mentioned in the Javanese *Nagarakretagama* of 1365: C[onstance] M[ary] Turnbull, *A History of Modern Singapore, 1819–2005* (3rd ed) (Singapore: NUS Press, 2009) at 20.

³¹ “The Lure of the Chinese Market” in Kwa, Heng & Tan, *id.*, 19–32 at 19: “That a port-settlement called Temasek did exist in Singapore between the late thirteenth and fourteenth centuries is without doubt.”

³² Miksic, “14th-Century Singapore: A Port of Trade”, above, n 14 at 51–52; “Reconstructing the Lion City” in Kwa, Heng & Tan, above, n 30 at 39–40.

River, and concentrations of archaeological finds have enabled postulations as to the use of different locations. Thus, as indicated earlier, iron and copper remains at the Parliament House site suggest metalworking; while relatively large quantities of sherds of storage jars at the Empress Place and Old Parliament House sites, both near the river edge, may indicate the unloading of trade goods from ships and their storage. Higher concentrations of coins at Parliament House, the Singapore Cricket Club on the Padang, and Saint Andrew's Cathedral suggest that trading activity took place further inland from the river.³³ Finally, the significant quantities of foreign coins and sherds from imported ceramics evidence mercantile links between Temasek and communities in present-day China, Indonesia, Malaysia, Thailand, and Vietnam.³⁴ The authors of *Singapore: A 700-year History* (2009) note:

Today, archaeological data forms one of the most important sources of information for the reconstruction of the port-city of Temasek. While the nature of the archaeological artifacts, which are composed entirely of small finds, has made it impossible to deduce any physical features of the port-city, the data does provide us with possible glimpses of such features as the location of specific economic activities and the links between the social hierarchy and the location of habitation, as well as external characteristics as Temasek's economic links with foreign markets, and the extent of the Temasek polity and its sphere of influence in the immediate region.³⁵

In addition, the projects at Fort Tanjong Katong, Saint Andrew's Cathedral, Palmer Road and Adam Park indicate that archaeology may shed light on Singapore's colonial and World War II period. Local archaeologist Lim Chen Sian has called attention to the fact that archaeology is valuable for a deeper knowledge of Singapore's colonial military history, immigrant communities, and industrialization and its social and environmental impact.³⁶

II. THE LEGAL FRAMEWORK FOR FACILITATING ARCHAEOLOGY

A. THE PRESERVATION OF MONUMENTS ACT 1970

A legal provision facilitating archaeological investigations appeared for the first time in the Preservation of Monuments Act 1970 (PMA 1970),³⁷ which came into force on 29 January 1971. As the long title of the Act indicates, the purpose of the statute was to create a body called the *Preservation of Monuments Board* (PMB) "to preserve for the benefit of the nation, monuments of historic, traditional, archaeological, architectural or artistic interest".³⁸ The provision in question was section 7 of the

³³ Miksic, *id* at 52; Kwa, Heng & Tan, *id* at 43 and 51.

³⁴ Kwa, Heng & Tan, *id* at 44–46.

³⁵ *Id* at 37.

³⁶ Lim, "Archaeology as a Critical Source for Reconstructing the Colonial Past", above, n 21 at 130–131.

³⁷ No 45 of 1970 (hereinafter PMA 1970), later Cap 239, 1985 Rev Ed. For some background on the genesis of the Act, see Cai Yunci, "Law and its Impact on Singapore's Built Heritage" in Kevin Y[ew] L[ee] Tan & Michael Hor, *Encounters with Singapore Legal History: Essays in Memory of Geoffrey Wilson Bartholomew* (Singapore: Singapore Journal of Legal Studies, 2009), 87–125 at 105–107.

³⁸ See also s 5(a) of the Act, which stated that this was one of the objects of the PMB. Today, one of the National Heritage Board's objects is similar: Preservation of Monuments Act 2009, below, n 41, s 4(a).

PMA 1970, which was adapted from section 9 of the Ancient Monuments Act 1931 (UK):³⁹

Power to enter upon lands.

7.— (1) Any person specifically authorised in writing by the Board after giving not less than 14 days' notice in writing to the occupier of his intention to do so and on production of his authority, if so required by or on behalf of the occupier, may enter for the purposes of investigation at all reasonable times upon any land which the Board may have reason to believe contains any monument and may make excavations on the land for the purpose of examination:

Provided that —

- (a) no person shall under any power conferred by this subsection enter any dwelling-house or any building, park, garden, pleasure ground or other land used for the amenity or convenience of a dwelling-house except with the consent of an occupier; and
- (b) no excavation shall be made under the power conferred by this subsection except with the consent of every person whose consent to the making of the excavation would, apart from this subsection, be required.

(2) If any person willfully obstructs or hinders any person in the exercise of the powers conferred by subsection (1) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200.

The power was essentially to enable the Preservation of Monuments Board to conduct an investigation for the purpose of determining if land contained what it believed to be a monument, and if the monument was worth preserving as a national monument. The scope of such investigations was limited by the definition of *monument* in section 2(1) of the Act, which included:

- (a) any building, structure, erection or other work whether above or below the surface of the land, any memorial, place of interment or excavation and any part or remains of a monument; and
- (b) any land comprising or adjacent to a monument which in the opinion of the Board is reasonably required for the purpose of maintaining the monument or the amenities thereof or for providing or facilitating access thereto or for the exercise of proper control or management with respect thereto,

which is considered by the Board to be worthy of preservation by reason of its historic, traditional, archaeological, architectural or artistic interest.⁴⁰

³⁹ 21 & 22 Geo 5, c 16, now s 26 of the Ancient Monuments and Archaeological Areas Act 1979 (UK) (1979 c 46) <<http://www.legislation.gov.uk/ukpga/1979/46>> (accessed 21 May 2011; hereinafter AMAAA (UK)).

⁴⁰ The definition of *monument* specifically contemplated that excavations of historic or archaeological interest might be gazetted as national monuments. However, since the PMB began its work no sites of this nature which are not also buildings or structures of some kind in current use have been so designated. The current list of national monuments may be viewed at the website

It is immediately obvious that the definition is erroneously arranged. Certainly it could not have been Parliament's intention to require the land referred to in subsection (b) to be worthy of preservation due to its historic or other interest. Nonetheless, this mistake remained uncorrected until the Act was repealed and replaced by the Preservation of Monuments Act 2009 (PMA 2009).⁴¹ More pertinently for our purposes, because the power to enter upon land and conduct an investigation was contingent on the PMB having reason to believe that the land contained a monument, the power could only be exercised if there was any "building, structure, erection or other work whether above or below the surface of the land, any memorial, place of interment or excavation" that was "worthy of preservation by reason of its historic, traditional, archaeological, architectural or artistic interest". If there was no pre-existing work of some kind on the land, it seems that the power could not be exercised. In this connection, it is to be noted that the word *excavation* obviously referred to a preexisting excavation (for instance, a storage cavern hollowed out of rock, an underground burial chamber, or a buried cache of valuables) and not an excavation resulting from the exercise of the power. Thus, section 7 did not authorize archaeological excavations of sites lacking evidence of structures having been put up, such as a beach where goods were landed or a public thoroughfare.

The power to conduct archaeological digs pursuant to section 7 was also restricted in two other ways. First, if the PMB's representatives wished to conduct the dig at a dwelling-house or land used for the amenity or convenience of a dwelling-house, the occupier had an absolute right to refuse.⁴² Second, although the *chapeau* of section 7(1) appeared to empower excavations to be carried out, the effect of subsection (b) was that the representatives had to obtain "the consent of every person whose consent to the making of the excavation would, apart from this subsection, be required".⁴³ The relevant individual would be the person entitled to sue for trespass to the land,⁴⁴ that is, the lawful occupier of the land.⁴⁵ In addition,

of the National Heritage Board at <<http://www.nhb.gov.sg/NHBPortal/Sites&Monuments>> (accessed 13 November 2013).

⁴¹ No 16 of 2009 ('PMB 2009'), available from Singapore Statutes Online at <http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_legdisp.pl?actno=2009-ACT-16-N> (accessed 27 March 2011, archived at <<http://www.webcitation.org/5xTnjoyK9>>). The current version is Cap 239, 2011 Rev Ed.

⁴² PMA 1970, s 7(1)(a).

⁴³ *Id.*, s 7(1)(b).

⁴⁴ Interference with the subsoil amounts to trespass to land: *Cox v Glue* (1848) 5 CB 533, 136 ER 987 (holes dug into subsoil).

⁴⁵ Trespass to land is a tort against the lawful possessor rather than the owner of land: *Jones v Chapman* (1849) 2 Ex Ch 803 at 816, 154 ER 717 at 722 ("The action of trespass *quare clausum fregit* ['why he broke the close,' that is, trespass on land that is visibly enclosed] is founded upon actual possession by the plaintiff, who will make out a prima facie case if he proves possession in himself and entry by the defendant. He need not give any proof whatever of title or of right to the possession."). In fact, the landowner has no standing to sue if some other person such as a tenant is in lawful possession of the land: *Wallis v Hands* [1893] 2 Ch 75. However, there is a presumption that the holder of title to the land has possession in the absence of contrary evidence (*Herbert v Thomas* (1835) 1 Cr M & R 861, 149 ER 1329), and where there are competing claims to possession (*Jones v Chapman*, *id.*; *Lows v Telford* (1876) 1 App Cas 414 at 426; *Canvey Island Commissioners v Preedy* [1922] Ch 179). See Mark Lunney, "Trespass to Land" in Ken Oliphant (gen ed), *The Law of Tort* (2nd ed) (London: LexisNexis Butterworths, 2007), 485–534 at 489–490 and 511, paras 10.7 and 10.35.

It may be noted that the tort of private nuisance is not applicable, as a private nuisance is "an unlawful *non-trespassory* interference with the private use and enjoyment of land or rights over land": Donal Nolan, "Nuisance" in *The Law of Tort* (2nd ed), *id.*, 1101–1198 at 1108 and 1116, paras

section 7 said nothing about the disposition of movable items that might be found in the course of an excavation, in which case common law rules relating to the law of finders and, possibly, treasure trove, applied. This is explored below.

The power conferred on the PMB by section 7 only needed to be invoked if the occupier or owner of the land refused to permit an investigation of the land. However, the consequence of any willful obstruction or hindrance of the PMB's representatives was a paltry fine of S\$200 (about US\$160 as at 26 February 2013).⁴⁶ It is not known whether the Board ever exercised its power under section 7.

B. THE NATIONAL HERITAGE BOARD ACT 1993

In 1993, Parliament enacted the National Heritage Board Act⁴⁷ (NHBA) to consolidate the National Museum, the National Archives and the Oral History Department, and certain heritage departments of the Ministry of Information and the Arts⁴⁸ together under a single statutory board.⁴⁹ During the Second Reading of the bill which led to the Act, the Minister for Information and the Arts informed Parliament that the National Heritage Board (NHB) would be “empowered to conduct archaeological investigations of land under development which the Board believes may contain artifacts of historical or heritage value. In exercising this power, the Board will be careful to minimise inconvenience to the owners of the affected premises.”⁵⁰

The provision of the Act that eventually conferred the power on the NHB was section 46. Entitled “Power to enter upon lands to conduct archaeological investigation”, the provision is significant because it is currently in force. As amended by the PMA 2009,⁵¹ it states:

46.— (1) Subject to this section, any person specifically authorised in writing by the Board, after giving not less than 24 hours' notice in writing to the occupier of the land of his intention to enter the land and on production of his authority, if so required by or on behalf of the occupier, may enter for the purposes of archaeological investigation or examination at all reasonable times upon any land which the Board has reason to believe contains any ancient monument and may make excavations in the land.

(2) No person shall, under any power conferred by subsection (1), enter any dwelling-house or any building, park, garden, pleasure ground or other land used for the amenity or convenience of a dwelling-house except with the consent of the occupier.

22.9 and 22.16 (emphasis added). Entering upon land and excavating it unambiguously amounts to a trespass.

⁴⁶ PMA 1970, s 7(2).

⁴⁷ No 13 of 1993 (hereinafter NHBA), later Cap 196A, 1994 Rev Ed.

⁴⁸ Renamed the Ministry of Information, Communications and the Arts in 2001. Following a reorganization of ministries, with effect from 1 November 2012 heritage matters were taken over by a new Ministry of Culture, Community and Youth.

⁴⁹ George Yong-Boon Yeo (Minister for Information and the Arts), speech during the Second Reading of the National Heritage Board Bill, *Singapore Parliamentary Debates, Official Report* (13 April 1993), vol 61 at col 137.

⁵⁰ *Id* at col 140.

⁵¹ PMA 2009, above, n 41, s 37(5), which inserted a new version of s 46(10) containing definitions of the terms *ancient monument* and *monument*.

(3) No excavation shall be made under the power conferred by subsection (1) except with the consent of every person whose consent to the making of the excavation would, apart from that subsection, be required.

(4) Any power of entry under this section shall be construed as including power for any person entering any land in exercise of the power of entry to take with him any assistance or equipment reasonably required for the purpose to which his entry relates and to do there anything reasonably necessary for carrying out that purpose.

(5) Without prejudice to subsection (4), where a person enters any land in exercise of any power of entry under this section for the purpose of carrying out any archaeological investigation or examination of the land, he may take and remove such samples of any description as appear to him to be reasonably required for the purpose of archaeological analysis.

(6) Where a person enters any land in exercise of any power of entry under this section for the purpose of carrying out any archaeological investigation or examination of the land, he may take temporary custody of any object of archaeological or historical interest discovered during the course of the excavations carried out for that purpose, and remove it from its site for the purpose of examining, testing, treating, recording or preserving it.

(7) The Board or other person by or on whose behalf the power of entry was exercised may not retain the object without the consent of the owner beyond such period as may be reasonably required for the purpose of examining and recording it and carrying out any test or treatment which appears to the Board or to that person to be desirable for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object.

(8) Nothing in this section shall affect any right of the Government in relation to treasure trove.

(9) Any person who wilfully obstructs or hinders any person in the exercise of the powers conferred by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both.

(10) In this section —

“ancient monument” means any monument which, in the opinion of the Board, is of public interest by reason of the historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance attaching to it;

“monument” means the whole or any part of, or the remains of —

- (a) any building, structure, erection, statue, sculpture or other work, whether above or below the surface of the land, and any cave or excavation;
- (b) any site comprising the remains of any such building, structure, erection, statue, sculpture or other work or of any cave or excavation; or

- (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a),

and includes any machinery attached to or forming part of a monument which cannot be detached from the monument without being dismantled.

(11) For the purposes of this section, “archaeological investigation” means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and includes in the case of an archaeological investigation of any land

- (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land; and
- (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavation or inspection carried out for the purposes of any such investigation.

(12) For the purposes of this section, an archaeological examination of any land means any examination or inspection of the land (including any buildings or other structures thereon) for the purpose of obtaining and recording any information of archaeological or historical interest.

Section 46 appears to be based upon section 7 of the PMA 1970. In a manner similar to section 7(1), section 46(1) confers on the NHB a power to “enter for the purposes of archaeological investigation or examination... upon any land which the Board has reason to believe contains any ancient monument and may make excavations in the land”. Section 46(10) defines *ancient monument* as “any monument which, in the opinion of the Board, is of public interest by reason of the historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance attaching to it”.⁵² Oddly, this definition does not expressly require an ‘ancient monument’ to be ancient – perhaps this is to be implied. If we take the ordinary meaning of *ancient* to refer to something “[w]hich existed in, or belonged to, times long past, or early in the world’s history; old”,⁵³ the scope of the power of entry and excavation is significantly limited as it excludes the archaeology of nineteenth- and twentieth-century Singapore.

I will shortly be focusing on particular shortcomings of section 46, but before that I wish to point out a few more salient features of the provision and compare

⁵² Section 46(10) also contains a definition of the word *monument* more detailed than that contained in section 2(1) of the PMA 1970.

⁵³ This is the definition of *ancient* set out in the *OED Online*, which also defines an ancient monument as “a monument made or set up long ago”. The term *ancient* is also specifically applied to “the period of history before the fall of the Western Roman Empire”, that is, prior to about the fifth century CE – the last Western Roman Emperor was Romulus Augustus, who was deposed on 4 September 476 at the age of about 13 to 15 years after a 10-month reign. However, adopting this latter definition in the Singapore context is meaningless, since there is no historical evidence of human settlement on the island of Singapore before the 14th century. See “ancient, *adj.* and *n.*”, *OED Online* (Oxford: Oxford University Press, March 2011) <<http://www.oed.com/view/Entry/7250>> (accessed 14 April 2011).

them with section 7 of the PMA 1970. First, the minimum notice period that must be given to an occupier of land is 24 hours, rather than the 14 days mentioned in the PMA 1970. This enables an archaeological investigation and excavation to be commenced swiftly when there is risk of damage to a site. Second, to facilitate work, section 46(4) of the NHBA usefully explains that the power to enter land includes the power for an authorized representative of the Board to take any assistance or equipment reasonably required, and to do anything reasonably necessary for carrying out purpose for entry. Finally, the penalty for wilfully obstructing or hindering a person in the exercise of powers conferred by the section is a fine not exceeding S\$5,000 (about US\$4,000) or imprisonment not exceeding one year or both,⁵⁴ a significant increase from the S\$200 fine imposed by the PMA 1970.

C. THE PLANNING ACT

The rules governing the development of Singapore's built environment are laid down in the Planning Act.⁵⁵ This statute does not deal directly with archaeological investigations, but has a significant impact on how successful they are likely to be. The Act mandates that a master plan be reviewed every five years⁵⁶ by the Chief Planner of the Urban Redevelopment Authority (URA),⁵⁷ a government agency. Included in the master plan are approved maps and a written statement intended to aid interpretation of the master plan by summarizing its main proposals and providing descriptive matter illustrating the proposals.⁵⁸ The current plan is the Master Plan 2008, and its written statement encompasses matters such as zoning, plot ratios and factors to be considered by the URA when approving development applications.⁵⁹ The URA is empowered to prepare certified interpretation plans on a scale larger than the maps in the master plan to provide detailed interpretation of the latter.⁶⁰

Of particular note is the fact that the Minister for National Development may designate in the master plan "any area... of special architectural, historic, traditional or aesthetic interest" as a conservation area, which may comprise a whole area, a group of buildings, or a single building.⁶¹ While the term *historic interest* is arguably broad enough to include areas of archaeological interest, to date the government has only applied its power to designate buildings, structures (such as bridges, parks and reservoirs) and precincts regarded as having largely architectural merit as conservation areas.⁶² The URA issues guidelines for the conservation of buildings or land within a conservation area and for the protection of their settings.⁶³

⁵⁴ NHBA, s 46(9).

⁵⁵ Cap 232, 1998 Rev Ed (hereinafter PA).

⁵⁶ PA, s 8.

⁵⁷ Appointment of Competent Authority (Cap 232, N 7, 2007 Rev Ed), para 1(b).

⁵⁸ PA, s 2 (definition of *written statement*) and s 6.

⁵⁹ *The Planning Act: Master Plan Written Statement 2008*, available on the website of the Urban Redevelopment Authority (URA) at <http://www.ura.gov.sg/MP2008/written_statement.htm> (accessed 5 January 2013; archived at <http://web.archive.org/web/20110605235315/http://www.ura.gov.sg/MP2008/written_statement.htm>).

⁶⁰ PA, s 7.

⁶¹ PA, s 9.

⁶² See *Listing of Conservation Areas & Maps* from the URA website at <<https://www.ura.gov.sg/conservation/mod2.htm>> (accessed 1 February 2013; archived at <<http://web.archive.org/web/20120624172253/https://www.ura.gov.sg/conservation/mod2.htm>>).

⁶³ PA, s 11(1).

Public consultation is required whenever the master plan is amended. Such amendments are proposed by the URA and approved by the minister.⁶⁴ Proposals for material⁶⁵ amendments must be advertised in the *Government Gazette* and in one English, Chinese, Malay and Tamil newspaper circulating in Singapore, giving the public not less than two weeks to make objections and representations concerning it.⁶⁶ The minister must give objectors and representors an opportunity to appear before a hearing or a public inquiry, and must take into account such objections and representations and the findings of the hearing or public inquiry when deciding whether to approve or reject the proposal.⁶⁷ No comparable procedure applies when the URA issues or amends certified interpretation plans.

The Planning Act requires⁶⁸ people to apply for and obtain planning permission before land is developed,⁶⁹ and conservation permission before work is carried out in conservation areas.⁷⁰ The URA generally processes such applications,⁷¹ though the minister may instruct the Authority to refer specific applications or a class of applications to him.⁷² Applications must generally be determined in conformity with the master plan and any relevant certified interpretation plan,⁷³ though the minister may depart from them in defined circumstances.⁷⁴ Permission can be granted unconditionally or subject to conditions that the minister sees fit to impose.⁷⁵ Those familiar with planning law in other jurisdictions may be surprised to learn that the Act neither requires applicants for planning or conservation permission to assess the impact of the proposed work on the environment or heritage, nor provides any procedure for third parties to object to the granting of the permission.

III. DIFFICULTIES WITH THE EXISTING FRAMEWORK AND PROPOSALS FOR REFORM

On 1 July 2009, the Preservation of Monuments Act 2009 came into force. By repealing the PMA 1970, the Act dissolved the PMB and transferred its functions to the NHB, a move that the Acting Minister for Information, Communications and the Arts described in Parliament as a “merger” that will “enhance the impact of our overall heritage promotion efforts, and enable us to reap natural synergies and economies of scale”.⁷⁶ The Act contains no clause equivalent to section 7 of the PMA

⁶⁴ PA, s 8.

⁶⁵ The Planning (Master Plan) Rules (Cap 232, R 1, 2000 Rev Ed) (hereinafter PMPR), r 6(3), exempts nonmaterial amendments from compliance with the procedure described in the text.

⁶⁶ PMPR, r 2 (definition of *notice by advertisement*) and r 4.

⁶⁷ PMPR, r 6.

⁶⁸ PA, s 12.

⁶⁹ A lengthy definition of the term *development* appears in the PA, s 3.

⁷⁰ The term *works within a conservation area* extends beyond development of land to “any decorative, painting, renovation or other works (whether external or internal) to any building within a conservation area which may affect its character or appearance”: PA, s 2.

⁷¹ PA, s 13.

⁷² PA, s 21.

⁷³ PA, s 14(1).

⁷⁴ PA, s 14(2).

⁷⁵ PA, ss 14(4)(a) and 15.

⁷⁶ Rear Admiral (NS) Lui Tuck Yew (Acting Minister for Information, Communications and the Arts), Second Reading of the Preservation of Monuments Bill, *Singapore Parliamentary Debates, Official Report* (13 April 2009), vol 85, cols 3645–3651 at 3651.

1970, which means that at present the sole provision facilitating archaeological investigations in Singapore is section 46 of the NHBA.

The PMA 2009 strengthened the protection for national monuments accorded by the law. It imposes a new duty on the owners of monuments to maintain them,⁷⁷ and empowers the NHB to require owners of monuments to provide information on works carried out on them,⁷⁸ and to order owners to cease such works or restore monuments that have been altered without the Board's permission.⁷⁹ Penalties for offences have generally been increased. However, it is a pity that no changes were wrought to the regime laid down in section 46 of the NHBA. The powers enabling entry on to land for archaeological investigations remain extremely limited, and there is no scheme in place for identifying and protecting potential sites from being damaged by urban development. The current system of planning law provides little assistance in this regard. Furthermore, there is still no coherent framework dealing with the ownership of archaeological finds.

A. POWERS FACILITATING ARCHAEOLOGICAL INVESTIGATIONS

Singapore is a highly built-up city. Because most land is covered by buildings, roads and other structures, especially in the city centre and southern coastal areas,⁸⁰ it will usually be practical for archaeological excavations to be carried out only when a piece of real estate is slated for redevelopment. This ensures that disruption to the use of the land is minimized. Less expense is also involved as agreement may be reached on the deployment of the developer's earth-moving equipment, and the costs of reinstatement are obviated. However, section 46 of the NHBA imposes no duty on landowners, occupiers or employees of construction companies to notify the National Heritage Board of proposals to redevelop sites, enabling it to arrange for archaeological investigations.

It might be thought that this shortcoming is alleviated by the requirement that permission be obtained before development works can take place. However, there is no indication in the Planning Act or any other legislation that the URA or Minister for National Development works together with the NHB to ensure that the archaeological value of land is taken into account when development applications are considered. First, when the URA proposes that land should be designated as a conservation area, or that such a designation should be rescinded, it is unclear that the NHB is consulted. The Planning Act also lacks a formal procedure enabling interested persons to request that the URA considers proposing to the minister that a particular piece of land be granted a conservation designation. Second, as noted earlier, there is no requirement that applicants for development permission carry out any environmental or heritage impact assessment, making it unlikely that the archaeological value of the land in question is considered. Third, unlike when the master plan is amended, since there is no opportunity for public consultation when

⁷⁷ PMA 2009, s 13.

⁷⁸ *Id.*, s 16.

⁷⁹ *Id.*, ss 18–20.

⁸⁰ In 1992 it was noted in Parliament that almost 60% of the island of Singapore consisted of built-up areas, and that this figure rose to 90% in the city centre and the southern coastal areas which were of particular historical significance because these coastal areas and seas were strategic trade routes: Yatiman Yusof (parliamentary secretary to the Minister for Foreign Affairs), "Estimates of Expenditure for the Financial Year 1st April, 1992 to 31st March, 1993", *Singapore Parliamentary Debates, Official Report* (17 March 1992), vol 59, col 1115.

development permission is sought, it is difficult to see how the NHB or third parties can conveniently find out about such applications or make representations against them. It is theoretically possible for aggrieved persons to seek judicial review of decisions whether or not to designate land as conservation areas and grants of development permission, but applicants might be put off by the expense. They would also have to overcome various difficulties such as proving that they have sufficient standing, and that the URA or minister has breached one or more grounds of review in administrative law – hardly a straightforward task.

The restrictions that existed in sections 7(1)(a) and (b) of the PMA 1970 were largely carried over into sections 46(2) and (3) of the NHBA, and no changes were made to the latter provisions by the PMA 2009. As noted earlier in our discussion of the PMA 1970, these provisions made the consent of the occupier of land a condition for entry into a dwelling-house and land used for the amenity or convenience of a dwelling-house, and for carrying out excavations. Consequently, even if a redevelopment project has come to the NHB's attention and it takes the view that an archaeological excavation is warranted, it is within the occupier's right to refuse. The NHB is entirely dependent on the goodwill and sense of responsibility of the occupier.

Neither does the NHBA require the discovery of any artifacts potentially having archaeological value to be reported, nor work to be halted to avoid damaging them. Indeed, the contractual penalties imposed by building and construction contracts for delays deters such reporting or work stoppage. A concern along these lines was raised in Parliament before the enactment of the NHBA during debates on the annual budget of the Ministry of Information and the Arts in 1992. Yatiman Yusof, parliamentary secretary to the Minister for Foreign Affairs, suggested that a law be passed to require a developer involved in developing land which might contain national heritage such as sites near the Singapore River, Chinatown, Kampong Glam, or nearby seas, to consult the National Museum before proceeding.⁸¹ The Minister for Information and the Arts George Yeo responded thus:

The present law does require the discovery of such objects to make a report, either to MITA or to the receiver of wrecks. But of course the moment you make such a report, then a general survey will be conducted, excavation work may be done, and their project will be delayed. So even though the law requires it, there is often an economic incentive not to report such findings. We will seriously consider the possibility of changing the law to enable the National Museum to conduct surveys of sites which are of suspected archaeological interest. But we must do it with a sense of balance because we cannot, in our enthusiasm to preserve the past, impose too heavy a burden on the present and the living. We must find an appropriate balance here.⁸²

The Merchant Shipping Act⁸³ imposes a duty on a person who finds or takes possession of any wreck⁸⁴ within the limits of Singapore that he or she is not the

⁸¹ Yatiman Yusof, *Singapore Parliamentary Debates*, above, n 80, at col 1116.

⁸² Brig-Gen George Yong-Boon Yeo (Minister for Information and the Arts), "Estimates of Expenditure for the Financial Year 1st April, 1992 to 31st March, 1993", *Singapore Parliamentary Debates, Official Report* (17 March 1992), vol 59, cols 1116–1117.

⁸³ Cap 179, 1996 Rev Ed.

⁸⁴ *Wreck* is defined in the Merchant Shipping Act, s 145, as including jetsam (parts of a ship, its equipment or cargo that are intentionally jettisoned to lighten the vessel when it is in distress, and that sinks or is washed ashore), flotsam (floating wreckage of a ship or its cargo), lagan (cargo lying on the ocean floor, sometimes marked by a buoy, that can be reclaimed) and derelict (cargo

owner of, or brings such a wreck within the limits of Singapore, to deliver the wreck to the receiver of wreck.⁸⁵ However, where archaeological finds on dry land are concerned, it is not clear what “present law” the Minister was referring to as neither the PMA 1970 nor any other statute in force at that time or now contains any reporting requirement. It may be that the Minister was alluding to the law relating to treasure trove; this is discussed in the next section. Regrettably, Mr Yatiman’s proposal was not incorporated into the NHBA which was enacted the following year.

The improvements needed to ameliorate the disadvantages of the present legal regime are fairly obvious. It is submitted the Planning Act should be amended to require persons seeking consent to develop land to carry out and submit heritage impact assessments as part of their applications. In addition, there should be a procedure for publicizing applications and allowing third parties to make representations opposing or supporting them. Such reports and representations will better position the URA or minister to decide if the applications should be approved, and whether any protective conditions should be imposed if the works are authorized. Information indicating that a piece of land possesses archaeological value would also equip the URA to have the land earmarked as a conservation area, which would determine how future applications to develop land in the area ought to be dealt with. The URA and the minister should be required to consult the NHB before reaching decisions on these issues.

In this respect, the laws of other jurisdictions may prove to be useful models. The Town and Country Planning (Environmental Impact Assessment) Regulations 2011⁸⁶ of the United Kingdom, for example, enjoin relevant authorities from granting planning permission unless they have first taken into account “environmental information”.⁸⁷ Such information includes “[a] description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, *material assets, including the architectural and archaeological heritage*, landscape and the inter-relationship between the above factors.”⁸⁸ This approach of requiring the impact of proposed development to be holistically assessed, taking into account factors relating to both heritage and the natural environment, has been adopted elsewhere as well, such as under New Zealand’s Resource Management Act 1991⁸⁹ and the Canadian Environmental Assessment Act, 2012.⁹⁰

lying on the ocean floor that cannot be reclaimed) found in or on the shores of the sea or any tidal water.

⁸⁵ Merchant Shipping Act, s 153(1). Failing to do so without reasonable cause is a criminal offence and causes the finder of the wreck to forfeit any claim to salvage and to be liable to pay double the value of the wreck to the owner of or the person entitled to the wreck: s 153(2).

⁸⁶ SI 2011 No 1824 (UK) <<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>> (accessed 28 February 2013; hereinafter EIA Regs (UK)).

⁸⁷ *Id.*, reg 3(4).

⁸⁸ *Id.*, Schedule 4, pt 1, para 3 (emphasis added); see also s 2(1) (definitions of *environmental information* and *environmental statement*).

⁸⁹ 1991 No 69 (reprint as at 1 February 2013) (NZ), ss 9(4) and 193, and Schedule 4, para 2(d) (“Subject to the provisions of any policy statement or plan, any person preparing an assessment of the effects on the environment should consider the following matters: ... (d) any effect on natural and physical resources having aesthetic, recreational, scientific, *historical*, spiritual, or cultural, or other special value for present or future generations...” [emphasis added]).

⁹⁰ SC 2012, c 19, s 52 (current to 6 February 2013) (Canada) <<http://laws-lois.justice.gc.ca/eng/acts/C-15.21/index.html>>; see, for example, ss 5(2)(b)(iii) (“[I]f the carrying out of the physical activity, the designated project or the project requires a federal authority to exercise a power or perform a duty or function conferred on it under any Act of Parliament other than this Act, the following environmental effects are also to be taken into account: ... (b) an effect... of any change

It remains to be seen whether the Singapore Parliament is prepared to enact a law to such effect. Academics have been calling for mandatory environmental impact assessments to be legislated for almost two decades.⁹¹ Yet, to date, the government has resisted introducing such a measure, asserting that Singapore's small geographical size, large population, and high level of economic growth require developmental needs to be prioritized over ecological preservation.⁹² It has been suggested that "[p]olitical expediency in the desire to get things done to meet development needs has tended to override the longer-term goals of protecting the environment for the benefit of future generations."⁹³

It is undeniable that the comprehensive preservation of heritage sites stands in the same position as ecological conservation, and raises the same fraught issue of how it should be balanced with development. This is illustrated by the controversy engendered by the government's plan to build a four-lane road across part of Bukit Brown Cemetery to alleviate traffic congestion in the area,⁹⁴ and eventually to turn the burial ground into a housing estate.⁹⁵ Bukit Brown is the largest Chinese cemetery outside China, with some 100,000 graves laid between 1922 and 1973.⁹⁶ The Singapore Heritage Society has highlighted various facets of its value. The gravestone epigraphs are an invaluable source of genealogical and historical information about prominent pioneers and ordinary people of Singapore; and the

referred to in paragraph (a) on... (iii) any structure, site or thing that is of *historical, archaeological, paleontological or architectural significance*" [emphasis added]), 6–8, 19(1)(a).

⁹¹ Foo Kim Boon, Lye Lin Heng & Koh Kheng Lian, "Environmental Protection: the Legal Framework" in Ooi Giok Ling (ed), *Environment and the City: Sharing Singapore's Experience and Future Challenges* (Singapore: Institute of Policy Studies; Times Academic Press, 1995), 47–99 at 87; Koh Kheng Lian, "The Garden City and Beyond: the Legal Framework" in *Environment and the City*, *id.*, 148–170 at 166–167; Lye Lin Heng, "Legal Protection of the Natural Environment" in Clive Briffett & Ho Hua Chew (eds), *State of the Natural Environment in Singapore* (Singapore: Nature Society, 1999), 83–95 at 89–90; Joseph Chun, "Reclaiming the Public Trust in Singapore" (2005) 17 SAcLJ 717, especially 715, para 5, 725–736, paras 21–45, and 745–746, para 70; Joseph Chun, "Beyond Real Estate: Sowing the Legal Seeds for an Ethical Public Land Stewardship in Singapore" (2006) 3 Macq J Int'l & Comp Env'l L 1 at 16–20 and 28–33; Lye Lin Heng, "A Fine City in a Garden – Environmental Law and Governance in Singapore" [2008] Sing J Legal Studies 68 at 109–112; Lye Lin Heng, "Land Law and the Environment: Re-examining the Concept of Ownership and Forging New Rights and Obligations in a Changed World" (2010) 22 SAcLJ 189 at 219–225, paras 47–60.

⁹² Clive Briffett & Jamie Mackee, "Environmental Assessment in Singapore: An Enigma Wrapped Up in a Mystery!" (2002) 20(2) Impact Assessment & Project Appraisal 113 at 116–118.

⁹³ *Id.* at 119.

⁹⁴ "LTA Finalises Alignment of New Road across Bukit Brown: Fewer Graves Affected than Earlier Estimated; More Time for Next-of-kin to Register Claims; Preliminary Documentation for Affected Graves Completed", URA website (19 March 2012) <<http://www.ura.gov.sg/pr/text/2012/pr12-26.html>> (accessed 27 February 2013; archived at <<http://web.archive.org/web/20121001071635/http://www.ura.gov.sg/pr/text/2012/pr12-26.html>>). The proposed road also affects Seh Ong Cemetery, an adjoining cemetery: *ibid.*

⁹⁵ Bukit Brown was zoned for residential use in the URA's 1991 Concept Plan, but still designated a cemetery in the 2008 Master Plan. On 30 May 2011, the URA announced that the cemetery would eventually be developed into a housing estate: Terence Chong, *Position Paper on Bukit Brown* (Singapore: Singapore Heritage Society, 2012) at 11 and 16 <http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf> (accessed 27 February 2013; archived at <http://web.archive.org/web/20121022225529/http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf>). See also *A High Quality Living Environment for All Singaporeans: Land Use Plan to Support Singapore's Future Population* (Singapore: Ministry of National Development, 2013) at 19, para 3.4.6 <http://www.mnd.gov.sg/landuseplan/e-book/files/assets/common/downloads/Land_Use_Plan_to_Support_Singapore.pdf> (accessed 27 February 2013).

⁹⁶ Terence Chong, "Bukit Brown as Contested Space" in *Position Paper on Bukit Brown*, *id.* at 20–24.

design, ornamentation, and orientation of the tombs according to *feng shui* principles, as well as annual rituals conducted at the cemetery to honor the deceased, provide insights into community cultural practices.⁹⁷ Rich in biodiversity, Bukit Brown is home to 66 resident species of birds, 11 of which are regarded as critically endangered, endangered, or vulnerable. It also serves as a resting and foraging site for the fauna of Singapore's Central Catchment Area; a protective buffer zone between the Area and Lornie Road, a busy highway;⁹⁸ and a "sink" to absorb rainfall, which recharges reservoirs and prevents flooding.⁹⁹ Given its potential as a tourist attraction and the intangible sense of belonging it promotes among citizens to the land and the past, the society has recommended that the cemetery be fully documented, gazetted as a heritage site, and retained as a park.¹⁰⁰ However, responding to letters to the press calling for its preservation, the URA said: "Planning for the long-term in land-scarce Singapore does require us to make difficult trade-off decisions. While we cater for conservation, we also need to balance it against other needs in the community, such as housing for people. Bukit Brown is needed in the future for housing."¹⁰¹

Without downplaying the importance of preserving certain heritage sites intact, in some cases the needs of archaeological research are more modest. If archaeologists are given sufficient time to research, record and excavate a site, it can be released for development thereafter. Thus, when a heritage impact assessment indicates that a site has or may have archaeological value, it may be sufficient for the URA or minister to grant planning or conservation permission on condition that the NHB (or its nominee) has a specified period within which to conduct a full investigation. If an excavation is found to be warranted, the NHB can notify the developer that it requires additional time. The Planning Act should set out what the maximum time periods are to enable property developers to make suitable accommodation in their project schedules so that developments are not delayed unforeseeably. In this way, there should not be "too heavy a burden on the present and the living".¹⁰² Archaeologists will also have sufficient time to carry out their investigations. It has been noted:

The majority of the excavations in Singapore have been salvage operations, and the archaeological crews were often granted merely weeks or even days to explore a site. It is inevitable that a system of prioritisation be implemented to recover as large a sample of the archaeological data as possible on the comparative[ly] little understood pre-colonial Temasek period, at the expense of the remains from the colonial period. It is under such conditions that

⁹⁷ *Position Paper on Bukit Brown*, *id* at 4–6.

⁹⁸ Ho Hua Chew, "Bukit Brown: Nature in an Old Cemetery" in Kevin Y L Tan (ed), *Spaces of the Dead: A Case from the Living* (Singapore: Ethos Books, 2011), 100–113 at 104 and 109.

⁹⁹ Lim Han She, "Bukit Brown: A Hydrological Perspective" in *Position Paper on Bukit Brown*, above, n 95 at 25.

¹⁰⁰ *Position Paper on Bukit Brown*, *id* at 13 and 18–19.

¹⁰¹ Ler Seng Ann (Group Director (Conservation & Development Services), URA), "Tough Decision in Face of Housing Needs, Says URA [letter]", *The Straits Times* (11 June 2011) <<http://www.ura.gov.sg/pr/forum/2011/forum11-06.html>> (accessed 27 February 2013; archived at <<http://web.archive.org/web/20130616182914/http://www.ura.gov.sg/pr/forum/2011/forum11-06.html>>); see also Tan See Nin (Director (Physical Planning), URA), "Why Bukit Brown is Needed for Housing [letter]", *Today* (18 June 2011) <<http://www.ura.gov.sg/pr/forum/2011/forum11-07.html>> (accessed 27 February 2013; archived at <<http://web.archive.org/web/20121001071547/http://www.ura.gov.sg/pr/forum/2011/forum11-07.html>>).

¹⁰² Above, n 82.

colonial period archaeology is often sidelined and relegated to a lower level of priority.¹⁰³

The Ancient Monuments and Archaeological Areas Act 1979 of the United Kingdom contains comparable provisions. Pursuant to the Act, the Secretary of State for Culture, Olympics, Media and Sport may designate an area as one of archaeological importance.¹⁰⁴ Once an area has been so designated, a specified investigating authority is entitled to serve an “operations notice” on a developer intending to carry out operations in the area that disturb the ground, or that involve flooding the land or tipping any materials on to it.¹⁰⁵ This confers on the investigating authority a right to enter the site of the operations to inspect for the purpose of recording any matters of archaeological or historical interest and determining if excavations are desirable, and to observe the operations so that any objects or other material of archaeological or historical interest that are discovered can be recorded.¹⁰⁶ If the investigating authority wishes to excavate, it must notify the developer within four weeks of the service of the operations notice, and having done so it has a period of four months and two weeks starting six weeks after the date the operations notice was served to carry out the excavation.¹⁰⁷ The investigating authority and the developer may also agree on an earlier date.¹⁰⁸

The changes to the Planning Act proposed above work in tandem with section 46 of the NHBA. While the Planning Act will facilitate archaeological investigations when applications are made for land to be developed, section 46 empowers the NHB to carry out investigations in the absence of such applications. Such investigations may reveal the heritage value of sites, which can then be designated as conservation areas under the Planning Act. Certain aspects of section 46 can be improved. For one, the requirement for the NHB to show it has reason to believe that land contains an ancient monument before it can enter upon it to conduct an investigation is unduly narrow. The section should be recast to confer upon the Board a general power to carry out archaeological investigations and excavations. In addition, the ability of an occupier of land to block exploration simply by refusing consent for excavation should be removed. As regards entry upon and excavation of a dwelling-house and land appurtenant to it, the aim of section 46(2) of the NHBA is no doubt to protect the occupier from intrusion into his or her private life that may cause inconvenience. Nonetheless, it is submitted that the Board should be permitted to carry out an archaeological excavation if the owner embarks on a redevelopment project of the dwelling-house or its appurtenant land that itself involves operations that disturb the ground.

¹⁰³ Lim, “Archaeology as a Critical Source for Reconstructing the Colonial Past”, above, n 21 at 129.

¹⁰⁴ AMAAA (UK), s 33(1).

¹⁰⁵ The AMAAA (UK), s 61(1), defines *flooding operations* as “covering land with water or any other liquid or partially liquid substance” and *tipping operations* as “tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land”.

¹⁰⁶ *Id.*, s 38(1).

¹⁰⁷ *Id.*, ss 38(2), (3) and (4)(a). Where the operations stated in the operations notice are to be carried out after clearance of the site, the excavation period starts from the date when notification of the site clearance is received or with the date mentioned in s 38(4)(a), whichever occurs last: s 38(4)(b). Proceeding with operations while an investigating authority has the right to excavate a site renders a developer criminally liable: s 38(7) read with s 35.

¹⁰⁸ *Id.*, s 38(4)(c).

B. OWNERSHIP OF ARCHAEOLOGICAL FINDS

The other major shortcoming of the present legal regime in Singapore is the lack of a clear framework dealing with the ownership of relics that are unearthed in the course of archaeological excavations. It will be recalled that while section 46 of the NHBA empowers a person exercising a power of entry on to land to remove (and presumably retain) “samples... reasonably required for the purpose of archaeological analysis”,¹⁰⁹ he or she may only take “temporary custody” of objects of archaeological or historical interest discovered during an excavation and remove it from the site “for the purpose of examining, testing, treating, recording or preserving it”.¹¹⁰ That person and the National Heritage Board are expressly prohibited from retaining the object “without the consent of the *owner* beyond such period as may be reasonably required for the purpose of examining and recording it and carrying out any test or treatment which appears... to be desirable for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object” (emphasis added).¹¹¹

Thus, section 46 studiously avoids dealing with the issue of ownership of objects of archaeological or historical interest, which for convenience I will term ‘relics,’ leaving this to the common law. Intriguingly, section 46(8) goes on to state: “Nothing in this section shall affect any right of the Government in relation to treasure trove.” It would appear that ownership of relics is left up to the common law of finders and, possibly, treasure trove.

Section 46(8) seems to imply that common law rules relating to treasure trove apply in Singapore. This is possibly buttressed by the comment made by the Minister for Information and the Arts in Parliament in 1992 that the law requires persons discovering relics to report the find to his Ministry.¹¹² The common law laid a duty on finders of treasures trove, or persons with knowledge of the finding, to report the matter to the coroner of the district in which the discovery occurred.¹¹³ However, I previously expressed some doubt about the effect of the section, stating that it appeared to have been inserted out of caution rather than after considered thought.¹¹⁴ I will not rehearse the details here, but essentially there is disagreement among academics over whether Crown prerogatives such as treasure trove can properly be regarded as having been transferred to the Yang di-Pertuan Agong (the Supreme Head of the Federation of Malaysia) at the federal level and to the Rulers of the States of Malaysia at the state level following Malaysia’s independence from the British Empire in 1957 and the introduction of a new constitution.¹¹⁵ This is relevant to Singapore because it joined the Federation of Malaysia in 1963, before becoming a fully independent republic two years later. I am inclined to agree with Andrew

¹⁰⁹ NHBA, above, n 47, s 46(5).

¹¹⁰ *Id.*, s 46(6).

¹¹¹ *Id.*, s 46(7).

¹¹² George Yong-Boon Yeo, *Singapore Parliamentary Debates*, above, n 82.

¹¹³ Lord Simonds (gen ed), *Halsbury’s Laws of England*, 7 (3rd ed) (London: Butterworths, 1954) at 540, [1161]–[1163]. It is notable that the Coroners Act 2010 (No 14 of 2010, now Cap 63A, 2012 Rev Ed) of Singapore deals entirely with the duty of coroners to hold inquiries into deaths, and is silent on any jurisdiction as regards treasure troves.

¹¹⁴ Jack Tsen-Ta Lee, “Treaties, Time Limits and Treasure Trove: The Legal Protection of Cultural Objects in Singapore” (2004) 9 *Art, Antiquity & L* 237–280 at 259.

¹¹⁵ Contrast R[eginald] H[ugh] Hickling, “The Prerogative in Malaysia” (1975) 17 *Mal L Rev* 207–232, with A[ndrew] J[ames] Harding, “Monarchy and the Prerogative in Malaysia” (1986) 28 *Mal L Rev* 345–365; see Lee, “Treaties, Time Limits and Treasure Trove”, *id* at 259–261.

Harding that the wording of the Malaysian Constitution and the Civil Law Act 1956¹¹⁶ did not unambiguously confer the prerogatives of the Crown on the Agong, which was a novel office created by the Constitution. If the prerogative did not devolve upon the Agong, then it could not have vested in Singapore's head of state, its President, upon Singapore's independence from Malaysia in 1965.¹¹⁷

If I am mistaken on that count, it should be noted that in 1965 Singapore law provided that

... all existing laws shall continue in force on and after Singapore Day [9 August 1965], but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia.¹¹⁸

Moreover, section 3(2) of the Application of English Law Act¹¹⁹ enacted in 1994 states that the common law of England continues to be in force in Singapore "so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require". The language of prerogative rights does not sit well with the fact that Singapore has an elected president rather than a monarch, and it may well be that English common law rules relating to treasure trove should be regarded as inapplicable to these modern-day circumstances.¹²⁰

Is the concept of *bona vacantia* of assistance? Broadly speaking, *bona vacantia* refers to property that has no owner, and under some circumstances such property may be claimed by the government. Under Scots law, the applicable rule is *quod nullius est fit domini regis* ("that which belongs to nobody becomes our Lord the King's [or Queen's]"). In *Lord Advocate v University of Aberdeen*,¹²¹ the Inner House of the Court of Session held that a porpoise bone found together with items such as brooches, bowls and other metal work in a wooden box (known collectively as the "Saint Ninian's Isle Treasure"), though not qualifying as treasure trove unlike the metal objects, could be claimed by the Crown as *bona vacantia*.¹²² On the other hand, the English common law – applicable in Singapore by virtue of the Application of English Law Act – does not apply the concept of *bona vacantia* so widely. Property is only regarded as *bona vacantia* in specific circumstances, such as when a person dies intestate without next of kin,¹²³ or when a trust fails.¹²⁴ Controversy exists as to

¹¹⁶ Act 67 (1999 Reprint) (Malaysia).

¹¹⁷ By virtue of the Republic of Singapore Independence Act 1965 (No 9 of 1965, 1985 Rev Ed) (hereinafter RSIA), s 3: "The Yang di-Pertuan Agong of Malaysia shall with effect from Singapore Day cease to be the Supreme Head of Singapore and his sovereignty and jurisdiction and power and authority, executive or otherwise, in respect of Singapore shall be relinquished and shall vest in the Head of State."

¹¹⁸ *Id.*, s 13(1). The present Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) contains an equivalent provision, Art 162: "Subject to this Article, all existing laws shall continue in force on and after the commencement of this Constitution... but all such laws shall, subject to this Article, be construed as from the commencement of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."

¹¹⁹ Cap 7A, 1994 Rev Ed.

¹²⁰ Lee, "Treaties, Time Limits and Treasure Trove", above, n 114 at 262–263.

¹²¹ 1963 SC 533.

¹²² *Id.* at 559 *per* Lord Mackintosh; see also 554 *per* Lord Patrick.

¹²³ Andrew Bell, "Bona Vacantia" in Norman Palmer & Ewan McKendrick, *Interests in Goods* (2nd ed) (London: LLP, 1998), 207–226 at 216–220. In the Singapore context, see the Intestate

whether treasure trove is a species of *bona vacantia*;¹²⁵ one scholar regards it as a distinct form of the royal prerogative.¹²⁶ The point is that English law does not recognize any general right of the Crown to mislaid property: “[O]nly certain classes of property whose owner is unknown can be claimed as *bona vacantia*. Thus, lost property in general cannot be claimed, it is only if it falls... within one of the... heads of the royal prerogative that it can be claimed by the Crown.”¹²⁷

It is submitted that a more tenable option may be for the court to advance the common law of Singapore by recognizing, as the Supreme Court of Ireland did in *Webb v Ireland*,¹²⁸ that “a necessary ingredient of sovereignty in a modern state... should be an ownership by the State of objects which constitute antiquities of importance which are discovered and which have no known owner”.¹²⁹ There is precedent for a judicial holding of this nature in Singapore: in 1998, the Court of Appeal held in *Public Prosecutor v Taw Cheng Kong*¹³⁰ that when Singapore gained independence in 1965 it acquired the attributes of sovereignty, and that it was inherent in the nature of a sovereign republic that its legislature has plenary powers of legislation, including the power to enact extraterritorial laws.¹³¹ Article 23(1) of the Singapore Constitution vests the “executive authority of Singapore” in the President and makes it “exercisable subject to the provisions of this Constitution by him or by the Cabinet or any Minister authorised by the Cabinet”. The Constitution does not set out the ambit of executive authority. It is conceivable that a court might hold that, following *Webb*, the executive authority of Singapore includes the ownership of relics unearthed during archaeological digs.

The extent of such a principle is important. In *Webb*, three of the five judges who heard the case were of the view that the scope of the state’s “right or prerogative of treasure trove” was the same as the prerogative of treasure trove at common law.¹³² It is submitted that such a rule would be of limited utility in Singapore. In order to qualify as treasure trove, an object must be substantially – that is, more than 50%¹³³ – gold or silver and must have been concealed with an intention that it be

Succession Act (Cap 146, 1985 Rev Ed), s 7, rule 9; and the Civil Law Act (Cap 43, 1999 Rev Ed), s 27(1): “When a right to the personal estate of any person who dies intestate without next of kin has accrued to the Government, such personal estate or the proceeds thereof shall form part of the Consolidated Fund and shall be appropriated as part of such revenue to such public purposes as Parliament may from time to time think proper and direct.” However, the relevant minister may “order the transfer of the whole or any part of such personal estate, or the proceeds thereof, to any person or persons who shall establish to the satisfaction of the Minister any equitable or moral claim thereto”: s 27(2).

¹²⁴ Bell, “Bona Vacantia”, *id* at 223–226.

¹²⁵ William Blackstone, *Commentaries on the Laws of England* (14th ed) (London: T Cadell and W Davies, 1803), vol 1 at 298; see also Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown and the Relative Duties and the Rights of the Subject* (London: J Butterworth, 1820) and the *dicta* of Finlay CJ in *Webb v Ireland* [1988] IR 353 at 381, SC (Ireland): “Treasure trove... is part of the more general right of *bona vacantia*”.

¹²⁶ Noel D Ing, *Bona Vacantia* (London: Butterworths, 1971) at 8–9; see Bell, “Bona Vacantia”, above, n 123 at 208.

¹²⁷ Bell, “Bona Vacantia”, *id* at 212.

¹²⁸ Above, n 125.

¹²⁹ *Id* at 383 *per* Finlay CJ.

¹³⁰ [1998] 2 SLR(R) 489.

¹³¹ *Webb*, above, n 125 at 499–500, [30] and [32].

¹³² *Ibid per* Finlay CJ, Henchy and Griffin JJ concurring at 394.

¹³³ *Attorney-General of the Duchy of Lancaster v G E Overton (Farms) Ltd* [1982] Ch 277 at 292, CA.

recovered later.¹³⁴ An item accidentally lost or deliberately left behind (for instance, buried in a grave) is not treasure trove.¹³⁵ However, virtually all the relics unearthed in Singapore to date have been composed of base metals or nonmetallic materials. In fact, it appears that only one cache of gold objects has ever been found in Singapore. On 7 July 1926, workers carrying out an excavation for a reservoir on Fort Canning found a number of gold artifacts¹³⁶ believed to be of Javanese origin. These included clasps, clips and jewelled rings, including one incised with a bird, possibly a goose, which is one of the regalia of the royal house of Surakarta in Central Java and the Hindu symbol of the vehicle of Brahma. There were also two magnificent armlets, one intact and one slightly damaged, with a *kala* head design. The *kala* are demonic beasts who are the sons of the Hindu goddess Durga in destructive mood,¹³⁷ and their use as decoration is consistent with a fourteenth-century date.¹³⁸ In 1926 common law rules relating to treasure trove applied in Singapore as it was one of the Straits Settlements which were collectively a Crown colony. However, I have not been able to locate any evidence that the ornaments were formally declared to be treasure trove by a court. Perhaps this was unnecessary because their ownership was never in doubt, the Fort Canning site presumably having been government land. It is worth noting that one of the judges in *Webb* went further than his brethren by expressing the view that since most archaeological finds in Ireland were not of gold or silver, the right of the state to ownerless antiquities should extend beyond items traditionally constituting treasure trove.¹³⁹

If relics do not qualify as treasure trove, their ownership depends on the common law rules of finders. The Singapore courts have yet to pronounce upon this matter, but they are likely to apply the English common law position. Basically, if an object is embedded in the realty it belongs to the landowner and not to the finder. If, however, it is found on the surface it belongs to the finder (assuming the true owner cannot be located), unless the landowner has manifested an intention to control the land and objects that may be found on it.¹⁴⁰ It is submitted that this is not a satisfactory way for the ownership of objects of archaeological or historical importance to be determined. The combined effect of the common law rules relating to treasure trove and finders is that if a number of objects are discovered together on privately owned land, those not substantially gold or silver may have to be separated from those that are, thus diminishing the value of the find. Ownership of these items may then be in the hands of either the landowner or the finder, who is free to deal

¹³⁴ Chitty, *Prerogatives of the Crown*, above, n 125 at 152, cited with approval in *Attorney-General v Moore* [1893] 1 Ch 676 at 683 and *Attorney-General v Trustees of British Museum* [1903] 2 Ch 598 at 608.

¹³⁵ *A-G v Trustees of the British Museum*, *id* at 608–609.

¹³⁶ “Treasure Trove: Discovery at Fort Canning”, *The Singapore Free Press and Mercantile Advertiser* (19 July 1928) at 9; “Treasure Trove at Fort Canning”, *The Straits Times* (19 July 1928) at 8; R[ichard] O[laf] Winstedt, “Gold Ornaments Dug Up at Fort Canning, Singapore” (1928) 6(4) JMBRAS 1, reprinted in (1969) 42(1) JMBRAS 49.

¹³⁷ Miksic, *Forbidden Hill*, above, n 14 at 43.

¹³⁸ John N Miksic, *Old Javanese Gold* (Singapore: Ideation, 1990) at 50; Miksic, *Forbidden Hill*, *id* at 42–43. Some of the gold ornaments, including the “goose ring,” were found to be missing after World War II (*Forbidden Hill*, *id* at 43, caption of fig 3); the remainder have pride of place in the collection of the National Museum of Singapore.

¹³⁹ *Webb*, above, n 125 at 391 *per* Walsh J. The remaining judge, McCarthy J, expressed no view on this issue.

¹⁴⁰ *Parker v British Airways Board* [1982] QB 1004; *Waverley Borough Council v Fletcher* [1996] QB 334.

with them as he or she wishes.¹⁴¹ In the United Kingdom, the common law regime has been replaced by the Treasure Act 1996.¹⁴²

It is submitted that the shortcomings of the present law should be remedied by adopting a comprehensive regime protecting relics and vesting ownership of them in the state.¹⁴³ An important preliminary issue that the regime must address is what objects are to be regarded as relics. Given the significance of modern-era archaeology to Singapore, a definition is unhelpful if it declares to be relics only objects of historical value that are of a certain age, for instance, at least 50 or 100 years old.¹⁴⁴ Instead, I would suggest a provision akin to the definition of *archaeological object* in the National Monuments Act 1930¹⁴⁵ of Ireland: “any chattel whether in a manufactured or partly manufactured or an unmanufactured state which by reason of the archaeological interest attaching thereto or of its association with any Irish historical event or person has a value substantially greater than its intrinsic (including artistic) value, and the said expression includes ancient human and animal remains...”¹⁴⁶

The subsequent National Monuments (Amendment) Act 1994¹⁴⁷ of Ireland contains provisions that have much to commend them. First, they deter uncontrolled searches for and removal of relics from archaeological sites by prohibiting their unauthorized possession, acquisition, sale, or disposal;¹⁴⁸ and empowering the police to seize devices such as metal detectors.¹⁴⁹ Secondly, the Act requires chance finds of relics to be reported and transferred into state custody.¹⁵⁰ To encourage finds to be reported, it establishes a system for rewarding finders and private landowners.¹⁵¹ Finally, it prevents relics valuable to the nation’s heritage from being exported.¹⁵² A detailed examination of such export restrictions is beyond the scope of this article,

¹⁴¹ See, for instance, “Treasure Trove and Title to Discovered Antiquities” in Norman Palmer & Ewan McKendrick (eds), *Interests in Goods* (London: Lloyd’s of London Press, 1993), 305 at 308–309; Roger Bland, “Treasure Trove and the Case for Reform” (1996) 1 Art, Antiquity & L 11 at 16–18.

¹⁴² 1996 c 24 (UK).

¹⁴³ Though cogent arguments have been made against attempts by nations to retain cultural property within their borders (see, for example, John Henry Merryman, “The Retention of Cultural Property” (1988) 21 U Cal Davis L Rev 477, reprinted in John Henry Merryman, *Thinking about the Elgin Marbles: Critical Essays on Cultural Property, Art and Law* (2nd ed) (Alphen aan den Rijn, Netherlands: Kluwer Law Int’l, 2009) at 170–203), it might be said that the vesting of ownership of relics in the state is not unfair to finders or landowners since the presence of a relic on a person’s land and its subsequent discovery are entirely fortuitous events, and that the finder can be financially compensated for any effort expended in locating the relic.

¹⁴⁴ See, eg, the National Heritage Act 2005 (Act 645, 2006 reprint) (Malaysia) (hereinafter NHA (M’sia)), s 2(1) (definitions of *antiquity* and *archaeological relic*); Treasure Act 1996 (c 24) (UK) (hereinafter TA (UK)), s 1(1) (definition of *treasure*).

¹⁴⁵ No 2 of 1930 <<http://www.irishstatutebook.ie/1930/en/act/pub/0002/print.html>> (accessed 26 May 2011) (hereinafter NMA 1930 (Ireland)).

¹⁴⁶ *Id.*, s 2.

¹⁴⁷ No 17 of 1994 <<http://www.irishstatutebook.ie/1994/en/act/pub/0017/print.html>> (accessed 26 May 2011) (hereinafter NMA 1994 (Ireland)). By ss 24(2) and (3) of that Act, it is to be construed together with the National Monuments Act 1930 and the National Monuments (Amendment) Act 1987 (No 17 of 1987) <<http://www.irishstatutebook.ie/1987/en/act/pub/0017/print.html>> (accessed 26 May 2011) as one Act.

¹⁴⁸ NMA 1994 (Ireland), *id.*, s 4. Compare the NHA (M’sia), ss 86 and 113.

¹⁴⁹ NMA 1994 (Ireland), s 7. The use of such a device in a protected area is prohibited by the National Monuments (Amendment) Act 1987, above, n 147, s 2.

¹⁵⁰ NMA 1930 (Ireland), s 23; NMA 1994 (Ireland), s 5. Compare the NHA (M’sia), s 74, and the TA (UK), s 8.

¹⁵¹ NMA 1994 (Ireland), s 10; Compare the NHA (M’sia), s 79.

¹⁵² NMA 1930 (Ireland), s 24.

but it is worth noting that a number of jurisdictions have similar laws that also provide the state an opportunity to acquire such relics if it desires.¹⁵³

IV. CONCLUSION

In a sense, the Preservation of Monuments Act 2009 was a missed opportunity. When strengthening protection for national monuments – and, in the process, making consequential changes to the National Heritage Board Act – thought could have been given to overhauling section 46 of the latter statute by giving wider power to the Board to identify sites likely to be of archaeological value. The present provision is too timid: It allows the Board and its authorized representatives to enter upon land and conduct a surface investigation, but effectively confers on occupiers the absolute right to refuse permission for an archaeological excavation. Where a dwelling-house and the land appurtenant to it are concerned, the right extends even to preventing entry.

In addition, the provision appears intentionally silent as to the ownership of relics unearthed during excavations, as it expressly states that the Board and its representatives may only take temporary custody of them for examination, testing, treatment, recording, or preservation, and may not retain them beyond a reasonable period without the owner's consent. There is an unclear reference to treasure trove, which raises the issue of whether the common law principles relating to this Crown prerogative apply in Singapore today.

It might be thought that the Planning Act enables the URA and the Minister for National Development to protect sites with potential archaeological value by preventing irreparable damage due to uncontrolled redevelopment, and to facilitate the investigation of such sites by the NHB. However, while the current regime mandates permission to be sought before development works are carried out on land, there is no requirement for heritage impact assessments to be conducted and submitted to the URA. Neither is there any procedure for interested members of the public to be notified of applications for permission, nor for their representations on such applications to be received and considered.

The practical effect of the present state of the law is that it is far better for archaeologists from educational institutions and the NHB to enter into agreements with landowners and occupiers for excavations to be conducted than for the Board to assert its statutory rights. It could be said that, in any case, conducting an archaeological excavation by agreement is always preferable to doing so by force of law in the face of opposition. However, the present law places those seeking to conduct archaeological investigations in a weak negotiating position, with the result that permission for excavations may be granted by landowners as an act of grace with less-than-ideal conditions such as very short project periods. The historical information gleaned from such a project can only be sketchy and incomplete.

It is submitted that the legal frameworks in jurisdictions such as Ireland and England and Wales are useful in providing inspiration for how Singapore law might be reformed. Among other things, there should be a duty on persons planning to redevelop land to submit heritage impact assessments as part of their application for development permission. Such assessments will enable the URA or minister to

¹⁵³ NHA (M'sia), s 83; Cultural Property Export and Import Act (RS 1985, c C-51) (Can); Antiquities Act 1975 (1975 No 41) (NZ), ss 5–10; Protection of Movable Cultural Heritage Act 1986 (No 11 of 1986) (Cth, Aust), Pt II, Div I, ss 7–13.

determine, in consultation with the NHB, whether the land is likely to be archaeologically significant. If it is, development permission can be granted subject to conditions allowing for a proper archaeological investigation to be carried out for a reasonable, specified period. Furthermore, an occupier should not be able to prevent the NHB from carrying out excavations simply by refusing consent. There should also be a power to conduct an excavation in a dwelling-house or its surrounding land if the homeowner plans work that involves disturbing the ground. And to preserve for posterity relics discovered during excavations, it is submitted that ownership in them should be vested in the state, and suitable incentives provided for such finds to be reported to the NHB. In connection with the foregoing, thought will need to be given to whether the NHB is sufficiently resourced and has staff qualified to conduct archaeological investigations.

Strengthening the law along the lines proposed is probably not high on the government's legislative agenda, but my hope is that Parliament will not tarry too long before acting. As Lim Chen Sian warns: "It cannot be further emphasised that, faced with the exuberant pace of development, the archaeological reservoir of colonial period Singapore diminishes with each passing day."¹⁵⁴

¹⁵⁴ Lim, "Archaeology as a Critical Source for Reconstructing the Colonial Past", above, n 21 at 132.