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Treaties, Time Limits and Treasure Trove: The Legal Protection of Cultural Objects in Singapore

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TREATIES, TIME LIMITS AND TREASURE TROVE: THE LEGAL PROTECTION OF CULTURAL OBJECTS IN SINGAPORE

Jack Tsen-Ta Lee*

This article considers the extent to which civil and criminal law in Singapore deters the unlawful removal of cultural objects from the possession of private owners, art galleries and museums, or from archaeological sites, and provides redress to victims. Given Singapore's position as the crossroads of Asia, the law must be able to cope with the flow of objects in and out of the country. The law is currently deficient as it is not tailored to deal with issues concerning cultural heritage, and needs to be reformed in several respects. There are sound reasons for a modern State like Singapore to enact legislation, as well as to enter into regional and international treaties, to protect its national heritage and to promote global co-operation in opposing the illicit trade in unlawfully removed cultural objects.

Singapore is not known for having a civilisation with a long and distinguished history, unlike China, India or Greece, or even its South-East Asian neighbours Cambodia and Indonesia. As such, it is not perceived to be a 'source nation' vulnerable to the plunder of its cultural patrimony. Although a bustling, modern city, neither is it yet a centre of art and culture comparable to London or New York. One is therefore tempted to ask whether Singapore and, indeed, other States in similar positions which emerged as independent nations in the twentieth century need specific laws relating to cultural objects.

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I believe it would be regrettable if such a short-sighted view were taken. First, although Singapore's archaeological heritage may not be as spectacular as the sculptures and burial sites unearthed in other parts of South-East Asia, it is nonetheless valuable for a deeper understanding of the history of the island and the region. Secondly, we should move away from the notion that only 'old' cultural objects are worth caring for. Cultural objects that are presently 'new', whether artworks or historically-significant artefacts, will likely gain importance as time passes. In addition, Singapore's fine arts continue to grow and blossom, and the nurturing process must necessarily encompass proper protection for artists' works. Part I of this article examines the state of Singapore's heritage and art to set the background for the discussion that follows.

Part II focuses on the protection of cultural objects that are within Singapore. It considers the extent to which Singapore civil and criminal law deters the unlawful removal of cultural objects from the possession of their owners or from archaeological sites, and provides redress to victims. It also examines some of the problems encountered when cultural objects are acquired. Given Singapore's position as the crossroads of Asia, Part III of the article goes on to look at how Singapore law copes with the flow of cultural objects from other countries in and out of Singapore.

In my view the law is currently deficient as it is not tailored to deal with some of the special difficulties posed by cultural objects, and thus requires reform. It is my thesis that there are sound reasons for a modern State such as Singapore to enact legislation, as well as to enter into regional and international treaties, to protect its national heritage and to promote global co-operation in opposing the illicit trade in unlawfully removed cultural objects.

I: SINGAPORE'S HERITAGE AND ART

A. A Young Nation, an Ancient Heritage

Singapore became an independent republic on 9th August 1965. Its modern history is usually dated from January 1819, when Sir Stamford Raffles, an agent of the British East India Company, landed on the island after having searched the Straits of Malacca for a place to found a trading station to counter Dutch influence in the region. At the time, Singapore

was an obscure fishing village governed by the Temenggong, one of the Sultan of Johore's ministers. In August 1824, the Temenggong and the Sultan of Johore ceded to the East India Company and its heirs perpetual title to Singapore.¹

However, as was highlighted by an exhibition called *Singapore – 700 Years*² held some years ago at the Singapore History Museum, Singapore may have been mentioned in several documents dating between the second and thirteenth centuries. The first indisputable evidence of habitation is in the Javanese *Nagarakretagama* of 1365, which named a settlement called Temasek ('Sea Town') on Singapore island. Temasek was probably a trading dependency of the Srivijaya Empire.³ It is believed that the Malay name of the island, *Singapura* ('Lion City'), came into use between 1365 and 1462.⁴

By 1365, the Majapahit Empire had claimed Singapura as a vassal State. It was attacked by the Thais between 1398 and the early fifteenth century. After the Portuguese seized Malacca in 1511, the Malay *Laksamana* (Admiral) fled to Singapura. When the Sultan established a new capital at Johore Lama at the southern tip of the Malay peninsula he kept a *shabandar* (port officer) at Singapura. The Portuguese destroyed Johore Lama in 1587, and the end of Singapura probably dates from 1613 when the Portuguese reported burning down a Malay outpost at the mouth of the river. By the second half of the eighteenth century Singapore had been forgotten by the West.⁵

It is therefore likely that Singapore was inhabited and formed part of a civilised, literate world from about the tenth to twelfth centuries, but was subsequently abandoned to small pockets of *Orang Laut* ('Sea People'). In June 1819, a few months after Raffles' arrival, a sandstone slab about ten feet high and nine to ten feet long inscribed with 50 or 52 lines of script was found at the mouth of the Singapore river. By that time, the meaning of the inscription was already a mystery to the island's inhabitants. Most

1 C.M. Turnbull, *A History of Singapore 1819-1988* (2nd edn) (Singapore: Oxford: Oxford University Press, 1989), at 1-2, 4-5, 28.

2 See the Singapore History Museum website at <http://www.nhb.gov.sg/SHM/Exhibitions/past_spore700yrs.htm> (accessed 13 April 2004).

3 Turnbull, *supra*, n. 1 at 1-3.

4 John N. Miksic, *Archaeological Research on the 'Forbidden Hill' of Singapore: Excavations at Fort Canning, 1984* (Singapore: National Museum, 1985) at 26 (hereinafter *Forbidden Hill*).

5 Turnbull, *supra*, n. 1 at 3-4.

regrettably, the monument was blown to pieces in 1843 to make space for the quarters of the commander of Fort Fullerton. A Colonel James Low managed to salvage at least three fragments and had them chiselled into slabs, which he sent to Calcutta for analysis. A few words were made out by the Dutch epigrapher, Hendrik Kern, but the script has not been, and probably never will be, fully deciphered. A large block from the monument lay abandoned at Fort Canning until finally being broken up and used as gravel for a road.⁶ One of Colonel Low's fragments, called the Singapore Stone, is today displayed in the Singapore History Museum.

During an excavation for a reservoir on Fort Canning Hill on 7th July 1926, a group of gold artefacts that may have constituted a hoard were found.⁷ Among the clasps, clips and jewelled rings discovered were a ring incised with a bird, possibly a goose, one of the regalia of the royal house of Surakarta in Central Java and the Hindu symbol of the vehicle of Brahma; and a spectacular pair of armlets, one intact and one slightly damaged, bearing a design of a *kala*⁸ head, a decoration consistent with a fourteenth-century date.⁹ Some of these artefacts are now in the Singapore History Museum's collection; the rest, including the 'goose ring',¹⁰ having gone missing over the years.

Fieldwork in the South-East Asian region involving archaeologists from Singapore began in 1933. Casual finds of Neolithic stone tools on Pulau Ubin, a small island north-east of the main land mass, prompted an excavation in 1949 but nothing was found.¹¹ No other organised investigations were made until 1984, when systematic excavations were carried out at Fort Canning Hill in the hope of discovering further archaeological evidence of Singapore's past. Further excavations were conducted in

6 *Forbidden Hill, supra*, n. 4 at 13, 40, 41.

7 R.O. Winstedt, 'Gold Ornaments Dug Up at Fort Canning, Singapore' (1928) 6(4) J.M.B.R.A.S. [*Journal of the Malayan Branch of the Royal Asiatic Society*] 1, reprinted in (1969) 42(1) J.M.B.R.A.S. 49.

8 The *kala* are demonic beasts, sons of the Hindu goddess Durga in destructive mood: *Forbidden Hill, supra*, n. 4, at 43.

9 John N. Miksic, *Old Javanese Gold* (Singapore: Ideation, 1990) at 50 (hereinafter *Javanese Gold*); see also *Forbidden Hill, id.*, at 42-43.

10 *Forbidden Hill, id.*, at 43 (caption of fig. 3).

11 Alexandra Avieropoulou Choo, *Archaeology* (Singapore: National Museum, 1987) at 6, 13. See *id.*, 1-4, for an account of the history of archaeological research in South-East Asia that Singapore was involved in.

1987 and 1988.¹² Fort Canning Hill was probably an important site for much of the fourteenth century as many brick ruins, potsherds and coins were strewn about its slopes when the British occupied it in 1819.¹³

The Fort Canning projects, and more recent excavation efforts at other sites in Singapore such as the new Parliament House in 1994, Empress Place in 1998 and the grounds of St Andrew's Cathedral in 2003–2004, have revealed tens of thousands of artefacts linking Singapore to ancient empires.¹⁴ These include sherds of late Yuan Dynasty (1300–1367 CE) porcelain,¹⁵ other fragments of earthenware and stoneware from fourteenth to early fifteenth century contexts,¹⁶ glass beads and pieces, and other archaeological evidence from the tenth to seventeenth centuries.¹⁷

B. Housing Singapore's History

The first museum in Singapore, called the Raffles Library and Museum, was officially opened by Frederick Weld, the Governor of the Straits Settlements, on 12th October 1887.¹⁸

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- 12 The results of the 1984 excavation are reported in *Forbidden Hill*, *supra*, n. 4; and Alexandra Avieropoulou Choo, *Report on the Excavation at Fort Canning Hill, Singapore* (Singapore: National Museum, 1986). For another example of an archaeological investigation carried out in Singapore, see also Jennifer Barry, *Pulau Saigon: A Post-Eighteenth Century Archaeological Assemblage Recovered From a Former Island in the Singapore River* (Stamford: Rheidol Press, 2000), detailing an archaeological excavation carried out between November 1998 and March 1989 which turned up items made of ceramics, glass, bone, metal, wood, stone, plastic and rubber, as well as faunal and floral remains.
- 13 *Javanese Gold*, *supra*, n. 9.
- 14 See the Singapore History Museum website at <http://www.nhb.gov.sg/Discover_Heritage/Archaeology/fort_canning_disc.htm> (accessed 13 April 2004); *Early Singapore 1300s–1819: Evidence in Maps, Text and Artefacts* (John N. Miksic & Cheryl-Ann Low Mei Gek eds.) (Singapore: Singapore History Museum, 2004); John N. Miksic, 'Recent Archaeological Excavations in Singapore: A Comparison of Three Fourteenth-Century Sites' (2000) 20 *Bulletin of the Indo-Pacific Prehistory Association* 56 <<http://www.seaarchaeology.com/v1/pdfs/03sites.pdf>> (accessed 13 April 2004); 'Dig This – A Coin 700 Years Old', *The Straits Times* (20 November 2003), at 8; and Tan Shyr Ee, 'Digging Up the Past', *The Sunday Times* (25 January 2004), at L5.
- 15 *Javanese Gold*, *supra*, n. 9.
- 16 *Forbidden Hill*, *supra*, n. 4, at 55, 67–69, 76.
- 17 Singapore History Museum website, *supra*, n. 14.
- 18 See Singapore History Museum website at <<http://www.nhb.gov.sg/SHM/NMhistory/index.html>> (accessed 13 April 2004); and Office of Corporate Communications, National University of Singapore, *Surprising Images of Ancient Singapore* (last modified 1 August 2003) <<http://www.nus.edu.sg/corporate/research/gallery/research17.htm>> (accessed 14 April 2003). See also Choo, *supra*, n. 11, at 5–14; Gretchen Liu, *One Hundred Years of the National Museum, Singapore, 1887–1987* (Singapore: Nat'l Museum, 1987); and Eng-Lee Seok Chee *et al*, 'Introduction' in *Treasures from the National Museum, Singapore* (Singapore: National Museum, 1987) at 8.

The Library and Museum became separate departments in the 1950s, and the Raffles Museum was renamed the National Museum on 9th December 1960.

In August 1993, the National Heritage Board (NHB) was established as a statutory board under the Ministry of Information and the Arts.¹⁹ From that time, the Board assumed oversight of the National Museum and National Archives. The National Museum of Singapore now comprises three component museums: the Singapore History Museum, the Singapore Art Museum and the Asian Civilisations Museum (ACM).²⁰ The museums under the National Heritage Board umbrella are part of the Museum Roundtable, other members of which include smaller specialised history museums in Singapore.²¹

The first branch of the ACM was inaugurated in 1997. On 2nd March 2003, the museum opened a new flagship branch with ten galleries in the historic Empress Place Building. The ACM received a government grant of S\$79 (£28.5) million for renovations to the building, and S\$16 (£6) million for new acquisitions matched by a private donation of S\$16 million. The museum's collections span Chinese, Indian, Malaysian, Peranakan (Straits-born Chinese), Thai and Islamic art, and 30% of the work on view is from long-term loans secured from collectors and museums at home and abroad.²²

C. Art and Artifice

It is impossible in a paper of this length to do justice to the history of the fine arts in Singapore, and the reader is referred to authoritative works on the subject.²³ There is some scanty information about an art club being established in Singapore around 1882 followed by the establishment of the Amateur Drawing Association in 1909, but it was in the late 1920s to mid-1930s when visual arts activities blossomed.²⁴ The birth of contemporary painting and art

19 National Heritage Board Act (Cap 196A, 1994 Rev Ed), s. 3 (hereinafter 'NHB Act'). Since 2001, the Ministry has been known as the Ministry of Information, Communications and the Arts.

20 Singapore History Museum website, *supra*, n. 18.

21 See the Museum Roundtable's website <<http://rmbr.nus.edu.sg/roundtable/index.html>> (accessed 13 April 2003).

22 Emma Beatty, 'Singapore Fulfils its Cultural Promise', *The Art Newspaper* (April 2003), at 12. See also *The Asian Civilisations Museum: A-Z Guide to its Collection* (Singapore: National Heritage Board, 2003), at 11-15.

23 See, eg, Kwok Kian Chow, *Channels & Confluences: A History of Singapore Art* (Singapore: National Heritage Board, 1996).

24 *Id.*, at 10.

institutions in Singapore can be traced back to the founding of the Society of Chinese Artists in 1935.²⁵

Singapore's first State-funded art museum was the National Museum Art Gallery which opened in 1976.²⁶ In the last decade, the fine arts in Singapore were given a fillip by the opening of the Singapore Art Museum (SAM) in January 1996, which houses Singapore's national art collection comprising twentieth-century Singapore and South-East Asian modern and contemporary art. The SAM has the largest collection of twentieth-century South-East Asian art held by a public institution internationally. The museum showcases works from its permanent collection as well as those on loan from institutions in other countries. One exhibition featured artworks from the Solomon R. Guggenheim Museum in New York.²⁷

The art market in Singapore emerged in the 1950s, with prominent local artists Liu Kang, Chen Chong Swee, Chen Wen Hsi and Cheong Soo Pieng setting a record of S\$9,800 (about £3,300 at today's rates) in sales in a 1951 joint exhibition.²⁸ The art and antiquities market has continued to grow. In 1985, Sotheby's opened an office in Singapore, and launched Singapore's first sale of South-East Asian paintings in October 1996.²⁹ Christie's has held auctions in Singapore since 1994, and in March 1996 assisted in the sale of Raden Saleh's *The Deer Hunt* (1846) for S\$3,083,750 (almost £1.1 million), a world auction record for a work by a South-East Asian artist.³⁰ There are now many local art dealers and galleries as well.

25 *Id.*, at 16; *Singapore Artists* (Chia Wai Hon ed., Singapore: Singapore Cultural Foundation and Federal Publications, 1982) at xi.

26 *Singapore Artists, id.*, at xiv. See also *National Museum Art Gallery Official Opening, 21 Aug 76* (Singapore: The Museum, 1976).

27 See SAM's website <<http://www.nhb.gov.sg/SAM/profile/profile.shtml>> (accessed 13 April 2003). See also *Singapore Art Museum at the Old SJI* (Singapore: National Heritage Board, 1996).

28 Kwok Kian Chow, *supra*, n. 23, at 69.

29 See Sotheby's website <http://search.sothebys.com/jsps/live/office/OfficeAuction.jsp?office_id=12> (accessed 13 April 2004); and Leong Weng Kam, 'Sotheby's Sale Here Next Month', *The Straits Times* (Life section) (20 September 1996) at 9.

30 See Christie's website <<http://www.christies.com/departments/overview.asp?DID=84>> (accessed 13 April 2004). In addition, Bonham's held its first auction in Singapore in May 1996, and Associated Fine Arts Auctioneers, a joint venture between a Singapore art gallery and a Hong Kong auction house, held its sixth sale in Singapore on 22 September 1996: Leong Weng Kam, *ibid.*

However, the development of the art and antiquities trade has led to allegations that Singapore has become a transit and distribution centre for cultural property looted from other Asian countries such as Cambodia,³¹ China,³² Indonesia³³ and Myanmar.³⁴ In April 2002, *The Art Newspaper* reporter Jonathan Napack wrote:³⁵

Every looting field has its own shopping mall. China has Hong Kong, Cambodia and Bangkok; Java has Singapore, which imposes no controls on art sales, other than a goods and services tax. In recent years, magnificent sculptures smuggled from East Java have surfaced at the Tanglin Mall, the center of the semi-licit trade in Indonesian cultural property. One anonymous dealer has frequently advertised Majapahit pieces in specialist magazines like *Orientations* and *Arts of Asia* leaving only a Yahoo! e-mail address and a Singapore fax number — no name, no address, no telephone.

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- 31 Jenny Doole, 'Post War Cambodia', *Culture Without Context*, issue 4 (Spring 1999) at 6 (a new smuggling route for Cambodian antiquities has opened through Singapore); Jenny Doole, 'Cambodian Update & Thai Crackdown', *Culture Without Context*, issue 5 (Autumn 1999) at 7 (Thai customs agents seized 29 wooden crates containing 43 Cambodian antiquities including Buddhist and Hindu sculptures weighing several tons and estimated to be worth millions of dollars, believed to have arrived in Bangkok by sea freighter via Singapore from the Cambodian port of Sihanoukville); Frederic Amat, 'Artifact Repatriation: Whose Culture, Whose Treasure?' (6 April 2001) <<http://www.globalheritagefund.org/news/index.html>> (accessed 13 April 2004) (at the 11th session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illegal Appropriation held in Phnom Penh from 6-9 March 2001, the Cambodian government claimed that some countries in the region, such as Singapore and Thailand, were considered world centres for smuggling Khmer art).
- 32 Neil Brodie, Editorial, *Culture Without Context*, issue 4 (Spring 1999); Kenneth Polk, 'The Antiquities Trade Viewed as a Criminal Market', *Hong Kong Lawyer* (September 2000) <<http://www.hk-lawyer.com/2000-9/Sep00-cover.htm>> (accessed 13 April 2004) (some plundered material from China is already passing through Singapore).
- 33 Jonathan Napack, 'Java's Art is Slipping Away: Looters Hit Majapahit Kingdom', *The Art Newspaper* (April 2002) at 6, available as 'Historic Javanese Art Treasures Victims Of Looting' from Forbes.com <<http://www.forbes.com/2002/04/03/0403hot.html>> (accessed 13 April 2004); see also nn. 83-85 and the accompanying text.
- 34 Brodie, *supra*, n. 32 (Kenneth Polk, Professorial Fellow in the Criminology Department of the University of Melbourne, asked a shop in Singapore about the supply of Buddhist objects from Burma and was told "of course the material is smuggled, how else can we get it out?").
- 35 Napack, *supra*, n. 33. See also Christine Alder, 'The Illicit Trade in Asian Antiquities' (2002) 41 *Journal of the Australian Registrars Committee* 9 at 10 (illicit antiquities can be found in shops in the shopping arcade within the Raffles Hotel and in Tanglin Shopping Centre).

II: PROTECTION OF CULTURAL OBJECTS WITHIN SINGAPORE

The above description illustrates that there is now a fairly wide appreciation of culture and heritage and a flourishing art trade in Singapore supported by both the Government and private enterprise. In this exciting atmosphere, there is an interest in ensuring that the law sufficiently deters would-be thieves from removing cultural objects from homes, dealers' shops, galleries and museums, and archaeological sites and monuments. In addition, theft victims should be assured of adequate procedures for redress. The discussion in this Part considers whether Singapore law currently achieves these aims and, on the other hand, considers some of the difficulties that may be faced, particularly by public museums, if stolen objects are acquired.

A. Cultural Objects Other Than Antiquities: Civil Law

1. *The Loss of Cultural Objects by Theft*

Let us assume that a Singapore museum, corporation or individual has had one of the cultural objects in its possession stolen. The object is bought by an innocent purchaser in Singapore from the thief. The purchaser may subsequently engage a dealer or auction house to arrange for the object to be sold within the jurisdiction. The original owner has causes of action in the tort of detinue³⁶ or conversion against the thief, the innocent purchaser and the dealer which the latter engages.

(1) The Claim Against the Thief. Under Singapore law, the owner's claim against the thief has to be brought within six years from the date on which the cause of action arose: that is, the date of the theft.³⁷ Once the six-year period has expired without the owner recovering possession of the object, the owner's title to the object is extinguished.³⁸ There is no equivalent in Singapore law to section 4 of the Limitation Act (England and Wales), which entitles the original owner to bring an action in conversion to recover goods or their value *at any time* against a thief or any person

36 Detinue was abolished in the UK by the Torts (Interference With Goods) Act 1977 (c. 32) (UK), but still exists in Singapore.

37 The general limitation period of six years applies: Limitation Act (Cap. 163, 1996 Rev. Edn.) (Singapore), s. 6(1)(a); *cf* Limitation Act 1980 (c. 58) (England and Wales), s. 2 (time limit for actions founded on tort).

38 Limitation Act (Singapore), s. 7(2); *cf* Limitation Act (England and Wales), s. 3(2).

whose possession of the goods is related to the theft.³⁹ In other words, in the United Kingdom, no limitation period applies against such persons.

Six years is arguably short enough to make it worthwhile for a thief to keep a stolen cultural object hidden until the original owner's claim has become statute-barred before disposing of the object to an innocent purchaser or otherwise putting it to his own use. The thief is more likely to contemplate such action if the object is apt to increase in value.⁴⁰ Further, cases show that six years is seldom enough time for an owner to ascertain the facts necessary for her to bring a claim, including the thief's identity and the location of the stolen object.

For instance, *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc*⁴¹ involved the theft of a large mosaic dating back to about 525–530 AD affixed to the apse of the Church of Panagía Kanakariá in the village of Lythrankomi in northern Cyprus. Widespread looting of churches in northern Cyprus occurred after the region was occupied by Turkish forces in 1974. It is not known exactly when the Kanakariá mosaic was removed, but in November 1979 the desecration came to the attention of the Republic of Cyprus government which controlled the southern part of the island. The Republic of Cyprus immediately sought the assistance of many organisations and individuals in recovering the mosaic, including UNESCO, the International Council of Museums, the Council of Europe, international auction houses such as Christie's and Sotheby's, and the foremost museums, curators and Byzantine scholars throughout the world.⁴² Nonetheless, it was only in 1988, nine years later, that the Republic discovered the location of the mosaic and the identity of its possessor.⁴³

39 Every conversion following the theft of a chattel before the person from whom it is stolen recovers possession of it is regarded as related to the theft, unless the stolen chattel has been purchased in good faith or converted thereafter: Limitation Act (England and Wales), s. 4(2). There is also a presumption that any conversion following a theft is related to the theft unless the contrary is shown: s. 4(4).

40 See, e.g., UK House of Commons Select Committee on Culture, Media and Sport, *Seventh Report: Cultural Property: Return and Illicit Trade* (2000), HC 371-I, para. 89.

41 917 F 2d 278 (7th Cir., 1990).

42 *Id.*, at 281.

43 *Id.*, at 283.

It was recently reported by Sterling and Peggy Seagrave in their book *Gold Warriors*⁴⁴ that during the Second World War expert teams with Japan's military emptied treasuries, banks, factories, private homes, art galleries and pawn shops in twelve Asian countries, including Singapore, Malaya, China, Korea and the Philippines. Together with Penang and Kuala Lumpur in Malaya, Singapore was used as one of the major centres for the collection and shipment of loot. Mr Seagrave is quoted as saying:

We can't even put a ballpark figure on what was stolen from Singapore and Malaya, since this would include gold looted from banks and treasure of all kinds from individuals, temples, clan associations and the underworld.⁴⁵

Assuming that problems with proof of ownership and spoliation can be overcome, the lapse of almost 60 years since the end of the Japanese Occupation of Singapore in 1945 means that claims for the recovery of property or compensation have long become barred under current limitation laws.

Is there a case, then, for adopting a much longer limitation period or, perhaps, no limitation period at all for claims against thieves or persons who obtain possession of goods from them in bad faith? One justification for a 'yes' answer is that since cultural objects are often unique and hold special significance for their owners, the law should be more generous to owners by affording them greater opportunity to recover the objects. It may also be argued that there is really no good reason why thieves or their accessories should ever gain title.

On the other hand, a long limitation period or the absence of one may lead owners to fail to pursue their claims expeditiously. This is unjust to defendants as it subjects them to the indefinite possibility of being hauled to court. The long delay may also prevent them from effectively defending claims – witnesses may no longer be available to testify, or evidence may have been lost or destroyed over the years.

Such arguments, though, do not lie well in the mouths of thieves, and Stephanos Bibas remains unconvinced. He

44 Sterling & Peggy Seagrave, *Gold Warriors: The Covert History of Yamashita's Gold: How Washington Secretly Recovered it to Set Up Giant Cold War Slush Funds and Manipulate Foreign Governments* ([US]: Bowstring Books, 2002).

45 Felix Soh, 'Exposed: Story Behind Japan's Plunder of SEA Treasures During World War 2', *The Sunday Times* (Singapore) (28 September 2003), at 29.

takes the view that if an owner lacks adequate evidence to establish her ownership of a cultural object, this acts as a sufficient disincentive for commencing legal action. Conversely, a short limitation period has the effect of unfairly shutting out claims that are not really stale at all.⁴⁶ Further, an owner's inability to locate his stolen cultural property is analogous to a claim involving latent injuries or damage to which an extended limitation period applies.⁴⁷

The Singapore position appears to be ameliorated by section 29(1) of the Limitation Act which provides for the postponement of the limitation period in cases where an action is "based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent" or "the right of action is concealed by the fraud of any such person as aforesaid".⁴⁸ In such cases, the period of limitation does not begin to run until the plaintiff has discovered the fraud, or could with reasonable diligence have discovered it.⁴⁹ The provision does not apply against a purchaser of the object for valuable consideration who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed.⁵⁰

For the limitation period to be postponed on the ground that the action is based on the defendant's fraud, the fraud must be an essential ingredient of the cause of the action.⁵¹ An owner cannot rely on this provision if a cultural object is merely stolen from him, although he may succeed if swindled of the object.

As for fraudulent concealment of the right of action, 'fraud' in this context not only denotes facts forming the basis for an action for deceit but also conduct that makes it unconscionable for the defendant to avail himself of the lapse of time.⁵² Thus,

46 Stephanos Bibas, 'The Case Against Statutes of Limitations for Stolen Art' (1995) 5 I.J.C.P. [*International Journal of Cultural Property*] 73 at 85-86. (The article was first published as (1994) 103 Yale L.J. 2437.)

47 Limitation Act (Singapore), s. 24A; Bibas, *ibid*.

48 Limitation Act (Singapore), ss. 29(1)(a) and 29(1)(b) respectively; *cf* Limitation Act (England and Wales), ss. 32(1)(a) and 32(1)(b).

49 Limitation Act (Singapore), s. 29(1); *cf* Limitation Act (England and Wales), s. 32(1).

50 Limitation Act (Singapore), s. 29(2)(a); *cf* Limitation Act (England and Wales), ss. 32(3) and 32(4). See, *infra*, nn 66-67 and the accompanying text.

51 *Beaman v. ARTS Ltd* [1949] 1 K.B. 550 at 558, C.A.

52 *Bank of America National Trust & Savings Association v. Herman Iskandar* [1998] 2 S.L.R. [*Singapore Law Reports*] 265, para. 73 at 286, C.A., citing *King v. Victor Parsons & Co* [1973] 1 W.L.R. 29 at 33, C.A.

for instance, it has been held that a person who knowingly commits a tort by extracting another person's coal in circumstances that are unlikely to be discovered for a long time cannot rely on a statute of limitations.⁵³ The defendant or the person through whom he claims need not take active steps to conceal the wrongdoing; it is sufficient if he knowingly or recklessly commits the wrong.⁵⁴ It is unnecessary to show that the defendant acted with any degree of moral turpitude.⁵⁵ Such a liberal interpretation by the courts of the analogous provision in the United Kingdom, section 26(b) of the Limitation Act 1939,⁵⁶ led Megarry V-C in *Tito v. Waddell (No. 2)*⁵⁷ to comment that:

as the authorities stand, it can be said that in the ordinary use of language not only does 'fraud' not mean 'fraud' but also 'concealed' does not mean 'concealed', since any unconscionable failure to reveal is enough.

A thief naturally strives to achieve his objective in circumstances that make it as difficult as possible for the owner to discover his identity or whereabouts. However, section 29(1)(b) is helpful only where a thief's actions are such that the owner is oblivious to the theft. It has been held that there is no fraudulent concealment where the owner knows a theft has occurred but the identity of the thief is unknown to her and might in that sense be said to have been 'concealed'.⁵⁸ As this is probably the case in most thefts, the provision, which at first appeared to hold much promise, in reality gives little assistance to the owner in our example.

(2) The Claim Against the Innocent Purchaser or Dealer.

We now turn to the owner's claim against the innocent purchaser or dealer in our example. As the position is the same whether the purchaser or dealer is claimed against, the remainder of this discussion will refer only to the

53 *Bulli Coal Mining Co v. Osborne* [1899] A.C. 351, P.C. (on appeal from NSW): see *Bank of America, ibid.*

54 *Bank of America, ibid.* Negligence is insufficient: *id.*, para. 74, at 287. See also *Leicester Wholesale Fruit Market v. Grundy* [1990] 1 W.L.R. 107.

55 *Beaman v. ARTS Ltd, supra*, n. 51; *Kitchen v. Royal Air Force Association* [1958] 1 W.L.R. 563, C.A.

56 Chapter 21.

57 [1977] Ch. 106 at 245, noted by the Law Commission of England and Wales in their report *Limitation of Actions* (Law Com No 270) (2001), para. 8.14 at 146-147.

58 *RB Policies at Lloyd's v. Butler* [1950] 1 K.B. 76.

innocent purchaser. Under section 7(1) of Singapore's Limitation Act⁵⁹ the owner must bring a claim within six years from the theft. The limitation period does not restart from the date when the stolen object enters the innocent purchaser's possession. Section 7 therefore favours persons in the innocent purchaser's position. In contrast, the UK position is more advantageous to the owner as the six-year limitation period only starts to run from the date of the first good faith conversion,⁶⁰ and it is for the person who asserts good faith to establish it.⁶¹

The law in the United Kingdom in this respect is conceptually more sound. The Singapore rule could be said to promote certainty of transactions to some extent as it ensures that disputes over the title to a stolen object will be determined no later than six years from the date of the theft. I doubt, though, whether this is a sufficient reason to give credence to the period when the object is in the hands of the thief or a bad-faith possessor.

It is arguable that, as between a good-faith purchaser and an owner who has taken reasonable steps to report his loss, the owner is in a morally stronger position because the purchaser has directly or indirectly acquired the cultural object from a thief and ought to have properly investigated its provenance before the purchase. The availability of *catalogues raisonnés* and computerised lost art databases makes it possible for purchasers to exercise such due diligence.⁶² Also, as a purchaser is likely to have acquired a cultural object through a dealer, the purchaser can claim from his dealer an indemnity for breach of terms implied by law into the sale agreement, including a condition that the dealer has a right to sell the goods⁶³ and a warranty that the goods are free from undisclosed encumbrances and that

59 The section, which is *in pari materia* with the Limitation Act (England and Wales), s. 3(1), reads: "Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of 6 years from the accrual of the cause of action in respect of the original conversion or detention."

60 Limitation Act (England and Wales), s. 4(3) read with s. 3(1). See Ruth Redmond-Cooper, 'Time Limits in Actions to Recover Stolen Art', in *The Recovery of Stolen Art* (Norman Palmer ed., London: Kluwer Law International, 1998), ch. 7, 145, para. 2.3 at 147-148.

61 Redmond-Cooper, *ibid.*

62 Compare Bibas, *supra*, n. 46, at 83-84.

63 Sale of Goods Act (Cap 393, 1999 Rev. Edn.) (Singapore), s. 12(1).

the purchaser shall have quiet possession of them.⁶⁴ Dealers can spread their losses through insurance.⁶⁵

We noted above that section 29(1)(b), which allows for the limitation period to be extended in fraudulent concealment cases, does not apply against a good-faith purchaser who was neither party to nor aware of the fraud. The statute does not expressly impose a duty on such a purchaser to exercise due diligence in ascertaining that the person from whom he acquires the object has a valid title to it. However, the finder of a lost chattel has an obligation to take such measures as in all the circumstances are reasonable to acquaint the true owner of the finding and present whereabouts of the chattel and to care for it meanwhile.⁶⁶ Therefore, if such a duty applies also to purchasers of stolen chattels, it has been argued that if the good-faith purchaser discovers the chattels to be stolen, his failure to inform the true owner of their whereabouts may well constitute a fraudulent concealment.⁶⁷ However, as discussed previously, this will not assist the owner if he is aware that a theft has taken place.

(3) Proposals for Reform. A useful starting point for considering how Singapore law might be reformed is provided by the recommendations of the Law Commission of England and Wales, which comprehensively reviewed the UK law relating to the limitation of actions in 2001.⁶⁸ The Commission took the view that what it termed the 'primary limitation period' should be three years⁶⁹ which, in the case of claims related to theft, should not start to run until the claimant knows or ought to know the facts giving rise to the cause of action as well as the whereabouts of the stolen property.⁷⁰ In addition, there should be a long-stop limitation period of ten years from the date of the first *bona fide* purchase, after which no claim may be brought even if the primary limitation period has not expired due to the claimant lacking knowledge of the relevant facts.⁷¹

64 *Ibid.*, s. 12(2).

65 Bibas, *supra*, n. 46.

66 *Parker v. British Airways Board* [1982] Q.B. 1004 at 1017, C.A.

67 Redmond-Cooper, *supra*, n. 60, at 161.

68 Law Commission of England and Wales, *Limitation of Actions* (Law Com No 270) (2001). The Commission's recommendations have yet to be implemented in the UK.

69 *Id.*, para. 3.98 at 66. A three-year period was recommended as the UK experience suggested this was sufficient for a claimant to bring a claim in the vast majority of cases: *id.*, para. 3.96 at 66.

70 *Id.*, para. 4.67 at 119.

This differs from the present UK law, where no limitation period applies to claims against thieves. The Commission felt that the mere fact that a thief had committed an act which was morally wrong did not excuse claimants from their obligation to pursue litigation within a reasonable time.⁷² As for the imposition of a long-stop limitation period, this would protect defendants from claims brought so long after the events to which they related that the defendants were no longer properly able to defend themselves, as witnesses might not be available and documentary evidence might have been lost or destroyed. Further, the Commission noted that defendants are entitled to some limit on their need to insure themselves against liability, and a long-stop limitation period compensates for the adoption of a limitation regime dependent on the date of knowledge of relevant facts by the claimant.⁷³

There is merit in Singapore implementing a limitation period that runs from the date when the claimant knows or ought to know the facts giving rise to the cause of action and the location of the stolen property. I submit that this strikes a fairer balance between the owner and the thief than the present Singapore position which excessively favours the thief and the UK position which might be said to lean too much towards the owner. For comparison it is worth noting that under Article 3(3) of the *Unidroit Convention on Stolen or Illegally Exported Cultural Objects*,⁷⁴ about which more will be said below, a claim for restitution of a stolen cultural object must be brought within three years from the time when the claimant knew the location of the cultural object and the identity of its possessor.

The Law Commission's proposal is less favourable to innocent purchasers than either the position in Singapore or the United Kingdom, as it is currently not possible for a claim to be brought more than six years after the date of the theft in Singapore, or the first good faith conversion in the United Kingdom. Nonetheless, as detailed above, there are reasons to favour the owner of a cultural object over

71 *Id.*, paras 3.99-3.101 at 66-67; para. 4.63 at 117.

72 *Id.*, para. 4.59 at 116.

73 *Id.*, para. 3.100 at 67.

74 Opened for signature 24 June 1995 (in force 1 September 1998) (hereinafter the '*Unidroit Convention*'). See Lyndel V. Prott, *Commentary on the Unidroit Convention* (Leicester: Institute of Art and Law, 1997).

the innocent purchaser.⁷⁵ The innocent purchaser's interest is also safeguarded by the long-stop limitation period which applies regardless of whether or not the primary limitation period has expired.

Unlike the Law Commission's proposal, the Unidroit Convention provides for a long-stop limitation period of 50 years from the time of the theft.⁷⁶ No long-stop is imposed on a claim for the restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection,⁷⁷ although it is open to Contracting States to declare that such claims are subject to a time limitation of 75 years or such longer period as is provided in their law.⁷⁸ I prefer the long-stop limitation period recommended by the Law Commission as it is more sensitive to the difficulties faced by owners in acquiring the information necessary for them to launch their claims. However, I favour the Unidroit Convention's approach as regards cultural objects removed from monuments, archaeological sites or public collections. Special treatment is justified for such objects as they are important enough to be regarded as part of a heritage shared by all peoples.

The linking of the limitation period to the claimant's knowledge of relevant facts means that what is termed 'fraudulent concealment' of the claimant's right of action in Singapore is no longer relevant to the primary limitation period.⁷⁹ However, the Commission recommended that where facts have been dishonestly concealed, the long-stop limitation period should be suspended until the claimant knows or ought to know the facts.⁸⁰ Unlike section 29(1) of Singapore's Limitation Act, section 32 of the UK Act no longer refers to fraudulent concealment but to 'deliberate concealment'. The Commission pointed out that section 32 aims at preventing a defendant from profiting from his own behaviour in concealing facts relevant to the claimant's claim.⁸¹ It thus proposed that the section be

75 *Supra*, nn. 62-65, and the accompanying text.

76 Unidroit Convention, *id.*, Art. 3(3).

77 *Id.*, Art. 3(4).

78 *Id.*, Art. 3(5).

79 Law Commission, *supra*, n. 68, para. 3.138 at 82. On fraudulent concealment in Singapore law, see nn. 48-58, and the accompanying text.

80 *Id.*, para. 3.140 at 82-83.

81 *Sheldon v. Outhwaite* [1996] 1 A.C. 102 at 145, H.L.: *id.*, para. 3.136 at 81.

modified further such that it should apply only if the defendant acts *dishonestly* in concealing facts.⁸²

2. *The Acquisition of Cultural Objects*

An intended buyer or donee of a cultural object would be well advised to ensure that the vendor or donor has proper title to pass. Otherwise, the buyer or donee may find himself in the position of an innocent purchaser contending with the equally blameless owner of the object. There is a particular risk when an object is acquired by a museum or put up for sale by an auction house, as exhibiting the object or publishing a picture of it in a catalogue is usually the step that alerts the owner to its whereabouts.

In September 1996, Christie's withdrew two oil paintings from a sale in Singapore of 160 Southeast Asian works worth a total of about S\$3.4 (£1.1) million, Raden Saleh's *Portrait of a Dutch Governor Wearing the Willems Order* (1867) and an undated work entitled *A Nude* by Basoeki Abdullah,⁸³ following a news agency report that they were owned by the Indonesian government and had been stolen from the National Museum in Jakarta. This report quoted the late Basoeki's secretary as saying that she discovered the theft of *A Nude* only after she saw it printed in Christie's sale catalogue.⁸⁴ It was later disclosed that the paintings were put up for auction by Singaporean businessman and collector who had acquired the works together with three others without knowing they belonged to the Museum. After a confidential deal was struck between the parties, the businessman restored the paintings to the Museum.⁸⁵

For ethical reasons, it is clearly in the interest of public heritage institutions such as the NHB and its constituent museums not to find themselves in possession of stolen property. Apart from that, the NHB may find itself in a legal quandary because its governing statute appears to prohibit it

82 Law Commission, *id.*, para. 3.137 at 81.

83 It appears that the true name of the painting is *Metamorphosis: Amir Sidharta, 'Whodunit? Who Stole the Paintings from Jakarta's Museum Nasional?'* <<http://www.nusantara.com/seart/Basook.html>> (accessed 13 April 2004).

84 Leong Weng Kam, '2 Indonesian Paintings Withdrawn from Auction', *The Straits Times* (Life section) (23 September 1996) at 3 <<http://www.nusantara.com/seart/STRaden.html>> (accessed 13 April 2004).

85 Leong Weng Kam, 'Stolen Paintings Returned to Jakarta', *The Straits Times* (Life section) (28 September 1996) at 3 <<http://www.nusantara.com/seart/st961028.html>> (accessed 13 April 2004).

from disposing of such objects. Section 15(3) of the NHB Act, apparently modelled on section 5 of the British Museum Act 1963,⁸⁶ prohibits the Board from disposing of an object of:

significant national or historical value the property in which is vested in the Board and which is comprised in its collections unless with the prior approval of the Minister and the disposal is by way of sale, exchange or gift of an object which (a) is a duplicate of another object the property in which is so vested and which is so comprised; or (b) in the Board's opinion is unsuitable for retention in its collections.

Section 15(4) permits the Board to dispose of objects only if they have become useless for the purposes of its collections by reason of damage, physical deterioration or infestation by destructive organisms. One solution would be read the phrase 'unsuitable for retention' broadly, but it is uncertain whether the phrase can validly bear such an interpretation.

Another possibility is for the Board, which is a registered charity, to request the Commissioner of Charities to exercise the power conferred by sections 30(1) and (2) of the Charities Act⁸⁷ to authorise the return of an unlawfully-removed object that the Board has inadvertently acquired on the basis that it is "expedient in the interests of the charity". However, I submit that the most straightforward way of removing legal difficulties and avoiding inconvenience would be to amend the NHB Act to permit the Board to dispose of objects of doubtful provenance or for other sufficient reasons.

In Singapore museums, loans of cultural objects from other museums or private collectors are an important source of exhibits for displays. Most if not all loans of this nature are probably contracts as well as bailments for hire.⁸⁸ As such, under section 7 of the Supply of Goods Act,⁸⁹ there is an implied condition on the part of the bailor that he has a right to transfer possession of the goods by way of hire for the period of the bailment, and an implied warranty that the bailee (in this case, the museum) will enjoy quiet

86 Chapter 24.

87 Cap. 37, 1995 Rev Ed; cf Charities Act 1993 (c. 10) (UK), ss. 26(1) and (2).

88 Norman Palmer, 'Art Loans as Legal Animals' [1996] *Art Antiquity & Law* 251, 255 (hereinafter 'Legal Animals'); Norman Palmer, *Art Loans* (London, Kluwer Law International; International Bar Association, 1997) at 92 (hereinafter *Art Loans*).

89 Cap 394, 1999 Rev. Edn.

possession of the goods for the period of the bailment.⁹⁰ Hence, if there are adverse third-party claims on the loaned objects, the museum is entitled to sue the lender for breach of contract and seek compensation.

However, a museum that takes such action risks damaging its relationship with the lender, thereby endangering possible future loans. It is far better for the museum to review the provenance of loaned objects, at least selectively, by checking them against a lost art register. This may save future litigation and management costs as well as the expenses and adverse publicity involved in cancelling an exhibition, relocating other works, destroying catalogues and reproductions, and refunding sponsorship money.⁹¹

B. Cultural Objects Other Than Antiquities: Criminal Law

While civil law principles determine who owns cultural objects and enable owners to recover objects they are unlawfully dispossessed of, the purpose of criminal law sanctions is to deter persons from engaging in conduct regarded as serious wrongs.

1. Stolen Objects within the Jurisdiction

The criminal offences in Singapore that can be used to oppose the unlawful removal of cultural objects may be divided into those that penalise the taking and those that penalise the possession.

Of the taking offences, the least serious is the dishonest misappropriation or conversion of movable property to one's own use under the Penal Code.⁹² The next is theft,⁹³ defined as moving with the intention of taking dishonestly any movable property out of the possession of any person without that person's consent.⁹⁴

Minor possession offences are found in the Miscellaneous Offences (Public Order and Nuisance) Act.⁹⁵ It is an offence

90 This is identical to the position under the Supply of Goods and Services Act 1982 (c. 29) (UK), s. 7: see 'Legal Animals', *supra*, n. 88, at 260; *Art Loans*, *id.*, at 92.

91 *Cf* 'Legal Animals', *id.*, at 259-260.

92 Cap 224, 1985 Rev. Edn., s. 403.

93 Penal Code, *id.*, s. 379.

94 *Id.*, s. 378. Committing theft under certain circumstances leads to enhanced penalties (*id.*, ss. 380, 381), and there are also offences to commit various forms of house-trespass for the purpose of theft (*id.*, ss. 451, 454, 457).

95 Cap. 184, 1997 Rev. Edn.

if a person has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained and fails to account satisfactorily how he came by it.⁹⁶ A person from whom the property in question was received, and former purchasers or possessors of the property, can also be charged with offences.⁹⁷ Increased penalties await repeat offenders.⁹⁸ Other minor offences can be committed by secondhand dealers, pawnbrokers, and dealers or workers in precious metals who, having been notified of stolen or fraudulently obtained property by the police, fail to report such property entering their possession; or melt, alter, deface, or put away the property without the permission of the Criminal Investigation Department.⁹⁹

The more serious possession offence, which appears in the Penal Code, is that of dishonestly receiving or retaining stolen property, knowing or having reason to believe it to be stolen property.¹⁰⁰ *Stolen property* means, among other things, property the possession of which has been transferred by theft, and property which has been criminally misappropriated, whether the transfer has been made or the misappropriation has been committed within or without Singapore, unless if it subsequently comes into the possession of a person legally entitled to its possession.¹⁰¹ There is a lesser offence of voluntarily assisting in concealing, disposing of, or making away with property which the accused knows or has reason to believe to be stolen property.¹⁰²

The harshest penalty is reserved for persons who habitually receive or deal in property which they know or have reason to believe to be stolen property – they may be given life imprisonment or imprisonment of up to ten years, and may also be fined.¹⁰³

2. *Disposition of Property in Criminal Cases*

Under Singapore rules of criminal procedure, at the end of

96 *Id.*, s. 35(1).

97 *Id.*, ss. 35(2) and (3).

98 *Id.*, s. 35(5).

99 *Id.*, ss. 36, 37.

100 Penal Code, *supra*, n. 92, s. 411.

101 *Id.*, s. 410(1).

102 *Id.*, s. 414.

103 *Id.*, s. 413. In *Goh Khiok Phiong v. R.* [1954] Mal.L.J. [*Malayan Law Journal*] 223, H.C. (Kuching, Malaysia), the view was expressed that it is necessary to prove at least three prior acts of receiving stolen property (i.e., four acts of receiving in all) before it can be fairly said that the accused is a habitual receiver. The accused need not have been convicted of the prior acts of receiving, but it is necessary that the proof of the prior acts is as convincing as if he had been convicted.

a trial a court can order property that is produced before it to be delivered to any person or otherwise disposed of.¹⁰⁴ Further, the seizure by the police of suspected stolen property must be reported forthwith to a Magistrate's Court, which is then required to make orders concerning its custody and production, including the delivery of the property to someone entitled to its possession.¹⁰⁵ If the property's lawful possessor is unknown, the property may be detained in police custody while a public notification is issued requiring claimants to establish their claim within six months.¹⁰⁶ Ownership of the property vests in the Government if no claim is established.¹⁰⁷

Thus, if an unlawfully-removed object is recovered within the jurisdiction, it can be restored to its owner in the course of criminal proceedings without the owner commencing a separate civil suit.

C. Antiquities

1. Civil Law: Ownership and Possession of Antiquities

I use the term *antiquities* to refer to artefacts found in sites of archaeological or historical interest. Although this article focuses on movable cultural property, antiquities should not be viewed as distinct from the sites from which they originate – the law should not only provide remedies for the illicit trade in antiquities, but also prevent their unlawful excavation so that historical sites can be systematically investigated and excavated by archaeologists.

Criminal law sanctions that deal with these concerns are explored later in this article.¹⁰⁸ On the civil law front, persons who enter unauthorised on to immovable property to search and dig for antiquities can be sued for trespass to land or nuisance, while the torts of detinue and conversion may be used against those who unlawfully possess or deal with such objects. In the latter case the proper claimants of antiquities are those with rights to possess them, and this is the issue to which we shall give attention.

To determine the rules concerning the rights of ownership

104 Criminal Procedure Code (Cap. 68, 1985 Rev. Edn.), ss. 386(1) and (2).

105 *Id.*, ss. 392(1) and (2).

106 *Id.*, s. 392(4).

107 *Id.*, s. 393.

108 Part II.C.2, *infra*.

and possession to antiquities applicable today, it is necessary to delve into Singapore's legal history. There is little doubt that so long as Singapore remained subject to the British Crown, common law principles relating to finders of objects¹⁰⁹ and treasure trove¹¹⁰ applied with all their vagaries. During this time, no treasure trove inquests seem to have been held – no references to one conducted for the hoard of gold jewellery found on Fort Canning Hill in 1926¹¹¹ have been located,¹¹² possibly because it was found on State land and so belonged to the Crown pursuant to both the law of finders and treasure trove. In fact, the statute book contains no procedure for the holding of such inquests by coroners. Singapore ceased to be part of the British Empire in 1963 when it merged with and became a state in the Federation of Malaysia. It achieved full independence two years later.

Section 46(8) of the NHB Act¹¹³ suggests that the law of treasure trove continues to apply in Singapore today: it reads, "Nothing in this section shall affect any right of the Government in relation to treasure trove." However, this section appears to have been inserted out of caution rather than after considered thought.

Treasure trove was one of the prerogatives of the Crown.¹¹⁴ Crown prerogatives are derived from and limited by the common law.¹¹⁵ Commentators differ over whether the Crown prerogatives survived Malaysia itself becoming

109 See, generally, Norman E. Palmer, *Bailment* (2nd edn.) (London: Sweet & Maxwell, 1991), ch. 23 at 1418-1479.

110 Norman Palmer, 'Treasure Trove and Title to Discovered Antiquities', in *Interests in Goods* (Norman Palmer & Ewan McKendrick eds., London: Lloyd's of London Press, 1993), ch. 12 at 305-344; Roger Bland, 'Treasure Trove and the Need for Reform' [1996] *Art Antiquity & Law* 11.

111 See nn. 7-9 and the accompanying text.

112 I reviewed microfilms of the contemporary newspapers *The Straits Times*, the *Straits Budget* and *Singapore Free Press* published between 8 and 31 July 1926 (for *The Straits Times*, for the month of August 1926 as well; the Fort Canning hoard was found on 7 July) and between 1 November and 10 December 1928 (the article by Winstedt appeared in the *Journal of the Malayan Branch of the Royal Asiatic Society* which was published in November: *supra*, n. 7), but located no news reports relating to the find.

113 *Supra*, n. 19.

114 Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown and the Relative Duties and Rights of the Subject* (London: Printed for J. Butterworth, 1820), cited in Harding, *infra*, n. 121, at 355 n. 61; *Lord Advocate v. University of Aberdeen* [1953] SC 533, Ct of Sess. (Scot); *Webb v. Ireland*, *infra*, n. 131. In the UK, the law of treasure trove has been abolished and replaced by a new scheme under the Treasure Act 1996 (c 24); see Roger Bland, 'The Treasure Act and Portable Antiquities Scheme: A Progress Report' [1999] *Art Antiquity & Law* 191.

115 *Halsbury's Laws of Singapore* (4th edn., 1996 reissue) vol. 8(2) at para. 368.

independent of the United Kingdom. Hickling is of the opinion that, on the introduction of the Malaysian Constitution on 31st August 1957, the prerogatives at common law were transferred from the Crown to the new Supreme Head of the Federation, the Yang di-Pertuan Agong, at the federal level and to the Rulers of the States of Malaysia at the state level.¹¹⁶

In support of this proposition Hickling notes,¹¹⁷ among other things, section 3 of the Malaysian Civil Law Act 1956¹¹⁸ which provides that, subject to reservations relating to written law, local circumstances and necessary qualifications, the courts are to apply the common law of England and rules of equity. In addition, on independence, Article 162(2) of the Malaysian Constitution¹¹⁹ ensured the continuation in force of all existing laws of the Federation of Malaya. In Hickling's view, although the Constitution did not expressly modify the law generally by substituting 'Yang di-Pertuan Agong' for 'Crown', a study of the express modifications that were made in 1957 illustrated "a clear tendency to adopt such a principle".¹²⁰

Harding, on the other hand, argues that the prerogatives lapsed and the Yang di-Pertuan Agong did not succeed to them. He believes Hickling's devolution theory ignores the fact that sovereignty in respect of all states of the Federation vested in the Agong, whose position is novel, unique and defined by a written Constitution which creates a limited constitutional monarchy based on the concepts of parliamentary democracy and the separation of powers. He finds it untenable that the prerogatives continue to exist alongside the Constitution as a potential source of executive, legislative and, possibly, even judicial power, since the Constitution already lays down the manner in which such

116 R.H. Hickling, 'The Prerogative in Malaysia' (1975) 17 Mal. L.R. [*Malaya Law Review*] 207.

117 *Ibid.*, at 212-13.

118 Act 67 (1999 Reprint).

119 1992 Reprint.

120 Hickling, *supra*, n. 116, at 212. He notes, for example, that the offence of waging war against the King in section 121 of the Penal Code (Act 574, 2002 Reprint) became the offence of waging war against the Yang di-Pertuan Agong, and concludes that "[i]t may be accepted, I suggest, as a general proposition that the appropriate authority corresponding to the Crown/King/Queen was and is the Yang di-Pertuan Agong, just as he in general became the recipient of the powers exercised by the High Commissioner on behalf of the Crown.": *ibid.*, at 213.

power is conferred. If Hickling's argument is correct, the Constitution can effectively be ignored since those in power can rely on "vast prerogative powers of uncertain extent, for the exercise of which they need answer to no one".¹²¹

Harding rejects Hickling's reliance on section 3 of the Civil Law Act 1956 and Article 162(2) of the Constitution.¹²² He views the existence of the Malaysian Constitution as a necessary reservation to the continued application of the common law provided for by the Civil Law Act, and notes that Article 162(6) of the Constitution requires pre-independence laws to be applied with "such modifications as may be necessary to bring it into accord with the provisions of the Constitution".¹²³

When Singapore joined the Federation of Malaysia, section 3 of the Malaysia Act 1963 (UK)¹²⁴ provided for the continuation of all existing laws, which were to have "the same operation in relation to the Federation, to any of the States of the Federation, and to persons and things belonging to or connected with the Federation or any of the States thereof" as they would have had if Singapore and other new States had not become included in the Federation. Article 105(1) of Singapore's new State Constitution was to similar effect,¹²⁵ subject to an important proviso: "but all such laws shall... be construed as from the coming into operation of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution and the Malaysia Act."

On Singapore becoming an independent republic in 1965, section 3 of the Republic of Singapore Independence Act¹²⁶ provided that the Yang di-Pertuan Agong of Malaysia ceased to be the Supreme Head of Singapore, and that his

121 A.J. Harding, 'Monarchy and the Prerogative in Malaysia' (1986) 28 Mal. L.R. 345 at 352.

122 *Id.*, at 353.

123 Art. 162(6).

124 11 & 12 Eliz. 2, c. 35.

125 Sabah, Sarawak and Singapore (State Constitutions) Order-in-Council 1963 (SI 1963 No 1493) (UK). The first part of Art 105(1) reads, "Subject to the provisions of this Article and to any provision made on or after Malaysia Day by or under Federal law or State law, all existing laws shall continue in force on and after the coming into operation of this Constitution..."

126 No. 9 of 1965, 1985 Rev. Edn.

sovereignty and jurisdiction and power and authority, executive or otherwise, in respect of Singapore were relinquished and vested in its Head of State, the President.

Further, a provision substantially similar to Article 105(1) of the State Constitution was enacted as section 13(1) of the Act.¹²⁷ The present incarnation of this provision is Article 162 of the Singapore Constitution:¹²⁸

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.

Law is defined in Article 2(1) as including, among other things, “the common law in so far as it is in operation in Singapore”. Also relevant is section 3 of the Application of English Law Act¹²⁹ which provides 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.

Based on the legislative provisions reviewed above, it may be contended that the law of treasure trove applies in Singapore today because, as a prerogative possessed by the Yang di-Pertuan Agong of Malaysia, it vested in the President of Singapore, and because it is a common law principle that continues to be part of Singapore law. I am not convinced, though. I am inclined to agree with Harding that there is scant support in the Constitution for Hickling’s hypothesis that the Agong has title to treasure trove as the successor to the Crown.

Further, if the devolution theory is shaky in Malaysia which

127 The provision reads, “[A]ll 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.”

128 1992 Rev. Edn.

129 Cap 7A, 1994 Rev. Edn.

has a monarchy that continues to exercise certain constitutional prerogatives, it is even less stable in Singapore which has only a republican head of State elected by the people. The language of prerogative rights is inappropriate in such a system of law. It is submitted that, for conformity with the Constitution and the circumstances of Singapore and its inhabitants, the Crown prerogative of treasure trove cannot remain part of the common law applicable in the island State.

There is little reason for regret. Treasure trove law is anachronistic and ill-suited as a means of protecting a nation's heritage. The numerous difficulties created by treasure trove law have been discussed elsewhere,¹³⁰ but for our purposes it is sufficient to note that the elements of the law are not easily satisfied; many antiquities cannot qualify as treasure trove; and the law can result in a collection of antiquities being divided up, thus diminishing its historical value.

We should not exclude the possibility that a law *analogous* to the prerogative of treasure trove might exist in Singapore today. This prospect is suggested by *Webb v. Ireland*.¹³¹ In that case, the Supreme Court of Ireland held that although no royal prerogative existing prior to the enactment of the 1922 Constitution was by virtue of the Constitution vested in the Irish Republic, Article 5 of the Constitution declared that "Ireland is a sovereign, independent, democratic state" and a necessary ingredient of sovereignty in a modern State was the ownership by the State of objects which constituted antiquities of importance which were discovered and which had no known owner.¹³² A majority of the Court held that the characteristics of the State's right of treasure trove were those of the common law prerogative,¹³³ while Walsh J. felt that there was no reason why the right should be so confined – the definition of treasure trove under the former law would be of little benefit in Ireland since so many of its antiquities were not made of either gold or silver.¹³⁴

130 See the works referred to in n. 110, *supra*.

131 [1988] I.R. 353.

132 *Id.*, at 383 *per* Finlay C.J. (Henchy and Griffin JJ. concurring), 390-91 *per* Walsh J., and 397-98 *per* McCarthy J.

133 *Id.*, at 383 *per* Finlay C.J. (Henchy and Griffin JJ. concurring).

134 *Id.*, at 391.

Webb v. Ireland raises the interesting possibility that Singapore, too, may be entitled to exercise a right analogous to the prerogative of treasure trove that arises from the country's status as a sovereign nation.¹³⁵ There is local precedent for such an approach: in *Public Prosecutor v. Taw Cheng Kong*¹³⁶ the Court of Appeal determined that the Singapore Parliament has plenary legislative powers as an attribute of its sovereignty. However, as the Supreme Court has yet to rule on whether antiquities belong to the State if their owners are untraced, the point must be regarded as uncertain.

If Singapore can exercise no right of treasure trove, then it appears the right to own or possess antiquities depends wholly on the common law principles that apply to the finders of objects.¹³⁷ The applicability of the common law is demonstrated by section 46 of the NHB Act,¹³⁸ which empowers the Board to enter upon lands to conduct archaeological investigations. If any objects of archaeological or historical significance are found during excavations, they do not automatically become the property of the Board or the State. Sub-section (6) merely authorises the Board's representatives to take 'temporary custody' of such objects and to remove them from their sites for the purpose of examining, testing, treating, recording or preserving them. Sub-section (7) stipulates that neither the Board nor its representatives may retain such objects "without the consent of the owner beyond such period as may be reasonably required" for archaeological investigation or analysis, or restoration or preservation. Thus the Act contemplates that the ownership of the objects is determined by other legal rules. As there are no relevant statutes, common law principles must apply.

The implication is that, broadly speaking, the title to an archaeological object found on private land can either be

135 Evidence is hardly needed for this latter fact, but for the sake of completeness it may be noted that in the Proclamation of Singapore dated 9 August 1965 (1985 Rev. Edn.) Lee Kuan Yew, then Prime Minister of Singapore, proclaimed and declared on behalf of the people and the Government of Singapore that as from that date "Singapore shall be forever a sovereign democratic and independent nation", and Article 3 of the Constitution states that "Singapore shall be a sovereign republic to be known as the Republic of Singapore." See also *Public Prosecutor v. Taw Cheng Kong*, *infra*, n. 136, at para. 30: "When Singapore became independent on 9 August 1965, it acquired the attributes of sovereignty."

136 [1998] 2 S.L.R. 410.

137 For these principles, see the authorities cited, *supra*, in n. 109.

138 *Supra*, n. 19.

asserted by the landowner if the object is embedded in the realty, or by the finder if the object is on the surface and the landowner has not manifested an intention to control the land and objects that may be found on it.¹³⁹ Regardless of the value that the object may have for Singapore's heritage, the possessor is fully entitled to deal with it as he pleases. He may even export it from the country as Singapore currently does not have any licensing system controlling the outflow of cultural objects.

The possibility of artefacts slipping beyond Singapore's shores was recently brought to the fore when Singapore's Minister Mentor and former Prime Minister, Lee Kuan Yew, put up for a charity auction on 5th July 2003 a black antique Waterman fountain pen that he had used to sign the Constitutional Agreement with the British in 1957. This agreement led to Singapore being transformed from a Crown colony to a self-governing State within the Empire, and to a new constitution coming into force in 1959.¹⁴⁰ The managing director of Sotheby's Singapore, the company which conducted the auction, remarked, "There will definitely be successful overseas buyers, but we hope that some items will be bought by Singaporeans."¹⁴¹ Fortunately, the pen was purchased by an anonymous Chinese businessman for S\$350,000 (£117,000) and loaned to the NHB. The lender has not specified when the pen should be returned to him.¹⁴²

2. Criminal Law

The criminal offences referred to earlier¹⁴³ such as misappropriation, theft and receiving stolen property apply to antiquities as they do to other types of cultural property, but they only operate after antiquities have been unearthed.¹⁴⁴ However, penal sanctions created by the Preservation of Monuments Act¹⁴⁵ may be applicable to the act of unlawful

139 *Parker v. British Airways Board* [1982] Q.B. 1004; *Waverley Borough Council v. Fletcher* [1996] Q.B. 334.

140 *The Lee Kuan Yew Family Collection: Singapore, Saturday, July 5, 2003* (Singapore: Sotheby's, 2003) at 13.

141 Ginie Teo, 'Going Once... Going Twice...', *The Straits Times* (29 June 2003), at L6-L7.

142 Ho Ka Wei, 'Five Items from SM Auction at Heritage Centre', *The Straits Times* (13 September 2003) at H13.

143 Part II.B, *supra*.

144 See Explanation 1 to s. 378 (definition of *theft*) of the Penal Code, *supra*, n. 92: "A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth."

145 Cap. 239, 1985 Rev. Edn.

removal itself. Under section 2(1) of the Act, a *monument* includes “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” which is considered by the Preservation of Monuments Board to be “worthy of preservation by reason of its historic, traditional, archaeological, architectural or artistic interest” as well as any “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”.¹⁴⁶

To date, the national monuments that have been gazetted under the Act have included only buildings that have contributed to Singapore’s architecture and history.¹⁴⁷ Nonetheless, the definition of *monument* expressly includes archaeological sites within the phrase ‘place of... excavation’.

The Minister of Information, Communications and the Arts may, on the advice of the Board, make a preservation order placing any monument under the Board’s protection pursuant to section 8 of the Act. Where a preservation order is in force, it is a criminal offence to demolish, remove, alter or renovate or have any addition made to the monument to which the order relates without the Board’s written consent, except in case of urgent and immediate necessity for the safety of persons or property.¹⁴⁸ The offence is aimed at preventing unauthorised changes to national monuments that harm their unique nature, but hacking off and carrying away parts of a protected monument might arguably constitute demolishing, removing or altering it.

The first conviction under this provision occurred in 2003. The Tan Si Chong Su, a Chinese ancestral temple and the

146 The definition in the Act appears to require that land comprising or adjacent to a monument which is reasonably required for maintaining the monument and other related purposes must also be “worthy of preservation by reason of its historic, traditional, archaeological, architectural or artistic interest”. This is unlikely to have been Parliament’s intention, and is probably an error. I have therefore rearranged the definition in the manner that I believe it was intended to be read.

147 See, eg, Gretchen Liu, *In Granite and Chunam: The National Monuments of Singapore* (Singapore: Landmark Books and the Preservation of Monuments Board, 1996); and Lee Geok Boi, *The Religious Monuments of Singapore: Faiths of Our Forefathers* (Singapore: Landmark Books and the Preservation of Monuments Board, 2001).

148 Preservation of Monuments Act, *supra*, n. 145, ss. 9(1) and 9(3).

assembly hall of the Tan clan, was built in 1876 and declared a national monument in 1974. The secretary to the temple's management committee pleaded guilty to commissioning renovations to the temple without the Board's approval and was fined S\$500 (£170).¹⁴⁹ Some conservationists have noted that the maximum fine of S\$1,000 is an insufficient deterrent and should be increased.¹⁵⁰

Section 18 of the Act makes it an offence for any person to wilfully deface, damage or otherwise interfere with any monument. It does not appear necessary for the Board to order that a monument be placed under its protection before this offence applies, although the Board must certify that it is worthy of preservation under the criteria listed in section 2(1). The removal of portions of a monument clearly defaces or damages it, and I submit that unearthing antiquities in the grounds of a monument amounts to interfering with it. This is a more serious offence than section 9(3) as it carries a maximum fine of S\$5,000 or imprisonment for up to six months or both.

The fact remains, however, that the Act was not really drafted to prevent persons from searching for and removing antiquities. It is not known whether the courts would interpret the criminal offences created by the Act in the ways suggested above.

3. *Proposals for Reform*

The foregoing discussion shows that, at best, antiquities might be claimed by the State under the principles established in *Webb v. Ireland* which are currently of uncertain ambit. Alternatively, it may be that traditional principles of treasure trove apply. We have seen that, in this case, the range of objects can be claimed is severely limited and treasure trove law has numerous shortcomings. At worst, the State must rely solely on the law of finders and thus only has a chance of asserting rights over antiquities that are discovered in or on State land. As for criminal law, there are no offences designed to control the excavation of antiquities. Hence, the conclusion must be that antiquities are not adequately protected for the nation's benefit.

149 Crystal Chan, 'Temple Official Accused of Illegal Changes to Monument', *The Straits Times* (13 November 2003) at 4; Chong Chee Kin, 'Temple Official Fined for Monument Changes', *The Straits Times* (28 November 2003) at 6.

150 Chong Chee Kin, *ibid.*

What is needed is legislation that fulfils the following functions:

- i. It should define clearly what items are antiquities, and the circumstances under which antiquities are owned by the State.
- ii. It should deter uncontrolled searches for and removal of antiquities from archaeological sites.
- iii. It should require chance finds of antiquities to be reported and transferred into the possession of the State.
- iv. It should establish a system for rewarding finders of antiquities and private landowners to encourage the reporting of finds.
- v. It should prevent antiquities that are valuable to the nation's heritage from being exported until the State has had an opportunity to acquire them if it desires.

One need not look far afield for guidance: Malaysia's Antiquities Act 1976¹⁵¹ is a good example of how the law may be reformed. It provides that the Government has absolute property in every antiquity discovered in West Malaysia on or after the date of the coming into force of the Act, every ancient monument which on that date is not owned by any person or the control of which is not vested in any person as trustee or manager, and all undiscovered antiquities (other than ancient monuments) whether lying on or hidden beneath the surface of the ground or in any river or lake or in the sea.¹⁵²

An *antiquity* is defined as "(a) any object movable or immovable or any part of the soil or of the bed of a river or lake or of the sea, which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency and which is or is reasonably believed to be at least one hundred years old; (b) any part of any such object which has at any later date been added thereto or re-constructed or restored; (c) any human, plant or animal remains which is or is reasonably believed to be at least one hundred years old; and (d) any object of any age which the Director General [of Museums] by notification in the *Gazette* declares to be an antiquity".¹⁵³

151 Act 168, 2001 reprint. See also the Antiquities and Treasure Trove Act (Cap. 31, 2002 Rev. Edn.) (Brunei) which appears to have been based on Malaysian legislation.

152 Antiquities Act (M'sia), *id.*, ss. 3(1) to 3(3).

153 *Id.*, s. 2(1).

The requirement that an object be at least a century old to qualify as an antiquity is similar to the age requirements for treasure in the Treasure Act 1996 (UK).¹⁵⁴ Such requirements reduce administrative burdens by capping the number of qualifying items and may represent an attempt to strike a fair balance between State interests and private rights to property, but I wonder whether it is not better for legislation to be more inclusive to avoid important objects falling outside the State's protection. Article 2(1) of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 (UK),¹⁵⁵ for instance, defines an *archaeological object* as including "any object, being a chattel (whether in a manufactured or unmanufactured state), which is, or appears to be, of archaeological or historical interest and which has, by reason of such interest, a value substantially greater than its intrinsic value or the value of the materials of which it is composed." The Malaysian authorities may, however, specifically declare an object of any age to be an antiquity.

A broad definition of an antiquity avoids the incongruities of the old prerogative of treasure trove. It is therefore a pity that Malaysia chose to retain the concept of treasure trove, albeit rationalized by Part VI of the Antiquities and Treasure Trove Ordinance 1957¹⁵⁶ which has now been revised and reprinted as the Treasure Trove Act 1957.¹⁵⁷ Under this Act, *treasure trove* is any money, coin, gold, silver, plate, bullion jewellery, precious stones or any object or article of value found hidden in, or in anything affixed to, the soil or the bed of a river or of a sea, the owner of which is unknown or cannot be found. It does not include any antiquity.¹⁵⁸ Articles of treasure trove differ from antiquities as they must be "of value"¹⁵⁹ and may be less than a hundred years old.

154 *Supra*, n. 114, s. 1(1).

155 S.I. 1995 No. 1625 (NI 9), reprinted in [1996] *I Art Antiquity & Law* 431. See also the definition of *archaeological object* in the National Monuments Acts 1930 to 1994 (Ireland), s. 2, as amended by the National Monuments (Amendment) Act 1994 (No. 17 of 1994) (Ireland), s. 14, which is reprinted in [1996] *I Art Antiquity & Law* 318.

156 No 14 of 1957. The Antiquities Act, *supra*, n. 151, s. 35(1), states, "The Antiquities and Treasure Trove Ordinance 1957... is, except in so far as it applies to treasure troves, hereby repealed."

157 Act 542, 2002 reprint.

158 Treasure Trove Act, *id.*, s. 2(1).

159 Most items have some value, even if nominal. To distinguish treasure trove from antiquities meaningfully the phrase "or any object or article of value" may have to be interpreted *eiusdem generis* as referring to items of significant value.

It is submitted that if the concern was that precious objects of any age should be protected, this could have been achieved more simply by removing the age requirement in the definition of an antiquity in the Antiquities Act.

To control the search for and removal of antiquities, the Malaysian Antiquities Act prohibits persons from excavating for the purpose of discovering antiquities, whether on land of which they are the owners or occupiers or otherwise, unless authorised by licence.¹⁶⁰ It is submitted that the integrity of archaeological sites can be better preserved if the use of detecting devices on the sites of ancient monuments without consent is also prohibited, which is the effect of article 29 of the Northern Ireland Order.¹⁶¹

The Antiquities Act requires persons who discover objects and monuments which they have reason to believe to be antiquities or ancient monuments to forthwith give notice of their discoveries to the authorities,¹⁶² and provides for reasonable compensation to be paid to finders and private landowners where antiquities are retained by the State.¹⁶³ Alternatively, the Director General of Museums may, on the Government's behalf, enter into a written agreement with a person entitled to compensation for him to receive a share of an antiquity in place of compensation.¹⁶⁴

Section 7 of the Act is particularly interesting. It entitles the Director General to give written notice to any person in possession of or lawfully entitled to sell or dispose of any antiquity or historical object¹⁶⁵ which the Director General is satisfied is or will be of lasting national importance or interest not to sell or otherwise dispose of the object without giving written notice of any such proposed transaction to him.¹⁶⁶ The person thus notified is not permitted to sell or

160 Antiquities Act, *supra*, n. 151, s. 9.

161 Historic Monuments and Archaeological Objects (Northern Ireland) Order, *supra*, n. 155. See also the National Monuments (Amendment) Act, *supra*, n. 155, s. 7.

162 Antiquities Act, *supra*, n. 151, s. 4(1).

163 *Id.*, s. 5(3).

164 *Id.*, s. 6(1).

165 Defined in s. 2(1) as "any artefact or other object to which religious, traditional, artistic or historic interest is attached and includes any (a) ethnographic material such as a household or agricultural implement, decorative article, personal ornament; (b) work of art such as a carving, sculpture, painting, architecture, textile, musical instrument, weapon and any other handicraft; (c) manuscript, coin, currency note, medal, badge, insignia, coat of arm[s], crest[,] flag, arm and armour; (d) vehicle, ship and boat, in part or in whole, whose production have ceased".

166 *Id.*, s. 7(1).

otherwise dispose of the antiquity or historical object until 90 days have elapsed from the time of her notice of the proposed transaction to the Director General.¹⁶⁷ The section then states that “it shall be lawful for the Director General to purchase such antiquity or historical object at a reasonable price notwithstanding any agreement which the owner may have entered into with another person”.

This provision may be compared with Part VI of the Act which deals with the export of antiquities and historical objects. Section 21(1) prohibits a person from exporting an antiquity without a licence unless the antiquity was originally imported by him, and requires the antiquity to be declared to an officer of customs at a customs airport or custom port. Under section 23, historical objects may be detained by customs or other duly authorised officers and, if the Director General is satisfied that the historical object is or will be of lasting national importance he may prohibit its export. Section 25(1) then provides that:

[w]here a licence to export any antiquity has been refused on the ground that such antiquity should be acquired on behalf of the Government or where a historical object is prohibited from being exported, the Director General shall pay to the owner thereof the reasonable compensation for such antiquity or historical object and thereupon the said owner shall deliver up the same to the Director General who may dispose or deal with it in such manner as he deems fit.

Section 25(1) therefore allows for the compulsory acquisition of antiquities and historical objects not already vested in the State if their owners attempt to export them. It is not clear whether section 7(2) has a similar effect, but it is possible to read it in that manner. Compulsory acquisition of property is not unknown in Singapore – the Land Acquisition Act¹⁶⁸ has provided for the compulsory possession of land since 1967. In fact, section 12(1) of the Preservation of Monuments Act¹⁶⁹ permits the Preservation of Monuments Board to request that the President, if he thinks fit, direct the acquisition of any land, site or monument subject to a preservation order in accordance with the provisions of the

167 *Id.*, s. 7(2).

168 Cap 152, 1985 Rev. Edn.

169 *Supra*, n. 145. Compare the Northern Ireland Order, *supra*, n. 155, art. 13(1).

Land Acquisition Act. However, the state's interest in taking ownership of cultural objects is arguably less pressing than the need to compulsorily acquire land for national development. It is therefore submitted that Singapore law should not empower the Government to expropriate such objects as this would be an unwarranted inroad into private property rights. Instead, the UK position should be considered. There, restrictions on the export of cultural objects exist¹⁷⁰ but an owner who is denied an export licence and who does not accept any offers to purchase the object for retention in the United Kingdom is merely required to keep the object within the jurisdiction.

III: MOVEMENT OF CULTURAL OBJECTS ACROSS BORDERS

Evidence about Singapore's role in transactions concerning looted foreign cultural objects currently appears to be largely anecdotal. Nonetheless, there is clearly an interest in ensuring that the law has sufficient teeth to prevent abuse of the nation's position as an important commercial centre in Asia.

1. Civil Law

(1) Stolen Objects Removed from Singapore. Singapore's lack of controls on the export of cultural objects may not only lead to the loss of items valuable to the nation's heritage, but also makes it easier for stolen items to be removed from the jurisdiction.

Once a thief has taken a stolen cultural object out of Singapore, it is likely to be costly and time-consuming for the owner to pursue a claim for it overseas. It is also possible that the owner's title to the object may pass under the law of another jurisdiction to, say, a *bona fide* purchaser for value. The validity of any such transaction is determined by the law where the object is situated (the *lex situs*) at the time of the transaction.¹⁷¹ In that eventuality, a Singapore

170 See the Export Control Act 2002 (c. 28) (UK) and the Export of Objects of Cultural Interest (Control) Order 2003 (S.I. 2003 No 2759) (UK). Unlawful export is punishable under the Customs and Excise Management Act 1979 (c. 2) (UK), s. 68. See also the EC Council Regulation on the Export of Cultural Goods 1992 (EEC No. 3911/92) and the EC Council Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State 1993 (93/7/EEC).

171 *Diamond Centre Pte Ltd v. R Esmerian, Inc* [1996] 3 S.L.R. 377, C.A., citing *Cammell v. Sewell* (1860) 5 H&N 728, 157 E.R. 1371; *Janesich v. George Attenborough & Son* (1910) 26 T.L.R. 278; and *Winkworth v. Christie Manson and Woods Ltd* [1980] 1 Ch. 496. See also *City of Gotha v. Sotheby's* (No. 2), *The Times* (8 October 1998), H.C.

court would uphold the foreign transaction,¹⁷² unless one of the exceptions to the *lex situs* rule can be made out. For instance, the *lex situs* rule does not apply where a purchaser claiming title has not acted *bona fide*, or where the Singapore court declines to recognise the particular law of the *situs* because it considers it contrary to Singapore public policy.¹⁷³ To fall within the latter exception, the foreign law would have to be so outrageous that the court would regard it as wholly contrary to justice and morality.¹⁷⁴

(2) Stolen Objects Acquired by Persons in Singapore.

Complications can also arise when a Singapore purchaser inadvertently acquires an object stolen from another country. If the foreign owner sues in Singapore, the court has to decide which jurisdiction's law applies to the transaction. Different laws can apply to different aspects of the case: the general rule is that all matters of procedure are governed by the domestic law of the country of the court in which legal proceedings have been taken (the *lex fori*), while matters of substance are governed by the law to which the court is directed by its choice of law rule (the *lex causae*).¹⁷⁵ Where limitation periods are concerned, since Singapore has no equivalent to the Foreign Limitation Periods Act 1984 (UK),¹⁷⁶ courts must apply the common law rule under which statutes of limitation that merely bar a remedy are considered procedural while those that extinguish a right are substantive.¹⁷⁷

Such difficulties are avoided by the NHB and its constituent museums as they employ a stringent control process to minimise the risk of acquiring objects from unidentified sources. Measures taken include making acquisitions from public fora such as international auctions where the objects are published in catalogues and/or on public view, and selecting objects with reliably-established provenances. For proposed major acquisitions from private dealers, lists of stolen works maintained by Interpol and UNESCO are checked, or the Director of Archaeology or other senior

172 Compare *Winkworth, ibid.*

173 *Ibid.*, at 501.

174 *Ibid.*, at 510.

175 *Dacey and Morris on the Conflict of Laws* (Lawrence Collins ed., 13th edn.) (London: Sweet & Maxwell, 2000), para. 7R-001 at 157.

176 Chapter 16.

177 *Dacey and Morris, supra*, n. 175, para. 7-040 at 172; para. 7-042 at 173-174.

officials dealing with antiquities from the country of origin of the object are consulted.¹⁷⁸

The Board is also a member of the International Council of Museums, and adopts ICOM's Code of Ethics for Museums.¹⁷⁹ Clause 3.2 of the Code states that a museum should not acquire any object or specimen by purchase, gift, loan, bequest or exchange unless the governing body and responsible officer are satisfied that a valid title to it can be obtained. Every effort must be made to ensure that it has not been illegally acquired in, or exported from, its country of origin or any intermediate country in which it may have been owned legally (including the museum's own country), and due diligence should establish the full history of the item from discovery or production before acquisition is considered.

In addition, the clause also stipulates that a museum should not acquire objects by any means where the governing body or responsible officer has reasonable cause to believe that their recovery involved the unauthorised, unscientific or intentional destruction or damage of ancient monuments or archaeological sites, or involved a failure to disclose the finds to the owner or occupier of the land or to the proper legal or governmental authorities.

2. Criminal Law

It is possible to charge persons within Singapore who handle cultural objects unlawfully removed from foreign countries with receiving or retaining stolen property.¹⁸⁰ As noted above, property is considered as stolen even if its transfer by theft or criminal misappropriation takes place outside Singapore.¹⁸¹

However, the other offences discussed previously¹⁸² all share a common weakness: while effective against criminal activity in Singapore, they do not apply to acts occurring abroad. A statute generally operates within the territorial limits of the parliament that enacted it, and there is a

178 Personal communications with Dr Kenson Kwok, Director of the Asian Civilisations Museum, dated 19 March 2003, and Ms Bridget Tracy Tan, Curator, Singapore Art Museum, dated 2 June 2003.

179 Adopted unanimously by the 15th General Assembly of ICOM meeting in Buenos Aires, Argentina, on 4 November 1986 and amended by the 20th General Assembly of ICOM meeting in Barcelona, Spain on 6 July 2001 <http://icom.museum/ethics_rev_engl.html> (accessed 13 April 2004).

180 *Supra*, nn. 100-103, and the accompanying text.

181 Penal Code, *supra*, n. 92, s. 410(1).

182 *Supra*, nn. 92-99, and the accompanying text.

rebuttable presumption against its extraterritorial application.¹⁸³ There is an even stronger presumption against a parliamentary intention to make acts by foreigners abroad offences triable by local courts.¹⁸⁴ Hence, the provisions cannot be employed against persons who bring illicitly-obtained cultural property stolen from elsewhere into Singapore for transit or sale.

3. *Proposals for Reform*

Countries need to co-operate with each other in order to effectively combat transnational dealings in illicit cultural objects. It is thus submitted that Singapore should consider acceding to relevant international treaties and enacting new legislation to implement them.

The main international instruments in the field are the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970¹⁸⁵ and the Unidroit Convention on Stolen or Illegally Exported Cultural Objects 1995. Singapore is currently not a party to either Convention.

The UNESCO Convention is widely accepted – as at 1st April 2004 103 countries were parties to it, including the United Kingdom and the United States. To date, the Asian countries that have ratified or acceded to it are Cambodia, China, Japan, North Korea, South Korea and Sri Lanka.¹⁸⁶ Among other things, the UNESCO Convention requires a State Party to introduce an export certification system for cultural property¹⁸⁷ and prohibit the exportation of such property from its territory unless accompanied by an export certificate,¹⁸⁸ prevent museums from acquiring illegally

183 *Public Prosecutor v. Taw Cheng Kong* [1998] 2 S.L.R. 410, para. 66 at 432, C.A., citing *Macleod v. Att-Gen for NSW* [1891] A.C. 455, P.C. (on appeal from Aust); *R. v. Jameson* [1896] 2 QB 425, DC; *Air-India v. Wiggins* [1980] 1 W.L.R. 815, H.L.; and *Treacy v. D.P.P.* [1971] A.C. 537, H.L. See also *Cox v. Army Council* [1963] A.C. 48, H.L.; *R v. Harden (Alan Goldstone)* [1963] 1 Q.B. 8; *Archbold: Criminal Pleading, Evidence and Practice* (P.J. Richardson ed.) (London: Sweet & Maxwell, 2002), § 2-33; *Blackstone's Criminal Practice* (Peter Murphy ed.) (Oxford: Oxford University Press, 2003), para. D1.74 at 1010-1011.

184 See *Jameson* and *Wiggins*, *ibid.*

185 Signed 14 November 1970 (in force 24 April 1972) (hereinafter the 'UNESCO Convention'). See Patrick J O'Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (Leicester: Institute of Art and Law, 2000).

186 UNESCO website <<http://www.unesco.org>> (accessed 13 April 2004).

187 UNESCO Convention, *supra*, n. 185, Art 6(a).

188 *Id.*, Art 6(b).

exported cultural property originating in another State Party,¹⁸⁹ and prohibit the importation of inventoried cultural property stolen from a museum or a public monument in another State Party.¹⁹⁰ One of the Convention's key features is that it establishes a system whereby a State Party must take appropriate steps to recover and return illicitly imported cultural property at the request of a State Party of origin, provided that the requesting State must pay just compensation to an innocent purchaser or to a person who has a valid title to the property.¹⁹¹

I submit it would not be unduly burdensome for Singapore to accede to the UNESCO Convention.¹⁹² Policies which ensure that museums do not acquire illegally-exported cultural objects are already in place, and I have already proposed that an export control system should be introduced. (To comply with the Convention, the export control system would have to apply not only to antiquities, but to other cultural objects such as artworks as well.) The additional step that Singapore would need to take would be to enact legislation imposing penalties or administrative sanctions on the exportation of cultural property without a valid certificate and the importation of inventoried cultural property stolen from a museum or a public monument,¹⁹³ and establishing a procedure for recovering and returning illicitly imported cultural property.

Useful models for such legislation are provided by the Protection of Movable Cultural Heritage Act 1986 (Australia),¹⁹⁴ the Cultural Property Export and Import Act (Canada),¹⁹⁵ and the Mauritius Scheme for the Protection of Cultural Heritage within the Commonwealth 1993.¹⁹⁶

189 *Id.*, Art 7(a).

190 *Id.*, Art 7(b)(i).

191 *Id.*, Art 7(b)(ii).

192 As Singapore is not a UNESCO member, it would need an invitation from the Executive Board of UNESCO to accede to the UNESCO Convention: see the Convention, *id.*, Art 20(1).

193 *Id.*, Art 8.

194 Act No 11 of 1986, as amended; see Hugh H. Jamieson, 'The Protection of Australia's Movable Cultural Heritage' (1995) 4 I.J.C.P. 215.

195 RS 1985, c. C-51; see Stephen Z. Katz, 'Penal Protection of Cultural Property: The Canadian Approach' (1993) 2 I.J.C.P. 11.

196 Reprinted in (2002) 11 I.J.C.P. 137. The Scheme is not a treaty and creates no binding, reciprocal rights and duties for countries which adopt it. It is for individual Commonwealth countries to pass legislation necessary to bring the principles of the Scheme into operation; see Patrick J O'Keefe, 'Protection of the Material Cultural Heritage: The Commonwealth Scheme' (1995) 44 I.C.L.Q. 147 at 148.

Common features of these documents include the following:

- i. The establishment of an export control system for cultural objects.¹⁹⁷
- ii. Provisions enabling a foreign country from which an object has been unlawfully exported to request the country where the object is located for assistance in recovering and returning it.¹⁹⁸
- iii. An extended limitation period, or no time limit, for claiming the return of cultural objects.¹⁹⁹
- iv. Criminalisation of the unlawful import and export of cultural objects.²⁰⁰

While the repatriation of cultural property is a matter to be dealt with on the governmental level under the UNESCO Convention, the Unidroit Convention provides a right for the owner of a stolen cultural object or the State from which it was illegally exported to bring a claim directly in the courts of the State where the object is located.²⁰¹ It also applies to all forms of cultural property, not only those that have been designated as such by a State.²⁰²

We previously examined the time limits for claims for restitution of stolen or illegally exported objects under the Unidroit Convention.²⁰³ The extended time limits in the Convention were the main reason why the UK Ministerial Advisory Panel on Illicit Trade recommended against acceding to the treaty. In its report,²⁰⁴ the Panel noted that a claimant who failed to take obvious and reasonable steps to discover the whereabouts of an object and the identity of its possessor was immune so long as he received no actual knowledge of these facts.²⁰⁵ Further, it was felt it would be unduly onerous for vendors who had bought and sold objects in good faith and

197 Australian Act, s. 8; Canadian Act, s. 4; Commonwealth Scheme, cl. 5.

198 Australian Act, ss. 14(1) and 41; Canadian Act, ss. 37(3) to (8); Commonwealth Scheme, cll. 7-13.

199 Canadian Act, ss. 37(9) (no limitation period); Commonwealth Scheme, cl. 14 (five years after the date the country of export had knowledge of the whereabouts of the item in the country of location).

200 Australian Act, ss. 9 and 14(2); Canadian Act, ss. 37(2) and 40; Commonwealth Scheme, cl. 15. See also the Dealing in Cultural Objects (Offences) Act 2003 (c. 27) (UK).

201 Unidroit Convention, *supra*, n. 74, Arts 3 and 5; Prott, *supra*, n. 74, at 15.

202 Unidroit Convention, *id.*, Art. 2; Prott, *id.*, at 26.

203 *Supra*, nn. 74-78, and the accompanying text.

204 Ministerial Advisory Panel on Illicit Trade, Department for Culture, Media and Sport, *Report* (London: the Department, 2000) (Chair: Professor Norman Palmer) (hereinafter *ITAP Report*).

205 *Id.*, para. 50 at 23.

with due diligence to remain vulnerable to claims and to maintain records for such long periods of time.²⁰⁶

These are not insurmountable difficulties. It was pointed out by the Panel that it may be possible for a State to declare upon acceding to the Unidroit Convention that a judge can have regard to knowledge which would have been available to the claimant if reasonable efforts have been made to trace the location of the object and the possessor's identity.²⁰⁷ In fact, such a qualification might be included in the domestic legislation implementing the Convention without such a declaration, arguably without doing violence to the Convention's text. I noted earlier that the Law Commission for England and Wales recommended that for claims related to theft the limitation period should not begin until the claimant knows or *ought to know* the facts giving rise to the cause of action and the location of the property. For reasons that were stated earlier, extended time limits for claims involving cultural objects can be justified.²⁰⁸ And since documents can now be created and stored electronically, it is no longer too inconvenient for vendors to keep transaction records.

By signing up to the two Conventions, Singapore would enable its nationals and museums to seek the recovery of stolen cultural objects located in the territory of other States Parties despite legal principles such as the *lex situs* rule that might deprive claimants of title. The Conventions also provide a means for residents of developing countries who cannot afford to commence lawsuits in Singapore courts to recover plundered objects by requesting that their government take up the matter with the Singapore Government on their behalf. It is worth noting that clause 4.4 of the ICOM Code of Ethics²⁰⁹ states that the two Conventions provide principles on which museums should approach the return and restitution of cultural property. There should not be much objection to signing up to the Conventions if the NHB already abides by their principles.

206 *Id.*, para. 51 at 23-24.

207 *ITAP Report, supra*, n. 204, para. 52 at 24. Declarations may be made pursuant to the Unidroit Convention, *supra*, n. 74, Art 15.

208 *Supra*, nn. 40-47, and the accompanying text. Although the long-stop limitation period that I proposed (*supra*, nn. 76-78, and the accompanying text) is longer than that stipulated by the Unidroit Convention, *supra*, n. 74, Arts. 3(3) and 5(5), the Convention does not prevent a Contracting State from applying any rules more favourable than provided for by the Convention: *id.*, Art. 9(1).

209 *Supra*, n. 179.

It will be recalled that stolen cultural objects from several Asian countries purportedly find their way to Singapore either for sale or transit for shipment to other destinations. Singapore's accession to the UNESCO and Unidroit Conventions would not assist countries such as Indonesia and Vietnam as they are also not parties to the Conventions. In particular, the Unidroit Convention is presently of limited application – as at 1st April 2004 there were only 21 parties to the Convention, and of these only two were Asian countries: Cambodia and China.²¹⁰ If Singapore is serious about stemming the inflow of illicit artefacts, participating in an appropriate regional treaty together with other Asian countries is a logical step. Both of the international Conventions are designed to accommodate the application of specific treaties between parties.²¹¹ It is to be noted that the member countries of the Association of Southeast Asian Nations, of which Singapore is one,²¹² stated as follows in Article 10 of the ASEAN Declaration on Cultural Heritage 2000:²¹³

ASEAN Member Countries shall exert the utmost effort to protect cultural property against theft, illicit trade and trafficking, and illegal transfer. As parties to this Declaration, ASEAN Member Countries shall cooperate to return, seek the return, or help facilitate the return, to their rightful owners of cultural property that has been stolen from a museum, site, or similar repositories, whether the stolen property is presently in the possession of another member or non-member country.

ASEAN Member Countries are urged to take measures to control the acquisition of illicitly traded cultural objects by persons and/or institutions in their respective jurisdictions, and to cooperate with other member and non-member countries having serious problems in protecting their heritage by properly educating the public and applying appropriate and effective import and export controls.

210 Unidroit website <<http://www.unidroit.org/English/Implement/i-95.htm>> (accessed 13 April 2004).

211 UNESCO Convention, *supra*, n. 185, Art. 15; Unidroit Convention, *supra*, n. 74, Art. 13.

212 The other ASEAN member countries are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Thailand and Vietnam.

213 Signed on 25 July 2000: <<http://www.asean.or.id/641.htm>> (accessed 13 April 2004).

IV: CONCLUSION

Singapore's civil and criminal laws apply to chattels generally and are not entirely suited to protecting cultural objects from being unlawfully removed. Concerning the loss of cultural objects, if stolen items have not left Singapore's shores the main drawback to the present civil law rules is the six-year limitation period which, it is submitted, fails to provide owners a reasonable opportunity to recover their property. On the other hand, NHB museums that inadvertently acquire stolen objects have insufficient flexibility to divest themselves of such items in appropriate circumstances. Determining who owns antiquities unearthed in Singapore may prove difficult because it is simply not clear which legal principles apply. While the criminal law in the form of the offences of theft and receiving stolen property may help to some extent, there are no offences designed to preserve the integrity of archaeological sites.

Singapore currently lacks a system controlling the export of cultural objects which could prevent both the loss of its valuable material cultural heritage as well as the removal of stolen items from the country. Once objects have been taken abroad, the expense and inconvenience of suing for their recovery in a foreign jurisdiction may put an owner off. The owner may also lose title under foreign laws. Similarly, the most that Singapore authorities can do to assist the foreign owners of items that have been brought into the island is to charge those in possession with receiving stolen property if the elements of the offence can be made out, as other existing criminal offences lack extraterritorial reach. As many of the cultural objects that surface in Singapore are from developing countries in the region, the cost of commencing civil actions in Singapore to recover them may be prohibitive for their owners. The effective control of the illicit transnational trade in cultural objects thus depends on co-ordination and co-operation between countries.

If Singapore intends to continue developing as a market for art and antiquities as well as furthering international cultural exchanges, demonstrating that it is a team player on the global field cannot but help. Acceding to the UNESCO and Unidroit Conventions and regional treaties would not only benefit its nationals but also be a tangible expression of its commitment to fight illicit dealings. Thereafter, what Singapore needs is a comprehensive piece of legislation that implements its international obligations and addresses the issues discussed in this article. I believe that by strengthening its laws, Singapore would celebrate its cultural heritage and, indeed, that of its South-East Asian and international partner-nations.