THE IMPERILMENT OF CULTURAL PROPERTY IN THE PEOPLE'S REPUBLIC OF CHINA*  

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China is the final frontier for the art and cultural property trade. Its potential, not just as a source but also as a future market, is huge.1 The very existence of an apparently thriving contemporary art market only serves to underscore the enormous importance of the vastly more lucrative antiquities trade.

The People’s Republic of China (PRC) is undoubtedly now the classic “source” state: it is a developing country awakening—both at the private and governmental levels—to the economic potential of the antiquities trade; the economic significance of its relics is increasing while their cultural significance is declining; there is a huge supply in government storage and as yet unexcavated or undiscovered in tombs; grave-robbing and museum thefts occur on a massive scale; the PRC is increasingly the target of international smuggling networks (with peasants at the bottom of the pyramid and dealers and collectors at the top); there are inadequate state resources for conservation, archaeology or protection; and there is little hope of effectively enforcing blanket export restrictions. Empirically, the lack of a free licit market has made large scale black marketeering inevitable, with attendant social problems of corruption and the devastation of sites. Many of the current

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1 It is interesting to compare and contrast the situation in Russia after “glasnost.” There, economic relaxations led immediately to the intervention of Western art dealers and auction houses, Western art exhibitions, concern about overvaluation, and confusion as to world trading practices and commercialization of art generally. The situation eventually prompted the re-entry of government with a view to taking over art as an export barter commodity: see J. S. Berkowitz, “A Look Into Glasnost’s Impact on the Soviet Art World” (1991) 11 Loyola Ent. L.J. 453.
problems and themes in the cultural property area generally are writ large in the PRC.\(^2\)

Little attention has been paid in the West to cultural property issues in the PRC (as distinct from art history research, for example). However, the empirical evidence that can be obtained suggests that the sheer numbers involved—antiquities in storage, in archaeological sites or as yet unexcavated; thefts from tombs, graves and museums; and incidents of smuggling—are all so enormous that it is almost beyond comprehension. The topic of cultural property in the PRC is a broad one. This paper is limited to a consideration of the ways in which cultural property is being threatened in China today.

**Historical Perspective**

It is ironic that one of the earliest instances of destruction of antiquities involved the same Emperor Qin whose terracotta army remains at Xian. This cruel ruler was said to have killed hundreds of thousands of Chinese and destroyed much of China's recorded history, including annals of past kings, archives and libraries.\(^3\)

Throughout China's modern history Westerners have carried off relics in the same way colonial powers have done in other parts of the world. In the nineteenth century, antiquities were lost through wild unscientific digs by foreigners working in China. They were also looted directly from the vast imperial collections of early Chinese art that had been built up by the emperors, particularly in the eighteenth century.

The British and French sacking of the Summer Palace outside Peking in 1860 resulted in a huge loss of imperial treasures.\(^4\) More of the imperial collections were stolen or sold off after the Republican revolution of 1911.

Interestingly, in response to recent U.S. allegations of human rights abuses in the PRC, *People's Daily* carried an article denouncing the destruction of the Mogao grottoes by Westerners decades earlier:

> At the beginning of this century, when China was divided and oppressed by imperialism, there was no outcry about the lack of human rights in China by politicians of the imperialist nations. In fact, the history of the plunder of the

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\(^4\) The Victoria & Albert Museum in London has in its collection an eighteenth century cloisonne enamel incense burner that once belonged to General Charles Gordon ("Chinese Gordon"), thought to be part of the booty he acquired after the looting of the Summer Palace: R. Kerr, *Chinese Art and Design* (London: Victoria & Albert Museum, 1991).
cultural relics of Dunhuang reminds the world of the predatory nature of the imperialist powers when they had the upper hand. The Mogao grottoes in Dunhuang, in western China's Gansu province, are a treasured cultural heritage of China. Their construction lasted 1,000 years (from 366-1367). When the existence of the grottoes became known to the outside world in the early years of this century, cultural spies and treasure-hunters of the imperialist powers flocked to China to plunder this priceless site. The loss of these cultural treasures took place at a time when the Chinese people were deprived of all human rights, and it was at this precise time that they were robbed not only of their territory, integrity and property, but also of part of their most treasured cultural heritage.5

The article alleges that as a result of the looting of the grottoes in Dunhuang, 50,000 manuscripts, hundreds of silk paintings, as well as other paintings of the Tang and Song dynasties found their way into museums throughout the world.6

These views allude to an epoch in the late 19th and early 20th centuries when Chinese sites were explored and relics and frescoes carried off by a succession of predominantly Western freebooters, archaeologists and scholars who virtually staked out imperialist spheres of influence. The period has been described admirably in Peter Hopkirk's Foreign Devils on the Silk Road.7 Hopkirk observes that:

to the bitter chagrin of the Chinese and the exasperation of scholars, this great Central Asian collection is scattered through the museums and institutions of at least thirteen different countries. . . . The men who carried off all these treasures had few qualms about the rightness of what they were doing. Nor, it should be said, did the governments or institutions (including the British Museum) which sent them. At the time they were lionised and honoured for their remarkable discoveries and unquestionable contributions to the scholarship of Central Asia and China. . . . The Chinese, on the


6 The article expressly places blame on the scholars Aurel Stein from England, Paul Pelliot from France, Sergei Oldenburg from Russia, Koichiro Yoshikawa from Japan, and Langdon Warner from the U.S. Aurel Stein was in fact responsible for negotiating (at a total cost of 130 pounds sterling) the removal from the "Hidden Library" at Dunhuang of vast numbers of manuscripts and relics (including the Diamond Sutra, the world's earliest known printed book)—an act likened by the Chinese to the Elgin Marbles controversy. Stein, on the other hand, regarded his work as "a pious act on my part to rescue for western scholarship all those relics of ancient Buddhist literature and art which were otherwise bound to get lost sooner or later through local indifference." Much of the textual material carried away was duplicative, as Stein could not read Chinese. Ironically, a great deal of the grandeur of the Dunhuang caves was destroyed somewhat later as a result of vandalism when White Russian soldiers were actually interned in the caves. By this time movable relics had been taken by cart to Peking.

7 Subtitled The Search for the Lost Cities and Treasures of Chinese Central Asia (Oxford: Oxford University Press, 1980). This work is particularly valuable as many of the journals or publications resulting from the European expeditions described therein are no longer in print.
other hand, view their archaeological activities in a very different light, although they did nothing to prevent them at the time. To the Chinese, "so-called scholars" like Stein, Pelliot and von Le Coq were no more than shameless adventurers who robbed them of their history.\(^8\)

The British Museum has now downplayed the work of Stein and little mention of him appears in its exhibitions. For that matter, the bulk of his discoveries remain in storage.

The looting of sites by foreigners and the resulting outflow of relics in the early decades of this century were factors leading to the promulgation of the *Law on the Preservation of Ancient Objects* in 1930. Sir Eric Teichman in *Journey to Turkistan*, an account of his travels along the Silk Road in 1935, recalls that the Chinese "boiled with indignation to read in the books of foreign travellers descriptions of how they carried off whole libraries of ancient manuscripts, frescoes and relics of early Buddhist culture in Turkistan."\(^9\)

Chinese antiquities have also left China with refugees and emigres at various times. The most notable example, of course, is the wholesale removal by the Nationalists of the hundreds of thousands of imperial treasures in the National Palace Museum to Taiwan in 1948-49. This accumulation, drawing from the priceless imperial collections built up over 1,000 years by the Song, Yuan, Ming and Qing dynasties, is probably now the greatest museum collection devoted to a single culture. The Republic of China has always taken the position that had it not been for the courage of museum staff, these treasures of Chinese culture would have been lost in wars and revolutionary ferment.

The Cultural Revolution was an extraordinary convulsion with wide-reaching consequences for all aspects of Chinese society, not least cultural property. The masses in effect turned upon their own cultural heritage in a manner rarely witnessed in other societies. Vast numbers of sites, regarded by the Red Guards as reactionary monuments to "old" thinking and feudalism, were obliterated. The so-called "house raids," conducted on a wide scale, resulted in privately owned antiques being carried off and destroyed. Enormous quantities of relics were lost.\(^10\) The popular historian, Salisbury, describes other excesses of this period:

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\(^8\) *Ibid.* at 1-2. Despite such Chinese views, one finds many examples of frescoes removed from their sites and reposited in PRC museums (notably the collection of Tang frescoes in the Shaanxi Museum of History).

\(^9\) Cited in Hopkirk, *supra* note 7 at 1.

\(^10\) See the preamble to the *Circular Approving the Report Seeking Instructions on Strengthening Administrative Work Over the Protection of Ancient Buildings and Ancient Sites Containing Cultural Relics*, issued by the State Council 15 May 1980, approving the Report of the State Cultural Relics Administrative Bureau and the State Capital Construction Committee, which blames "Lin Biao and the Gang of Four" for damage to and destruction of cultural relics. See
Kang Sheng [Mao’s security chief who came to particular prominence for fomenting the Cultural Revolution] uncovered rarities for Mao’s special collection, items that had originally been in the collections of the emperors. He enlisted the assistance of antiquarians and curators, including Wu Zhongqiao of the Forbidden City Museums. He built up a collection for himself as well, which by the time of the Cultural Revolution contained ten thousand works of art and more than forty thousand books. Many of these were valuable classical antiquities purloined from the Forbidden City museums. . . . Kang Sheng acquired valuable paper from the museums, often hundreds of years old, in addition to rare books. . . .

Once the Cultural Revolution roared into high gear, with tens of thousands of ignorant teenage Red Guards pulling houses to pieces in search of the Four Olds, Kang Sheng acquired more and more valuable items. On one occasion he was seen picking over heaps of manuscripts and artworks tossed into the street by the Red Guards. . . .

After the death of Mao and the fall of the Gang of Four, Kang’s widow was accused of stealing from state museums and libraries to add to her private collections.11

In the late 1960s, during a period of state paranoia over possible nuclear war with the U.S.S.R., Mao instituted a naive and crude plan to prepare for this eventuality, which involved the mass destruction of city walls and ancient buildings to provide stones for underground tunnels and shelters.

Jung Chang has recently provided a particularly stark view based on her own experiences in the Cultural Revolution:

Because of his contempt for the areas of Chinese civilization he did not understand, such as architecture, art and music, Mao destroyed much of the country’s cultural heritage. He left behind not only a brutalized nation but also an ugly land with little of its past glory remaining or appreciated.12

This cultural self-immolation could have been even worse but for the enlightened intervention of a few, notably Zhou En-lai, to save leading sites and monuments such as the Forbidden City itself.


11 Salisbury, supra note 3 at 221.
The Economic Boom and Challenges to the Environment

It is more than ironic that cultural property, once under attack by Red Guards, is now imperilled instead by capitalism. The capitalist explosion in the PRC has brought cultural property under threat in at least two separate ways. First, the new entrepreneurial spirit has led to "commodity dealing" in relics, which has encouraged widespread looting, smuggling and flouting of the state sales monopoly. Even local market dealing is perceived as a threat:

With the swift development of a commodity economy in our country, money has attained a high place in some people's minds. . . . The appearance of markets in cities and villages and the appearance of individual industrialists and traders have provided a perfect opportunity for some people to make a fortune. They join the league of traders and, using their lawful status, trade in cultural relics under the guise of trading in crafts, and become very rich. Hence, "antique markets" of various scales have sprung up and are expanding in cities such as Beijing, Shanghai and Guangzhou.13

More menacing to the physical preservation of the Chinese cultural heritage are the massive infrastructure and capital projects that are also the products of the capitalist boom of the 1980s and 1990s. Such development is literally changing the face of modern China. Rivers are dammed, gorges flooded, earth moved and mountains blasted away in a frenzy of economic reform that China has not experienced on this scale before.

Road construction, the building of structures and even agriculture have in the past resulted in the unearthing of relics. However, it would appear from PRC news accounts, in the last few years particularly, that this extraordinary wave of capital development has brought to light (if not destroyed) archaeological sites as never before.

For example, in Hubei province in the last two years construction departments concerned with projects such as the Three Gorges Dam and the Beijing-Shenzhen railway have excavated approximately 5,375 square metres of ancient cultural ruins and found 2,578 ancient tombs dating from the early stone age to the Northern and Southern dynasties.14 In the course of construction of the Xiantao-Jiangling highway, workers have found 1,600 tombs ranging from 2,700 to 200 years in age, and 20,000 cultural relics.15 Archaeologists observe that very often

14 Xinhua (13 April 1993).
tombs are densely compacted or found in layers in higher ground, so that they are particularly exposed during levelling operations.

Over the last decade, Gansu province authorities have discovered many archaeological sites in the course of water conservancy projects and capital construction. Such relics as have been saved are merely stored in warehouses, as the resources have been inadequate to allow proper research and preservation. Almost invariably relics must be taken from their context in order to facilitate the construction projects. It is thought that the construction contemplated by the Eighth Five-Year Plan will impose enormous excavation and archaeological demands on the province. Railway construction through a 128 kilometre area and pipeline construction for more than 1,000 kilometres will threaten large numbers of tombs and sites and will necessitate considerable excavation and screening work.

Quite apart from the numerous other ecological concerns that have been expressed in connection with the project, it is feared that the massive Three Gorges Dam on the Yangtze River, scheduled for completion around 2010, will have the effect of submerging temples, ancient tombs and countless numbers of antiquities which archaeologists have not yet been able to excavate. Certain members of the National Committee of the Chinese People's Political Consultative Conference have called for immediate measures to protect cultural relics in the Three Gorges area.

_Tomb-robbing_

As in other societies, the looting of graves and tombs has provided peasants with an attractive and relatively easy means of supplementing meagre incomes.

Grave-robbers were feared even in ancient times. As a result of their menace, the builders of Han tombs concealed their entrances. During the Tang and Song dynasties, cheap imitation grave objects (e.g. ceramic for gold) were sometimes used to deter grave-robbers, as it was feared that the intruders would disturb the spirits of ancestors. There is some indication in ancient historical records that even the tomb of Qin Shihuang at Xian was looted soon after his death in 210 B.C.

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17 *Xinhua* (13 October 1993).

18 See generally "Burial in China" in Kerr, _supra_ note 4. More recently, in March 1987, the head of one of the terracotta soldiers excavated from the vaults of Emperor Qin Shihuang's tomb was recovered from a local factory worker who was trying to sell it.
Graves and tombs containing culturally significant relics are found all over China’s territory. They exist on a scale that may not even be quantifiable. They are of immense interest to scientists as they can contain antiquities deposited there over a broad time span—from Neolithic times to late Ming.

The contents of tombs and graves are particularly valuable to robbers, and especially to those who direct them or benefit from their efforts. The items are often of the finest craftsmanship as they typically formed part of the burials of the rich and social elite. The Shang people, for example, believed that souls remained intact in the bodies of the deceased and required the same necessities as the living. This led to the tradition of elaborate funerals in which the privileged classes were buried along with vessels too precious to part with.

In addition, the objects normally have not been disturbed in any way or even used. The result, very often, is a cache of what today would be known as “museum-quality” relics, available for the taking.

Looting of tombs and graves has taken place on a massive scale in China, and continues despite the PRC’s efforts to contain it. It brings with it the attendant problems of destruction of sites, vandalism, loss of scientific data, separation of relics from context, corruption and general law-breaking.

A small sampling of the many recorded instances of tomb-looting gives some indication of the extent of the problem. In Henan province in 1986, peasants robbed 500 graves dating from the first to fourth centuries B.C.\(^1\) Statistics from the State Bureau of Cultural Relics indicate that over 40,000 tombs were reported plundered in China in 1989 and 1990 alone.\(^2\) From February to November 1990, a single gang excavated 46 tombs of the Han dynasty and sold the contents to smugglers for small amounts.\(^2\)

A PRC trade magazine published in Hong Kong\(^2\) reported that a deputy director of the Shaanxi Historical Museum visiting France in 1992 was astonished to find 400 to 500 pieces of bronze ware and carved stone images displayed in a shop selling Chinese antiquities. These

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\(^1\) Cited in Prott and O'Keefe, *Law and the Cultural Heritage*, vol. III; *Movement* (London: Butterworths, 1989) at 461. It is difficult to accept the surprising suggestion made in Volume I of that leading work (at 225) that “in densely populated areas where there is a strong community commitment to the preservation of the cultural heritage—such as in China—it may be difficult for clandestine excavators to operate.”

\(^2\) S. WuDunn, “Graverobbers Rip the Heart out of China’s Treasures,” *South China Morning Post* (10 December 1992). This source reported an incident in October 1991 in Shaanxi province in which a gang of robbers armed with searchlights, guns and explosives opened a Tang dynasty tomb.


\(^{22}\) [1993] *China Market* at 8 ff.
relics, normally banned from export, had recently been shipped from Hong Kong:

Where do these new and valuable cultural relics come from? The most direct and largest source is the excavation of ancient cultural sites and ancient tombs. Huge profits lure people to risk the danger of desperation. The activities of stealing from tombs thus have become rampant and cannot be halted despite repeated prohibitions. At a conference held by the State Cultural Relic Bureau in April 1991, representatives from eight provinces and autonomous regions of Gansu, Shaanxi, Qinghai, Inner Mongolia, Hebei, Zhejiang, Anhui and Shanxi reported that the activities of stealing cultural relics from excavation of ancient tombs and smuggling were serious in their respective provinces.

In Huaiyang prefecture of Henan Province where the wind of stealing ancient tombs was first fanned up, at the turn of summer and autumn of 1983, over 12,000 pieces of tomb artifacts were stolen. 751 tombs of the Warring States Period and the Han Dynasty were destroyed, and more than 100 tombs in one Warring State cemetery in Tangxian County were illegally excavated and the artifacts therein were stolen.

The event of armed stealing of ancient tombs occurred in Qucun Village of Woxian County in Shanxi Province. The raging tide of excavating ancient tombs and stealing artifacts therein continued for more than a year, involving over 1,000 people; in excess of 100 ancient tombs were destroyed. The ancient sites of Jin State, and ancient tombs in the cemetery were destroyed in Wenxi and Houma and other places.

In Chifeng City of Inner Mongolia, between 1988 and 1991, 1,796 ancient tombs were [robbed], together with the nation's major cultural protection units [i.e. sites] and the Zuling, Qingling and Huailing mausoleums were all destroyed.

Shaanxi is also a province where the nation's ancient tombs were seriously [robbed] and destroyed. Between 1986 and 1991, nearly 1,000 ancient tombs of the province were [robbed]. The Liu Gonquan tomb alone was [robbed] 13 times.... In a village in Shaanxi Province, when archaeological workers were [excavating] tombs in the east of the village, the tomb stealers were digging in the west of the village, forming an unnoticed competition; finally the cultural relics were dug up by tomb stealers and were smuggled out of China. . . .

At present, the protective forces fall far short of needs. Tomb stealers and smugglers collude with one another inside and outside China. The tools they use while committing the crime [are] advanced, including cars, motorcycles, radio and telephones, electric drills and detonators. In some places they even set up such a network with a clear division of labour — stealing and excavating — purchase — transport — reselling at changed hands — smuggling artifacts out of China. The unarmed security workers just had bicycles and flashlights. . . .

23 Ibid.
The following account appeared in a Chinese legal journal in 1988:

In the past few years, the criminal activities of stealing and excavations of ancient tombs and places of ancient culture have been shocking. This evil wind began in the region of the central plain and swept across the provinces of Guangxi, Qinghai, Xinjiang and Inner Mongolia. Throughout the country there are stealing and excavations of thousands of ancient tombs and places of ancient culture each year. In 1986, more than 5,000 ancient tombs have been robbed and excavated including 691 in Sichuan province, 635 in Shanxi province, 375 in Anhui province, 700 in Henan province and 1,000 in Jiangxi province. The scope of the robbing and excavations and the number of people involved was unprecedented.

It is noteworthy that the cultural relics criminals, in challenging the societal order, have become dependent on each other, and organised themselves in groups in committing crimes. Most of the smuggling criminals inside the territory depend on the cultural relics traders for sources of cultural relics and most of the traders depend on the grave robbers or thieves for the supply of cultural relics. In this way, the higher the demand of the smugglers, the better the sale of the cultural relics traders. The more the traders purchase, the more zealous the robbers will be. This mutual stimulation and initiation results in a vicious cycle. There is a saying that "if one wants to get rich, dig the ancient graves."

The damage caused by the robbing and excavating of ancient graves is also great. Because of the incorrect method of digging, the ancient tombs have become a mess and the buried cultural relics were destroyed.

Both local and overseas intellectuals have demanded "Love Our China; Save the Cultural Relics" and exclaimed, "Are we to let our descendants go to museums in foreign countries to study Chinese ancient cultural relics?"

At present, the illegal activities of robbing and excavating sites of ancient cultural ruins and ancient tombs are often conducted in group action. Sometimes there may only be a few people and sometimes there may be hundreds of persons involved. Among them, the majority have only violated the law and they will only need to be given criticism and education, administrative discipline and administrative punishment. But for the minority who initiate, lead, and organize the activities, they have violated the criminal law and should therefore be affixed with criminal responsibility. They cannot simply be administratively disciplined or punished instead of receiving criminal sanctions. Since 1982, in Jiangxi province, a total of 631 people were arrested for illegally excavating the ancient tombs and among them 629 persons were detained for a few days, fined and then released.

Between January and April 1987, in a county in Shanxi province, the local police station has cracked down on more than 20 cases of illegal excavations of ancient tombs, dealt with 50 people, received fines of nearly RMB 6,000, but has not affixed any person with criminal responsibility. In the opinion of the author, the relevant departments in these localities may not have appropriately [deliniated] offence and non-offence.
There is another phenomenon that is worth examining. In certain localities, the village cadre with the thoughts of "Opening up sources for wealth, developing side production that produces wealth," though knowing that robbing and excavating ancient tombs are illegal activities, encourages and even organizes large groups of villagers to excavate ancient tombs. This results in large numbers of ancient tombs being damaged and a large quantity of cultural relics being stolen. These leaders have already committed the offence and they are actually the principals. However, they are not affixed with any criminal responsibility nor are they given any punishment. This is against the law.24

A more recent legal journal article updated the "local saying" to: "To get rich, dig an ancient tomb; you can become a $10,000 household overnight." It reported that illegal excavation was becoming "more open, institutionalized and professionalized and the scale of operation ever expanding"—indeed, one could argue, a reflection of modern China. It claimed that in some villages 90 percent of the labour force take part in illegal tomb-robbing, and concluded that "the worsening trend of illegal excavation of tombs has wreaked great havoc upon the cultural heritage of our country."25

Smuggling

In the late 1970s, local fishermen in the village of Dinghai in Fujian province, while digging for shellfish, found a large quantity of ancient porcelain dating from the Song and Yuan dynasties (A.D. 960-1368). They used these items as kitchen containers, not recognizing their value. When the news of the find spread into the black market, smugglers from Hong Kong descended on the village and bought the relics for amounts that were very small relative to their actual market value in the West, but large enough in the minds of the fishermen to turn them into smugglers themselves.26

Antiquities are thought to be the largest single class of item smuggled out of the PRC, at least in terms of monetary value.27 Historically,

25 Fazhi Ribao [in Chinese] (7 February 1992) at 3. Apparently a "peasant saying" in Fujian province is: "To be rich, dig up an ancient tomb; to make a fortune, open a coffin": Fazhi Ribao (17 May 1991) at 2.
26 This incident is described in Hongye Zhao, "Recent Developments in the Legal Protection of Historic Shipwrecks in China," (1992) 23 Ocean Development and International Law 305 at 313 (which, parenthetically, is one of the few articles ever written in the West on any aspect of cultural relics law in China).
smuggling relics out of the PRC has proven to be relatively easy. A commonly used route is via the southern province of Guangdong (whose capital is Guangzhou or Canton) with a view to transshipment through neighbouring Hong Kong or the Portuguese colony of Macau. Relics are frequently smuggled out of the PRC by coastal vessels, including the myriad small cargo and fishing boats sailing in the South China Sea. They are also brought into Hong Kong in truck cargo, or, in the case of extremely valuable individual pieces, couriered out of the country by plane. There are accounts that smuggling rings are opening up new routes through Yunnan province and the isolated Tibetan Plateau into Nepal.

Hong Kong dealers recall the heyday of the mid-1980s when boxes of antiques were unloaded in Hong Kong from mainland cargo ships each night. Smuggling into Hong Kong may not be as brazen in recent times, but there is no doubt that a steady flow continues into the British dependent territory. It is widely alleged that many of the smuggling rings are based in Hong Kong or in Macau, using a network of antique dealers in order to obtain the highest prices. Hong Kong customs officials complain that they receive little cooperation from Hong Kong art traders and that the likelihood of low-level smugglers or couriers informing on ring-leaders is very slim.

The transit state of Hong Kong is an ideal conduit because of its proximity, its local expertise in Chinese antiquities and large number of dealers and buyers, its position as a financial and transportation centre and its relatively open border. The importing of antiquities into Hong Kong is not per se illegal under Hong Kong law, though importing

28 Yet another local saying is "East, south, west, north or central, by sea, land or air, smuggle cultural relics to Guangdong": Fazhi Ribao (7 February 1992) at 3. From 1981 to 1989, Guangdong customs investigated 3,081 cases of relics-smuggling and retrieved 70,226 items. In a typical recent case, Guangzhou Customs at Conghua, inspecting a container truck carrying goods for export, found among the goods seven large boxes of cultural relics of the Han, Tang, Yuan, Ming and Qing dynasties, all of which were prohibited exports, and 329 pieces of Grade Three relics from the collections of museums. An official of the Guangdong, Provincial Cultural Relics Administration Committee acknowledged that in 1991 in Guangdong Public Security and Customs recovered 2,000 prohibited relics and 5,600 ordinary relics: Xu Heng-bin quoted in Da Gong Bao [in Chinese] (24 October 1992) at 6.

29 Y. Sharma, "Smugglers Plunder Antiques that Survived Red Guards," Inter Press Service (22 March 1989) citing news items in China Daily. In late 1993 Hong Kong officers at Lok Ma Chau seized 107 artifacts worth more than HK$10 million. Hong Kong Customs and Excise Department statistics indicate that between 1983 and 1993 there were fifty court cases involving relics smuggling. Thirty-seven of them involved sea vessels and the rest trucks and containers. Almost seven thousand pieces were smuggled. The generally low sentences—usually fines around HK$10,000 (U.S. 1 dollar is approximately H.K. 7.8 dollars)—meted out by Hong Kong courts suggest that such smuggling is regarded as a minor economic crime.

30 South China Morning Post (9 October 1992).
without a manifest (smuggling) is an offence.\textsuperscript{31} As a matter of practice, Hong Kong customs authorities usually return to the PRC smuggled antiquities they have seized, presumably as a matter of comity.\textsuperscript{32} The relics are regarded as "home free" when they find their way into the hands of dealers or other intermediaries.

Relics of lower grade will normally be smuggled in bulk with shipments of other items. Top grade pieces can be couriered into Hong Kong individually. There is no Hong Kong law prohibiting this when the number of pieces is so small that a manifest would not be required. Sales of the most valuable antiquities to overseas buyers are said to be arranged by local dealers without the item ever appearing in a Hong Kong shop.

PRC Customs claim to have intercepted during the 1980s over 70,000 pieces bound for Hong Kong or Macau.\textsuperscript{33} According to Guangdong statistics, over 20,000 items and over 40,000 ancient coins were recovered in the period 1983 to 1986. Five thousand pieces of pottery were smuggled out of Gansu province. A Chinese law journal article commenting on this period alleged that "inside officers collude with outsiders to commit offences," and that almost all of the 100 largest cases "were incited and controlled by the merchants and smugglers from Hong Kong and Macau."\textsuperscript{34} Between 1984 and 1986, 8,541 of the 55,000 relics recovered were "precious"\textsuperscript{35} cultural relics.

In Shandong, during a 1987 campaign to erradicate the "Six Harms," the Public Security Bureau uncovered several caches of relics and

\textsuperscript{31} Import and Export Ordinance c. 60, ss. 17, 18 and 18A. The United Kingdom is not a party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

\textsuperscript{32} Hong Kong Customs assume that the government of the PRC is the owner of the relics and repatriation is arranged through the Hong Kong office of the New China News Agency, the de facto PRC embassy. (Though there is liaison between Hong Kong and PRC Customs, the topic of relics is, curiously, rarely broached by the PRC officials.) It has been reported that the PRC has "rewarded" the work of Hong Kong's law enforcement agencies in returning smuggled artifacts, by donating to the Hong Kong Museum of Art numerous pieces of antique porcelain from the National Museum of Chinese History: South China Morning Post (9 April 1991)—but see the official PRC rationale for the donation in "China's Museum Donates Ceramics to Hong Kong," Xinhua (7 February 1991). Hong Kong Customs authorities used to call upon curators at the Hong Kong Museum of Art to verify the nature and value of the items seized; however, the curators now resist in view of the large number of items that are brought to them on a regular basis. Lower grade relics are often seized in batches of hundreds.

\textsuperscript{33} South China Morning Post (9 April 1991).

\textsuperscript{34} Chen Shun-lie, supra note 24.

\textsuperscript{35} "Precious" usually refers to relics of the First, Second or Third grades (established and verified by the State Bureau of Cultural Relics), as distinguished from "ordinary" cultural relics. Precious relics will not be exported by the PRC (except perhaps for loan purposes); ordinary relics dating from 1795 can be sold through the state sales apparatus to domestic or foreign buyers.
arrested twelve persons, including a delegate to the National People’s Congress and a “model worker” of a city. In July 1989, the Public Security Bureau of Kunming Railway in a single case recovered 10,924 items including bronze and clay artifacts, several of which were Grade One and Two, and 93 of which were Grade Three.

In 1988, Public Security Bureau officers posing as “Hong Kong bosses” seized 3,700 relics and broke up a Hong Kong-based smuggling ring, involving thirty locals, in the city of Hangzhou. The Zhejiang Provincial Cultural Bureau identified many of the relics seized in the Hangzhou case as coming from the Liang Zhu tomb, a Neolithic site outside Hangzhou. More than 9,500 ancient tombs, ruins and kilns in Zhejiang province have been illegally excavated or robbed since 1987.

Xian, capital of thirteen dynasties and kingdoms, and known for its large number of relics, has been a particular target for smugglers. In 1991, 40 smuggling cases were investigated in Xian and 1,726 relics recovered. In a one-month period, Xian police recovered over 463 protected pieces, including some rare treasures such as a Qin dynasty copper weight bearing an imperial edict inscription.

Recent statistics issued by the PRC would indicate that the attempted smuggling of antiquities is not losing any momentum. In 1991 alone, Beijing Customs stopped 5,751 relic items from being exported. In 1992, 14,000 relics were seized by Chinese Customs. In the first four months of 1993, police in Shaanxi province dealt with 1,300 cases of illegal excavations and smuggling, and as a result 1,500 offenders were fined or imprisoned. Generally, smuggling is conceded to be on the rise as compared with previous years.

**Institutional Vulnerability**

The following provisions of the *Hunan Provincial Regulations on the Protection of Cultural Relics* give some indication of the PRC’s ideals in institutional protection:

36 *Fazhi Ribao* (7 February 1992) at 3.
38 Sharma, supra note 29.
40 *Fazhi Ribao* (20 November 1992) at 3.
41 *Xinhua* (12 January 1993).
42 *Xinhua* (22 April 1993).
43 It is said that PRC Customs’ relatively recent “open policy,” which involves only random checking, has fostered increased relics traffic: *Fazhi Ribao* (7 February 1992) at 3.
Article 18. Museums, memorial halls, libraries and other institutions under ownership by the whole people shall appraise in a scientific way the cultural relics in their collection, classify relics by different grades on the basis of their value and complete or incomplete condition, make registration of every article of cultural relic, compile files for the relics kept by them, and report to the local departments for cultural administration for the record.

Local departments for cultural administration in the prefectures, autonomous prefectures, cities, counties and autonomous counties shall compile files for those cultural relics above Grade Three; and the provincial departments for cultural administration shall compile files for cultural relics above Grade Two.

Article 19. Units which keep and exhibit cultural relics shall establish a strict system of protection and control. Special persons shall be designated respectively to keep the registry and the relics in the collection. The cultural relics shall be kept in fixed storerooms and equipped with such security facilities as preventing fire and guarding against theft. Grade One cultural relics shall be kept separately and with special care. Cultural relics above Grade Three shall be placed on record of the local public security organ.44

While ideals are laudable and necessary, the reality of the situation in the PRC is vastly different from the picture painted in these regulations. Institutional insecurity, lack of funding, inadequate procedures and corruption have combined to contribute to the steady outflow of relics from China.

On an April 1994 trip to Shaanxi province, the author observed the following: (1) the entire inner courtyard of the Xianyang Municipal Museum, a repository of important Qin and Han treasures, was being used as a storage area for construction materials including large quantities of lime; (2) the Tang frescoes “The Polo Game” and “The Hunting Party” lining the narrow passageway into the tomb of Prince Zhanghuai were unguarded and unprotected and had been partially obliterated by the passage of groups of tourists; and (3) many of the steles—stone obelisks containing historical records and examples of writing from the Tang dynasty onwards—in the “Forest of Steles” Museum in Xian (designated by UNESCO) were in the process of being coated with black ink so that calligraphy prints could be mass produced and sold to tourists.

A Chinese journal has reported on three instances in early 1983 when thieves were apprehended in the Shenyang Palace Museum. Alarmingly, 44

guards and police found it necessary to fire shots within the museum premises. One of the offenders who had a prior record of relic thefts was sentenced to death.45

Several years ago Sotheby’s was planning to auction an ancient bronze vessel aged perhaps 3,000 years. An art expert who had read the auction catalogue wrote to the Chinese authorities asking them to determine whether the piece had been smuggled from China. In this instance there existed sufficient documentary records to establish that it had been stolen from a small county museum in Hubei province. The owner returned the vessel to China and the thief was caught and sentenced to death.46

Chinese periodicals have contained various statistics on the incidence of museum thefts. It has been reported, for example, that between 1983 and mid-1986 there were more than 118 cases of museum thefts in Gansu, Shanxi, Qinghai and Shaanxi, involving 2,750 pieces.47 According to public security bureau statistics, in the five years from 1984 to 1988, there were 256 cases of theft of cultural relics in museum collections, a 30 percent increase from the previous five years.48 During the debate in the Standing Committee of the National People’s Congress over amendments to the 1982 Cultural Relics Law, it was disclosed that during the period from 1983 to 1990, 423 cases of museum theft were discovered, involving over 5,000 pieces.49

Recent accounts suggest that there have been fewer large museum thefts.50 “Incomplete” statistics show only 34 thefts in 1992, involving 424 relics of which 109 were extremely rare. One of the major cases in 1992, however, was a theft from Kaifeng city museum in Henan province in which 69 relics, including seven rare Ming and Qing antiques worth about HK $20 million, were stolen by a sophisticated gang (whose members were drawn from all over China). It was regarded as the most serious museum theft in the history of the PRC; in addition to the


46 Reported in WuDunn, supra note 20.

47 Chen Shun-lie, supra note 24.

48 Fazhi Ribao (7 February 1992) at 3.

49 Xinhua (27 February 1991). See an account in Xinhua (23 January 1990) suggesting a downturn in the frequency of museum thefts in the latter half of 1989, reportedly due to increased security measures and inspections. There had been efforts to move relics from “poorly-guarded warehouses” to buildings with more security. The bulk of the thefts were said to have occurred in smaller county-level museums.

50 See Xinhua (20 and 27 January 1993) and South China Morning Post (5 February 1993).
seven Grade One items, fifty-two were Grade Two and three Grade Three.\textsuperscript{51}

It is acknowledged by many participants in the art trade in Asia that the outflow of antiquities must be facilitated to a significant extent by corrupt officials, whether they be in local government units, museums or enforcement agencies. Corruption is a fact of life in the PRC and it has flourished in the current economic boom of the 1990s.\textsuperscript{52}

There are accounts of dealers being sent faxes from the PRC containing descriptions and details of important pieces in Chinese museums, inviting an "order" which will then result in a delivery via a theft and smuggling network.\textsuperscript{53} It is said that some smuggled items even come from government warehouses used to store pieces confiscated or surrendered to the state.\textsuperscript{54}

De Varine has observed that in many developing source states problems result merely from the fact that museum curators and staff are so poorly compensated.\textsuperscript{55} The PRC provides an extreme example. Professional museum staff typically earn around RMB 200-300 per month. Sun Fei reports of a manager of a museum shop in Hunan province stealing 1,814 cultural relics of which seven were priceless treasures.\textsuperscript{56}

It is not always apparent whether institutional losses result from inside complicity or simply from lack of institutional safeguards and proper documentation. For example, Sun Fei also describes a situation in which a museum was robbed over twenty times of more than 5,000 relics without the staff having noticed that anything was amiss.\textsuperscript{57}

There is a startling account of a municipal cultural relics working team in Changsha municipality opening "a small shop" in the city to buy and sell cultural relics:

According to the provisions of the state cultural relics protection policy, only cultural relics shops authorized by the cultural relics leading body can trade in cultural relics. It is illegal for a cultural relics working team to establish such a small shop. On 10 March, the tax bureau investigated the working

\textsuperscript{51}Xinhua (20 January 1993).


\textsuperscript{53}WuDunn, supra note 20.

\textsuperscript{54}Window (30 October 1992).


\textsuperscript{57}Ibid.
team and found out that it has, without expert's appraisal or approval of the department in charge, sold 4,436 pieces of ancient porcelain wares and 628 pieces of jade to the Hunan Handicrafts Import-Export Co.

The head of the tax bureau of the Changsha municipality wondered how the large amount of cultural relics passed through the customs without undergoing the proper procedures. The Wuhan Customs also sent personnel to Changsha to help in the investigation due to the seriousness and complications of the case.

While under investigation, the company continued with its smuggling activities of cultural relics. Large numbers of ancient porcelain wares were transported by rail to a warehouse belonging to the Hunan Foreign Trade Institute in Guangzhou. On 24 August, Zhu Hai-quan, the vice section chief of the company, went to the Changsha Xiangjiang Hotel to meet a client from Hong Kong and later took the latter to the warehouse and together signed a contract for the sale of the cultural relics.

Following a series of investigations, it was found that the company has illegally purchased a large number of cultural relics. They have never performed any declaration procedures for the export of cultural relics at the Guangzhou or Shenzhen customs ports. Further, there is evidence that they fake the ancient porcelain wares and jade as [other items] to deceive the Customs.

A sudden inspection was made at the jewellery and jade warehouse of the company. All goods stored at the warehouse were cultural relics. Among the large number of cultural relics were some packed for export. In a pile of rubbish, a copper weapon of the Warring States period was found. In the ditch near the warehouse laid the fragments of ancient porcelain wares.

The officers responsible for investigating this case made the appraisal and confiscated the cultural relics. However, the company's manager and Zhu Hai-quan blackmailed or bribed the relevant officials of the company to keep their mouths shut.

On 17 October, 1982 the Customs officers stopped the client from Hong Kong, Mr. Li, at the Guangzhou Airport. This Mr. Li was the one who earlier met Mr. Zhu at the hotel and was the manager of a Hong Kong company dealing in furniture, antiques and wooden carvings. He admitted that since 1976 he had dealings with the company. From 1979 to June 1982 he signed twelve contracts for the illegal export of cultural relics with the company. Eleven of these contracts have been performed and 10,771 cultural relics were exported. These were purchased at prices 20 percent lower than the prices of the export ports. He has reaped huge profits in these dealings. For instance, there is high demand for ancient wooden Buddhas in the international market so that at one time he purchased 3,621 wooden Buddhas with RMB 94,000. On the international market he sold them for RMB 325,000. . . .

The personnel involved like the manager and Zhu Hai-quan of the company have not yet been affixed with criminal responsibility nor been
disciplined. This kind of loose execution and enforcement of the law is in
effect allowing and encouraging the smuggling activities involving cultural
relics.\textsuperscript{58}

Apart from losses due to such manifestations of entrepreneurial zeal,
there are indications that museum and curatorial practice is simply
woefully inadequate. Some official guidelines and directives are very
telling.

According to the \textit{Circular Approving the Report Seeking Instructions on
the Trial Measures on the Administration of Exports of Cultural Relics With
Special Permission}:

\ldots in assessing cultural relics to be exported, any objects whose authenticity
is hard to determine at the moment or disputable shall not be exported for
the time being so that the outflow of cultural relics out of carelessness can be
avoided.\textsuperscript{59}

Article 6 of the \textit{Regulations on the Work of Provincial, Municipal and
Autonomous Region Museums} instructs that “labels must be put on
replicas, imitations and substitutes to avoid confusion.”\textsuperscript{60} Customs
officers are, in fact, often unable to distinguish replicas from antiques.\textsuperscript{61}

Sun Fei has noted the disturbing phenomenon of staff or even
curators of museums being unable to identify losses after thefts.\textsuperscript{62}
Moreover, the state hoarding of relics is so extensive that warehouses are
said to be packed with uncatalogued items which often suffer damage
due to inferior storage conditions.\textsuperscript{63}

The generally ineffective protection of cultural relics in the PRC due
to lack of funds was pointed up in a recent Chinese journal publica-
tion.\textsuperscript{64} The immensity of the task of protection is obvious when one
realizes that there are about 350,000 cultural relic spots, including
ancient sites, tombs and buildings, grottoes and temples; and about 10
million artifacts in storage in various types of institutions at all levels.
Many of the sites “have been destroyed or are being irretrievably

\textsuperscript{58} “The Cracking of an Important Case of Smuggling of Cultural Relics in Changsha,” (1985) 6
\textit{The World of Cultural Relics} 51-53 [in Chinese].

\textsuperscript{59} Issued 31 July 1979 by the State Council approving the Report of the State Cultural Relics
Administrative Bureau.

\textsuperscript{60} Approved and promulgated 29 June 1979 by the State Cultural Relics Bureau.

\textsuperscript{61} \textit{Da Gong Bao} (24 October 1992) at 6 [in Chinese]. See also Chapter Six of the \textit{Measures on the
Administration of Export Verification for Cultural Relics}, announced 27 February 1989 by the
Cultural Department.

\textsuperscript{62} Sun Fei, \textit{supra} note 56.

\textsuperscript{63} \textit{China Daily} (3 September 1993) quoting State Bureau of Cultural Relics official Yuan
Nanzheng.

\textsuperscript{64} “The Painful Feeling of a Large Cultural Relic Country,” \textit{supra} note 16.
damaged." Of the approximately 500 sites specifically designated by the state as key national cultural relic protection units, repaired and maintained during the Seventh Five-Year Plan period (1986-1990), about 300 require further salvage work. The designated sites at provincial or lower levels are said to be in a "precarious state." The funding for cultural relics protection before 1992 barely approximated that of a single year's budget for the Tokyo Museum. The current expenditure in the PRC is only a small fraction of that in India.

Shaanxi, to take an example, is one of the richest provinces in terms of cultural relics. It contains approximately 36,000 sites and more than 1,000 imperial graves, most of which the state cannot afford to excavate. It needs about RMB 50 million annually for maintenance and protection, but the State Bureau of Cultural Relics only allocates it RMB 2 million annually, and the provincial government RMB 4 million. It is estimated that it would require at a minimum RMB 100 million to properly excavate and protect each of the leading sites, but this funding is not available. Archaeological finds are often simply sealed up. Leading examples are the inner mausoleums of the tomb of Emperor Qin at Mount Li and the Qian tomb at Qianling, both of which have enormous archaeological potential, but which the PRC dares not excavate without expensive technology.

The meagre government allowances are supplemented only by small site admission fees. Increasingly, museums in the PRC are devoting more space to souvenir shops with a view to generating revenues, even to the point of closing whole exhibition galleries to accommodate them. The most modern museum in the PRC, the Shaanxi Museum of History in Xian, has over a dozen large souvenir shops interspersed with its galleries.

Statistics indicate that in the nation's provincial-, prefectural-, and city-level institutions, there are on average 25 pieces of artifacts per square metre. Few of the museums have any conservation or protection equipment of any kind. Most of the approximately 1,000 museums considered by the State Bureau of Cultural Relics to be the main targets for thieves do not have adequate protection systems.65

Official Acknowledgement of the Imperilment of Cultural Property

The PRC makes little attempt to hide the extreme difficulties it is facing in its attempt to preserve its cultural relics and maintain control over the traffic and trade in them. The situation has been disclosed in articles in the various legal, quasi-legal, archaeological, trade and news journals

published in China, most of which simply reflect the official government line in any case. However it is especially instructive to examine some of the background statements, or preambles, in materials of a statutory nature to fully appreciate what the PRC perceives as challenges to its cultural property regime.

A set of 1974 ministerial proposals relating to the commercial aspects of cultural relics protection noted that:

In recent years, the cultural, foreign trade and commercial departments in various localities have scored some achievements in purchasing cultural relics and organizing the export of ordinary cultural relics. At present, however, there still exist some problems with respect to the administration of the commercial market for cultural relics, which are mainly manifested in operations by too many departments, ununified pricing and confusion of market. Some departments even purchase unearthed cultural relics without authorization, thus encouraging the frenzy to "dig up tombs for buried treasures." All this has proved extremely detrimental to the protection of cultural relics.66

The preamble to a 1980 circular of the State Council observed:

Our country has a long history and the historical cultural relics, our state's precious cultural heritage, found under or above ground, are numerous. The protection of these cultural relics has an important function in raising our dignity, in conducting historical research and in creating new culture among the socialist race. Since the establishment of the state, the party and the state have paid much attention to the protection and administration work of cultural relics. A series of laws and orders on the protection of cultural relics were promulgated, ending the history of our state cultural relics being taken and damaged by imperialism. However, in the past ten years, since Lin Biao and the "Gang of Four" have advocated Leftist thinking, the legal system was seriously disrupted and many historical cultural relics have been damaged. Some key cultural relic protection units [sites] were levelled to the ground, some regions excavated ancient tombs, and the museum system was ineffective, causing great loss and damage. These phenomena continued to develop such that if no effective measures are adopted to strengthen the administration and stop the damage, our state's precious cultural heritage will suffer irremediable loss.67

66 Circular Concerning the Opinion on Strengthening Cultural Relics Commercial Administration and Implementing the Policy on the Protection of Cultural Relics, promulgated 16 December 1974 by the State Council, approving the Opinion of the Ministry of Foreign Trade, the Ministry of Commerce and the State Administration for Protection of Cultural Relics.

The following graphic preamble is found in the 2 March 1982 Decision Concerning the Severe Punishment of Criminals Who Seriously Undermine the Economy:

In view of the fact that currently economic criminal activities such as seeking exhorbitant profits through smuggling, speculative arbitrage and speculation, theft of articles of public property, theft and sale of precious cultural relics and extortion and acceptance of bribes are rampant, with serious harm to the cause of the country's socialist construction and to the interests of the people, and in order resolutely to attack such criminal activities and severely to punish these criminal elements and state personnel who participate in, protect or connive at these criminal activities, there is the necessity of making appropriate supplementations and revisions to some relevant provisions of the Criminal Law of the People's Republic of China.68

A 1987 State Council circular, significantly, links attacks on China's cultural patrimony with the concomitant societal breakdowns:

In recent years, the criminal activities of smuggling cultural relics and digging ancient tombs, sites of ancient culture, took place quite frequently in various places of the state and many cultural relics have been stolen and smuggled out of the country. This will not only seriously damage our state cultural heritage but will also corrupt social values, damaging the construction of socialist material civilization and spiritual civilization.69

In the same year the Supreme People's Court and Supreme People's Procuratorate, in an exercise of their quasi-legislative function, issued what amounted to sentencing guidelines in cases of crimes involving cultural relics. In their view:

During the past few years, crimes of stealing, excavating, dealing in, and smuggling of cultural relics have been very serious; many cultural relics have been smuggled out of the country or lost or destroyed, resulting in immeasurable loss to our nation's historical and cultural legacy. We can no longer produce cultural relics. Their historical, artistic and scientific value cannot be measured against the usual things describing other properties. . . . We must fight this crime in a precise and severe manner.70

More recently, the Ministry of Public Security and the State Bureau of Cultural Relics issued a joint opinion calling for much more severe enforcement measures. Their rather stark view included the following:

68 Adopted by the 22nd Session of the Standing Committee of the Fifth National People's Congress, with a view to amending portions of the Criminal Law in the fight against economic crimes.

69 Circular on Cracking Down on Activities Involving Smuggling and Illegal Excavation for Cultural Relics, issued 26 May 1987 by the State Council.

70 Explanation of Several Questions Concerning the Applicable Law in Handling Cases of Stealing, Illegally Recovering, Dealing in, and Smuggling Cultural Relics, issued 27 November 1987 by the Supreme People's Court and the Supreme People's Procuratorate.
The crime of robbing ancient graves, which has subsided for a while, is spreading rapidly after its recent resurgence. Some localities have been constantly plagued by massive thefts of ancient graves and cultural relics. Many robbed sites are littered with bones and pieces of cultural relics. Ancient graves in some localities have been gutted, resulting in the overnight destruction of underground cultural relics that are thousands of years old. . . . The extent of damage has been the most serious since new China's founding, and is seldom seen in history. Failure immediately to adopt decisive measures to stop the crimes will not only cause inestimable losses to the motherland's historical and cultural relics, but will also tarnish the country's image. . . . In spite of repeated crackdowns, the current illegal and criminal activity of robbing ancient graves has been caused by a lack of adequate understanding on the part of leading comrades in some localities regarding the important need to preserve cultural relics. A handful of leading cadres have adopted an indulgent and tolerant attitude towards the illegal and criminal activity of robbing ancient graves. They have even mistakenly regarded the activity as a means adopted by the public to make money. Some local authorities have invariably meted out light punishment, substituted penalties with fines, or taken other ineffective suppressive actions when handling cases involving the illegal and criminal robbery of ancient graves. They have failed to manage cultural relics efficiently, thereby enabling illegal elements to exploit the many loopholes in their management system.

Because of their inadequate efforts to publicize laws and policies on cultural relics preservation, they have failed to create a social environment in which the broad masses of people will preserve cultural relics in accordance with law. Hence, leaders at all levels must fully understand that combating illegal and criminal theft of ancient graves and preserving the motherland's cultural relics are pressing tasks for them. They must strengthen leadership effectively as well as mobilize and coordinate all social sectors to immediately conduct a comprehensive investigation of illegal and criminal robbery of local ancient graves and of the way local cultural relics are managed. They must also make swift arrangements for reversing the current grim situation. . . .

The Opinion also noted the emergence of "institutionalized and professionalized" criminal gangs and raised the spectre of the involvement of triad societies.

Overview of the Current Legal Regime

A thorough examination of the web of laws, regulations, notices, rules and orders that touch upon cultural property matters in the PRC is well

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beyond the scope of this paper.\textsuperscript{73} However it may be useful to provide a very basic overview of the legal regime that attempts to cope with the situation described above.

The National People's Congress, the supreme legislative organ, has not dealt directly with cultural property matters except in the \textit{Criminal Law of the People’s Republic of China}.\textsuperscript{74} Articles 173 and 174 deal with defacing, stealing and exporting relics, and generally criminalize violations of other cultural relics laws. Most of the main legislation in the cultural property area, including the central statute, the \textit{Law of the People’s Republic of China on the Protection of Cultural Relics},\textsuperscript{75} results from the deliberations of the Standing Committee of the National People’s Congress. Many legal norms (for example, the \textit{Circular on Cracking Down on Activities Involving Smuggling and Illegal Excavation for Cultural Relics})\textsuperscript{76} emanate from the main executive body, the State Council. In the PRC system even the Supreme People’s Procuratorate (prosecutions bureau) and the Supreme People’s Court can have legislative roles and have exercised this power with respect to cultural relics.\textsuperscript{77} Regulations can also be made by the Ministry of Culture and by the State Bureau of Cultural Relics.\textsuperscript{78}

While the PRC is a unitary state, there is still a body of cultural property-related legislation that has been developed by provincial, autonomous region and local governments,\textsuperscript{79} and by the decree of local cultural relics authorities. While such laws tend to mirror national


\textsuperscript{74} Adopted by the Second Session of the Fifth National People’s Congress on 1 July 1979 and effective as of 1 January 1980.

\textsuperscript{75} Adopted at the 25th Meeting of the Standing Committee of the Fifth National People’s Congress and promulgated by Order No. 11 of the Standing Committee of the National People’s Congress (hereinafter, the \textit{1982 Cultural Relics Law}).

\textsuperscript{76} Issued 26 May 1987 by the State Council.

\textsuperscript{77} See Explanation of Several Questions Concerning the Applicable Law in Handling Cases of Stealing, Illegally Recovering, Dealing in, and Smuggling Cultural Relics, issued by the Supreme People’s Court and the Supreme People’s Procuratorate 27 November 1987.

\textsuperscript{78} See, for example, \textit{Administrative Measures of the People’s Republic of China on Foreign Archaeological Work}, approved and promulgated by the State Bureau of Cultural Relics on 22 February 1991.

\textsuperscript{79} See, for example, \textit{Beijing Municipal Administrative Regulations on the Protection Areas for the Cultural Relics Protection Units and Construction Control Zones}, promulgated 1 December 1987 by the Beijing People’s Government.
It must be said that the cultural property regime suffers from the same inherent defects that characterize the Chinese legal system generally as "underdeveloped": a lack of legal efficacy (the gap between the statute book and the actual behaviour of citizens and officials) resulting from an absence, historically, of a concept and doctrine of legality or a legal culture; the ideology of Marxism-Leninism and particularly Mao Zedong Thought; the inadequate educations of most law-related personnel; the tensions between policy and law; and rudimentary legal drafting and legal engineering. A significant portion of the legislation in the cultural property area is overlapping and too often vague and merely hortatory.

The 1982 Cultural Relics Law was meant to be the first truly comprehensive modern legislative treatment dealing with protection of sites and immovables, archaeological excavations, state institutions, privately owned relics, export and enforcement. All of these areas of legislative concern have been subjected to various interpretations and glosses in numerous subsequent pronouncements and regulations, although the 1982 Cultural Relics Law still provides the basis of the legal regime.

The definition of "cultural relics" is broad, covering movables and immovables of historical, artistic or scientific value including sites, buildings, tombs, works of art, records, manuscripts, objects reflecting the various ethnic groups in different historical periods, and fossils. The general provisions of the legislation make no real attempt to adapt the statutory scheme or the definition to different types of protection or contexts. The definition itself is arguably subjective and vague, incorporating as it does wording like "important" and "valuable." A vast amount of administrative discretion is left to the State Bureau of Cultural Relics.

All cultural relics found underground or in inland waters or territorial seas within the boundaries of the PRC are the property of the state, as are all designated sites of ancient culture, tombs, cave temples and buildings, and collections in public institutions. The state has designated over 500 sites and relics and further designations have been made by govern-

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80 See, for example, Detailed Rules for the Implementation of the Law of the People’s Republic of China on the Protection of Cultural Relics promulgated 7 May 1992 by the State Bureau of Cultural Relics and approved by the State Council.
ments at lower levels. In addition, several dozen cities have been designated as "famous cities of historical and cultural value," and local protection efforts have been made in districts around the leading sites. The 1982 Law attempts to address in a very general way the tensions between the importance of site protection and the need for capital construction.

While private property rights in cultural property do exist, they are severely emasculated. Other provisions of the 1982 Law make it clear that the state has a duty to "protect" the relics, that the items may only be sold to the state and only through the state sales apparatus, and that mandatory submission to state "verification" procedures can result in expropriation.

The provisions of the 1982 Law dealing with archaeological excavations reflect themes that pervade PRC cultural property law: the tensions between cadres charged with the responsibility for relics and those involved with construction projects, paranoia over the possible loss of relics through administrative lapses, state concern over power exercised by local cultural relics administrations and the general need for political units to oversee the work of departments of cultural administration. No foreign national or organization may engage in archaeological investigations without special permission granted by the State Council. In recent years, the PRC has indicated its willingness to admit foreign and international organizations to cooperate with Chinese archaeologists in conducting archaeological surveys, excavations and studies. This undoubtedly reflects the PRC's need for the most modern technology and, in particular, foreign funding in view of the magnitude of the task.

The brief provisions as to state institutional collections contain numerous ideals as to compilation, classification, protection and control, but these are rarely followed through in practice.

The PRC prohibits exports of most cultural relics, but does allow for the granting of export certificates in some situations. No private individual may export any cultural relic; exports may only be made by the state sales apparatus. All relics must be "verified" or examined by a cultural relics bureau. Items deemed by the state to lack historical, artistic or cultural significance could be released for export, as could "ordinary" cultural relics (relics not graded or deemed "precious" by the State Bureau of Cultural Relics on the basis of unpublished guidelines) allowed to be exported in a sales context. It would appear that, pursuant to current administrative policy, no relics dated before 1795 will be allowed to leave China at all unless approved for exhibition loan purposes. Smuggled relics are confiscated by the state.
The 1982 Law as amended sets out lists of "administrative" (quasi-criminal) and "criminal" offences. The former include minor incidents of damaging relics, failing to report discoveries, undertaking construction in designated zones and illegal domestic sales. Penalties tend to be modest fines. The criminal offences include serious cases of theft, tomb-robbing, smuggling, damage and dereliction of duty by officials. Such offences are normally dealt with harshly under the provisions of the 1980 Criminal Law of the People's Republic of China.

There is a rather confusing mass of legislative enactments, regulations and edicts relating to serious cultural relics crimes and sentencing. It would appear that in serious cases the sentence will not be less than ten years and could be life imprisonment or death. One important factor in sentencing is the "grade" of the relic, even though the prosecution (much less the accused) may not appreciate its value or significance until after the verification process by the cultural relics administration. Criminals who steal or smuggle "Grade One" relics are often executed.

Apart from the 1982 Law and the numerous other enactments that relate to it, there is a wide spectrum of legislation that touches on cultural property in various contexts. This ranges from underwater relics and archaeology to film-making.

Historically, the PRC has, for the most part, remained aloof from the various cultural property developments in international forums. It has, however, recently acceded to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. It also participates in the current deliberations of UNIDROIT with a view to formulating a Convention on Stolen or Illegally Exported Cultural Objects.

Commentators in the cultural property area have argued for less retentive national policies with a view, paradoxically, to slowing the tide

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81 Decision on Amendments to Articles 30 and 31 of the Cultural Relics Law of the People's Republic of China, adopted 29 June 1991 at the 20th Meeting of the Standing Committee of the Seventh National People's Congress.

82 Decision Concerning the Severe Punishment of Criminals Who Seriously Undermine the Economy, adopted 8 March 1982 by the 22nd Session of the Standing Committee of the Fifth National People's Congress.


85 Acceded to by decision of the State Council 25 September 1989.
of thefts and illegal exports of antiquities. It is argued that the export policies of the source states must be guided by a cost-benefit approach, taking into account a scheme of values that ranks art objects according to their cultural significance. What is required, commentators argue, is a process of judicious selection that may result in the export of all but the most culturally significant items. The income from the export of excess relics can be made available to finance preservation of the most important pieces, training of curators, and scientific exploration efforts. Once international demand is satisfied by the creation of a sizeable licit market, the profit is cut out of illicit trafficking and the concomitant anti-social behaviour is reduced and enforcement regimes kept to a manageable size. This sort of approach, which has at its core the substantial relaxation of export controls, would, it is argued, achieve the stated objectives of embargo legislation better than embargo legislation itself.

The PRC is the classic source state. With its hoarding mentality, excess of relics and myriad social problems resulting from restrictive policies, it would seem to have much to consider in the theories of the cultural internationalists. In fact, there are now signs of some relaxation in cultural relics policy in the PRC. This has taken the form of increased cultural, scientific and technical exchanges as well as more outbound art exhibitions. In addition, the PRC has been wrestling with its export policy. Though the accumulation of foreign exchange (rather than purely cultural goals) seems to be a dominant factor, the PRC has recently shown a willingness to attempt to learn the workings of the international art market, consult foreign experts, relax its sales apparatus somewhat and experiment with international art auctions.

The inevitable changes to come in China in cultural property policy and administration will be as momentous as those in other areas of economic and cultural development in this rapidly changing society.