International Journal of Cultural Property (2025), **32:** 132–148
doi:10.1017/S0940739125000104

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Spain: No Country for Furtive Detectorism

Ignacio Rodríguez-Temiño[1,3] and Jaime Almansa-Sánchez[2,3]

[1]Department of Culture and Historical Heritage, Junta de Andalucía, Seville, Spain; [2]CRETUS, Universidade de Santiago de Compostela, Santiago de Compostela, Spain and [3]Némesis. Association for the research and defence of cultural heritage against looting and illicit trade
Corresponding author: Jaime Almansa-Sánchez; Email: jaime.almansa@usc.es

Abstract

This article examines the evolution of artifact hunting in Spain, particularly in Andalusia, highlighting the legal measures implemented to combat archaeological looting over the past three decades. In contrast to the liberal model led by England and Wales, a more conservative approach, like the Spanish one, offers valuable insights with a clear effect in the protection of archaeological heritage that can serve as an example for other nations grappling with similar challenges.

Keywords: looting; metal detecting; archaeology; legal frameworks; valuation

Introduction

Since 1981, the Council of Europe (CoE) has warned of the threat posed to archaeological heritage by the indiscriminate use of metal detectors being used to supply the antiquities market. A few years later, in 1985, the member states of the Council of Europe, wishing to put an end to the offences that too often affect archaeological heritage, agreed on the European Convention on Offences relating to Cultural Property. However, the traditional rejection of a criminal law approach to the problem may explain why this Convention, opened for signature at Delphi in 1985, has not played a significant role, failing to attract enough signatories to enter into force. After the failure of the Delphi Convention, it was not until the Nicosia Convention (2017) that the Council explicitly urged countries to implement punitive measures against actions that harm – or have the potential to harm – cultural heritage.[1]

The lenient stance on metal detectors found in the Convention for the Protection of the Archaeological Heritage of Europe (Revised) (Valletta 1992) is widely recognized as a response to concerns raised by the UK's representative. During the drafting of the Convention, he cautioned that a stricter tone would make it difficult for the UK to ratify the treaty.[2]

This ambiguity reflected the varying approaches different countries adopted to address the impact of metal detectors on archaeology. In the 1990s, two distinct models emerged: a liberal model, which main contribution has been the creation of a voluntary system of cooperation for recording finds on an online database through the Portable Antiquities

[1] Ulph and Vigneron (2024) reflect on how this Convention may affect the UK, while Romeo Casabona (2017) explains it from the Spanish point of view.

[2] Willems 2007.

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https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

Scheme.[3] This model is based on legal systems in which property rights take precedence over the protection of cultural property[4] and very little punitive action is taken against offenders;[5] and a conservationist model, which required prior authorization for the use of metal detectors and prosecuted unauthorized activities.[6]

The liberal model, mainly developed in England and Wales, spread to several Northern European countries, while the conservationist approach gained prominence in Southern Europe, with Spain taking a robust stance in its implementation.

These models might appear to be similar to those established by Merryman in relation to national cultural policies.[7] For this author, clearly in favor of greater freedom of international trade in works of art, there were nationalist countries that protected their assets against sales to other countries, while the so-called internationalists were in favor of being able to acquire works from other countries for their collections. For Merryman, free trade would put an end to illicit trade. Obviously, Merryman does not emphasize that such models coincide, broadly speaking, with a division of wealth and power. In any case, all countries, even buyers, have laws that protect their cultural assets from exportation, not only illicit exportation but also exportation that decapitalizes the country's cultural capital.

Despite widespread support for the liberal model,[8] it faced growing criticism both outside[9] and within the UK.[10] Even the European Association of Archaeologists' Committee on the Illicit Trade in Cultural Material has included in its mission the development of a new European standard for the use of metal detectors in locating archaeological objects.[11]

Between these two approaches, many countries have adopted a neutral stance. While they express concern over the activities of detectorists and the illegal antiquities trade, they lack the resources or political will to fully commit to a more robust conservationist model. Adherence to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the key international instrument against the plundering and illicit trafficking of cultural property, has not resolved these internal challenges, as the Convention has not had direct legal impact on the domestic laws of States Parties, significantly weakening its effect in combating looting. It is widely recognized in the literature that the range of rules contained in the 1970 UNESCO Convention falls short.[12] The difference in the political weight of the countries that receive and supply the objects; the complexity of national laws for the purposes of private law, as it is not always easy to determine which rule of law applies to a given object;[13] and the techniques for tracing the provenance of the objects all complicate and prolong the processes, making them anything but exceptional. In short, the recent international reality shows that civil actions for the return of objects are only undertaken when very important

[3] Bland 2009. The Portable Antiquities Scheme was created as a complementary measure to the reform of the customary rule on finds containing precious metals, the Treasure Trove. This reform materialized in the Treasure Act of 1996, which came into force the following year. It is beyond the scope of this work to analyse both measures. For the evolution of the concept of "treasure" in England, Wales, and Northern Ireland, see Bevas (2024). Over the years, other countries have implemented similar systems, now gathered in the European Public Finds Recording Network (see Dobat et al. 2020), which offers some resources online for different stakeholders.

[4] Gill 2010.

[5] Graham 2004.

[6] Rodríguez Temiño 2000.

[7] Merryman 1994.

[8] Deckers, Lewis and Thomas 2016.

[9] Lecroere 2016; Rodríguez Temiño, Yáñez and Ortiz Sánchez 2019.

[10] Hardy 2017; Brodie 2020; Godfrey 2020.

[11] https://heritage-lost-eaa.com/aims/

[12] Gerstenblith 2003; Manacorda 2011; Mackenzie 2011.

[13] Fuentes Camacho 1994.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

objects of great economic value are at stake, therefore justifying the cost of legal proceedings.

In this context, countries looking to the Nicosia Convention as a basis for introducing legal measures to combat archaeological looting may find the Spanish experience particularly instructive. In its early stages, Spain committed significant legal, human, and material resources to address rampant archaeological plundering, making it a valuable reference for other nations.

This article examines the origins and evolution of artifact hunting in Spain, with a particular focus on Andalusia. It also analyses the legal measures implemented over the past three decades and the outcomes achieved, presenting an intervention model aimed at preventing the looting of archaeological heritage with metal detectors.

The beginning: Andalusia became the El Dorado of artifact hunters[14]

In the parish of Santa María de Écija, a medium-sized town in the province of Seville and one of the black spots of archaeological looting in Spain,[15] there is a cloister housing a collection of archaeological artifacts, mainly from the Roman period. It is not for their historical interest that this chapter begins by mentioning them, but rather because they bear unwitting witness to the advent of artifact hunting in Spain.

The collection's origin dates back to the 1940s, when the parish priest began to gather artifacts found by chance at the town's construction sites. Word of the priest's collecting zeal soon spread, and in the following years, singular pieces were donated to him (capitals, sculptures, columns, inscriptions, bases, etc.), free of charge or in exchange for a modest fee.[16]

The collection stopped receiving donations in the 1970s, curiously, just as more finds were beginning to be made in the municipality. However, the new finds were no longer happening by chance, but rather through a deliberate effort on the part of the finders: they were being found using metal detectors, whose users knew there was a lucrative market for these objects. Whether the original collection was built out of ignorance or a desire to keep these vestiges, which bore witness to the past, in the parish collection, the truth is that artifact hunting put an end to it, fostering a profit-driven view of ancient artifacts.

The first metal detectors came into the country through the joint-use Spanish-American military bases, mainly Morón de la Frontera and Rota. However, the Americans using them were not seeking ancient artifacts, but *militaria*, that is, military artifacts, usually from the Spanish Civil War.[17] Nevertheless, they were the channel through which locals were able to acquire these tools.

[14] The salient features of the behavior of the detectorists highlighted in this section come from the personal experience of one of the authors of this work (IRT) when he was city archaeologist in Écija (Seville) at the beginning of the 1980s, together with the annual reports produced by the Guardia Civil (police corps) on the illegal use of detectors in Spain since 1986. Écija was one of the centres of the so-called "Black Triangle" of archaeological plundering (Rodríguez Temiño 2012a). The Guardia Civil reports are not accessible to protect the personal data of the accused. However, analyses based on these reports have been published on several occasions. For example, Sánchez Arroyo (1998) or Cortés (2006). Both these sources of information, together with the rest of the bibliographical references, and the investigations carried out by journalists in the articles cited hereafter – usually initiated with a press release from law enforcement offices – offer sufficiently verified information to support the account of these early years of police work in Spain and its evolution.

[15] Rodríguez Temiño 2012a.

[16] Martín Pradas and Carrasco Gómez 2018.

[17] *El País*, 19 November 1986: "La Junta multará a tres militares norteamericanos por realizar excavaciones ilegales en Cádiz" [The Government of Andalusia to fine three US soldiers for carrying out illegal excavations in Cádiz].

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The first generation of artifact hunters in Spain emerged in the late 1970s and early 1980s. At the time, local scholars interested in local studies coexisted alongside those who saw artifact hunting as a means of making a profit. Indeed, in many municipalities, the lingering influence of the *Misión Rescate* TV show, broadcasted by Radio Nacional de España and Televisión Española in the 1960s and 1970s, could still be felt. Through it, teachers and students at schools around the country were recruited to search for and dig through the soil of archaeological sites. Such activities encouraged the idea that direct intervention was essential for archaeological heritage because it was being lost, nobody knew about it, and, in any case, such actions certainly were not illegal. Some people (teachers, local scholars, or simply local history buffs) viewed metal detectors as a new way to channel their interest in contact with history.[18] These people make up the bulk of what are known as "arqueofurtivos de fin de semana" [clandestine weekend archaeologists] in Catalonia.[19] In Andalusia, they are colloquially known as *piteros*, or "beepers," for the sound the device makes when operated. In any case, the category and *modus operandi* of this group of users are identical in both Spanish regions.[20]

At first, such scholars were consulted by other non-expert users to catalogue what they found. This led some of them to become intermediaries between the finders and the antique dealers who went down to these towns to buy up the huge number of artifacts coming to light. But this mediation soon ended, and the relationship between the scholars and artifact hunters soured into one of distrust. The assistance the scholars had provided for the classification of the finds was replaced with self-taught conjecture. Every artifact hunter in Écija, Osuna, or Lantejuela had a copy of *Roman Coins & Their Values*[21] and/or *Compendio de las Monedas del Imperio Romano*,[22] with which they learnt to catalogue the coins they found and determine their price.

Once the scholars had been sidelined, the artifact hunters did not try to organize associations. They preferred to go out to the countryside alone or, sometimes, in pairs or groups of three, albeit only when there were previous ties of friendship amongst them, given the fierce rivalry between the users of metal detectors from different towns. These artifact hunters can be divided into two main groups, depending on how often they go into the field and what they do with the fruits of their activity. On the one hand, there are occasional detectorists who go out on weekends to see what they can find. They usually do it in the outskirts of the towns they live in, and the destination of the objects they do find is usually either their own collections or, more commonly, sacks and buckets for a subsequent sale as scrap. However, when they do find objects of interest that they believe could fetch a profit, they sell them through marketplace websites such as eBay or Wallapop. On the other hand, there are the professionals. These users go out all week long, travel long distances, form networks, and research the places to be looted in advance. Their *modus operandi* is to detect structures – mainly tombs – by day and then return at night to remove artifacts from a necropolis by the light of their vehicle's headlamps. The search is no longer only, or even mainly, for coins or other metal objects but, rather, for grave goods that can be sold to collectors through intermediaries. The so-called "clan de los sevillanos" [Sevillian clan] was one of the most active groups in this regard.[23]

[18] Almansa Sánchez and Matas Adamuz 2018.
[19] Alay i Rodríguez 2021.
[20] Cortés Ruiz 2006.
[21] Sear 1974.
[22] Cayón 1985.
[23] *El País*, 8 February 2007: "El fetichismo destructor" [Destructive fetishism], Cortés Ruiz 2006; Alay i Rodríguez 2021.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

This abundance of supply meant that seekers of archaeological artifacts – whether for their own collections or for foreign museums – could source them in Andalusia. In this case, the use of metal detecting devices was not driven by a prior demand for coins or other objects; rather, the early interest of scholars and enthusiasts attracted the attention of intermediaries and collectors and, in some cases, even led to the emergence of collections owned by people who had never previously considered having one. Nevertheless, once the circuit had been created, the ease of sale stimulated the supply, resulting in greater pressure on archaeological heritage.[24] In fact, government inaction and the increased supply encouraged antique dealers to portray themselves as saviors of historical heritage, to which end they lobbied for collecting incentives in a future law.[25] One singular case was that of Ricardo Marsal, who got his start as a buyer with the aim of mitigating the looting of the Alhonoz site – located on his property – and who eventually came to own a collection of more than 100,000 objects, donated to the Government of Andalusia after it was seized by the Guardia Civil [police corps].[26]

In that context, the response was quite feeble. On the one hand, museums were mired in despair and impotence. Nevertheless, despite their limited economic power to compete with the black market, they managed to prevent some artifacts from being taken out of the country.[27] On the other hand, although the police authorities were well aware of the problem of archaeological looting – which was reported on quite bluntly in the press – police response at the time was not very effectual.[28] Although, beginning in 1979, the Spanish Ministry of Culture's Directorate General for Artistic Heritage urged the civil governments of Andalusia and Extremadura to order the Guardia Civil to pursue such looting,[29] the law enforcement agency lacked specialized personnel, and the cases that were brought to court were dismissed or resulted in acquittals.[30]

Andalusia was the *El Dorado* of artifact hunters. They could roam free through the countryside in search of the best sites to dig through, there was a clandestine trade network to sell their finds, and they did all of this with complete impunity. Against this backdrop, the use of metal detectors soon spread to many other Spanish regions, such as Extremadura[31] or Catalonia,[32] giving users a false sense of security. However, that perception was misguided. In reality, this spread led to an increase in archaeological artifact hunting and a growing urgency to do something to stop it.

In the period under study here, from the late 1970s to the mid-1990s, two different social spheres challenged this use of metal detectors. First, farm owners saw how artifact hunters would often churn up vast areas of cultivated or recently sown land. This practice led to more than a few confrontations, and whilst they did not put an end to the phenomenon, they did cause the artifact hunters to change their *modus operandi* and start working by night. Second, some schools organized campaigns, involving teachers and students, to sow sites that had been hard hit by looting with metal shavings.[33] Although their numbers were all but

[24] Reyes Mateo 2018.

[25] *El País*, 29 November 1981: "Anticuarios piden exenciones fiscales para evitar fraudes" [Antique dealers call for tax exemptions to prevent fraud].

[26] Rodríguez Temiño 2012a.

[27] Fernández Gómez 1996; Enríquez Navascués and González Jiménez 2000.

[28] *El País*, 6 September 1979: "Denuncian el expolio arqueológico de Huelva" [Archaeological looting of Huelva reported].

[29] *El País*, 15 December 1979: "Sobre el abandono arqueológico" [On archaeological neglect].

[30] Rodríguez Temiño 2012a.

[31] Contreras Sánchez 2018.

[32] Alay i Rodríguez 2018, 2020.

[33] *El País*, 9 December 1980: "Los "grupos ciudadanos," base para defender el patrimonio artístico" [Citizen groups the basis for defending artistic heritage].

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symbolic, the initiative highlighted the rejection of artifact hunting by a group that had originally applauded it, back when the devices were used by local scholars and hobbyists. The main consequence of these disaffections was to contribute to the aura of harmfulness that, together with its unlawfulness, reinforced the idea of the illegality of the practice.

Academia also played a role in this phenomenon, not so much, perhaps, through the use of metal detectors for research – something that did not begin until much later – as by interacting directly with the fruit of the acts of looting.[34] Although voices have been raised against the use of metal detectors,[35] few archaeologists in academia have proved able to resist publishing on interesting pieces belonging to collections, notwithstanding their suspect provenience and lack of context. This practice has contributed to the laundering and revaluation of these objects, including notable, although fortunately infrequent, cases in which academics have even refused to cooperate with the justice system, as in the case of the Orientalizing period *thymiaterion* of Villagarcía de la Torre (Badajoz).[36] This attitude was roundly criticized by other colleagues.[37]

The media did highlight the drama that archaeological heritage was experiencing and the imperative need to do something about it.[38] All of this increased the level of social alarm and prompted the public authorities to respond.

The administrative and criminal legal response

To better understand the nature of the response in Spain to archaeological looting, it is necessary to go back to the 1970s, when the weak Franco-era cultural authorities proved unable to contain the wave of thefts at chapels, churches, and museums, perpetrated, amongst others, by René Vander Berghe,[39] also known as "Erik the Belgian," who was twice captured and sentenced to prison. That insecurity affected, to a perhaps even greater extent, archaeological heritage, which, as noted, was at constant risk of being dug up by artifact hunters. This situation outraged professional archaeologists, who discussed it in the media.[40]

Against this backdrop, it is easier to understand how the democratic Spanish Constitution of 1978 not only established as one of the guiding principles of the country's social policy the obligation for the public powers to conserve historical heritage, regardless of its legal regime and proprietary ownership, but also provided that criminal law would punish attacks against this heritage (for example, Article 46, Spanish Constitution).

Here, it is necessary to explain a peculiarity of *ius puniendi* in Spain, specifically, in matters of archaeological heritage. It is carried out in two ways. The first is through administrative sanctions.[41] This is an exorbitant administrative power that remains an oddity in the European context.[42] The second is through the Criminal Code, which likewise

[34] Rodríguez Temiño and Matas Adamuz 2013; Bellón *et al.* 2020.

[35] Caballos Rufino 2009.

[36] Bandera Romero and Ferrer Albeida 1994.

[37] Enríquez Navascués and González Jiménez 2000.

[38] *El País*, 15 November 1981: "Denuncian el expolio arqueológico que sufre la Costa Brava" [Archaeological looting in the Costa Brava region reported]; *El País*, 11 December 1983: "Los detectores de metales y la crisis agravan el expolio arqueológico de Andalucía" [Metal detectors and the crisis exacerbate archaeological looting in Andalusia]; *Abc*, 26/ February/1984: "Buscadores de tesoros y expolio del patrimonio arqueológico" [Treasure hunters and the looting of archaeological heritage], to cite just a few articles that can be freely viewed in the respective newspapers" online archives.

[39] Vander Berghe 2012.

[40] García Gelabert and Morete 1979.

[41] Yáñez 2018.

[42] Bacigalupo 1994.

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provides for a catalogue of crimes against historical heritage and, especially, against archaeological heritage.[43] In theory, which one is used depends on the severity of the offence. In the cases of interest here, the mere unauthorized use of a metal detector would be an administrative offence, whilst digging through immovable archaeological structures in order to obtain movable property would be considered a criminal offence.

This constitutional mandate took time to materialize. Moreover, the fact that each of Spain's self-governing regions – or "autonomous communities" – has its own law on historical and cultural heritage has led to significant imbalances between them in terms of both the legal regime and practice.[44]

Following the adoption of the new Constitution, it was necessary to update the *Ley del Tesoro Artístico Nacional* [Law on National Artistic Treasure] of 1933. The inspiration for the new law came from the Italian proposal based on the conclusions of the Franceschini Commission,[45] which, despite never becoming law in that country, has had a decisive influence on Spanish law.[46] However, although the Italian text did consider archaeological looting – primarily of Etruscan tombs – it lacked a sanction regime.

As a result of this reform, in 1985, the *Ley de Patrimonio Histórico Español* [Law on Spanish Historical Heritage, LPHE] was passed, although it did not address the problem that artifact hunters posed to the conservation of archaeological heritage. It was not until the enactment of regional laws (currently, one per autonomous community) that the use of metal detectors without government authorization would be classified as an administrative offence, and anyone breaking the law would be prosecuted.

It is a *de facto*, as opposed to *de jure*, prohibition. In other words, whilst the laws subject the use of metal detectors to prior authorization, they do not legally ban their use. However, because this authorization is considered exceptional; in practice, it implies a prohibition.[47] The legal regime for administrative authorization for such cases has been questioned in favor of other types of licensing concessions based more on trust than on strict administrative regulation.[48] However, the Regional Government of Andalusia has gone a step further and, with a recent reform of the *Ley de Patrimonio Histórico de Andalucía* [Historical Heritage Law of Andalusia], approved in 2024, aims at explicitly including the prohibition of the use of metal detectors throughout the region, with exceptions relating to their regulated use in archaeological activities, national security and defence, or infrastructure maintenance and repair.

Leaving aside this new reform of the *Ley de Patrimonio Histórico de Andalucía*, the remaining regional laws, although there are slight variations in the legislative techniques used to classify offending behaviors as crimes, share several features. Because the laws treat the use of metal detectors as a risk to archaeological heritage, they move the protection barrier forward, subjecting their use to prior administrative consent. Since archaeological artifacts are not found exclusively in what are administratively considered sites (inventoried and delimited or otherwise), the offence is committed regardless of where the user is. However, in practice, areas that cannot be home to a site – because they are recent geological formations, such as beaches, or located at uninhabitable altitudes, such as ski slopes and resorts – are excluded. In this regard, ploughed areas are considered archaeologically fertile and, therefore, are not exempted from the need for authorization. Like all risk prevention offences, this administrative offence is one of mere activity; that is, no find needs to be made

[43] Guisasola Lerma 2001 and 2017; García Calderón 2016.
[44] Rodríguez Temiño and Yáñez 2018.
[45] Franceschini 1966.
[46] García de Enterría 1983.
[47] Yáñez 2018; Barrero Rodríguez 2018.
[48] Barcelona Llop 2020.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

to commit it. This type of offence is punished with a fine reflecting the magnitude of the damage. Furthermore, as these fines often cannot be collected due to the insolvency of the fined parties, since 2007, *Ley de Patrimonio Histórico de Andalucía* provides for the seizure of the detector device as an additional penalty.[49]

At the same time, various regulations were passed, such as *Ley 30/1992, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común* [Law 30/1992, on the Legal Regime for the Public Sector and Common Administrative Procedure], or the *Reglamento del Procedimiento para el Ejercicio de la Potestad Sancionadora* [Rules of Procedure for the Exercise of Sanctioning Powers], approved by Royal Decree 1398/1993, which made it possible to draw up a constitutional legal framework for the exercise of administrative sanctioning power.

In 1995, the Spanish Criminal Code (CC) incorporated, with little success, two crimes of damage to historical heritage, including archaeological heritage: one for malicious damage (Article 323 CC) and another for damage caused by serious negligence (Article 324 CC). However, their convoluted wording did little to facilitate their application.[50] In 2015, Article 323 was amended to include a type of damage to terrestrial or underwater archaeological sites referred to as *expolio* [looting], although it does not explicitly state what this activity is or how it differs from the crime of specific damage to archaeological heritage. This ambiguity has led to extensive debate over its content. One part of the literature advocates identifying the content of the looting offence with the use of metal detectors when their operation results in slight shifts in the soil.[51] Some public prosecutor's offices are even classifying the use of metal detectors in the vicinity of known archaeological sites as crimes of damage to archaeological heritage or attempted looting.[52] This results in a *de facto* encroachment of criminal law into the sphere of administrative sanctions, which, in turn, increases the pressure on illegal artifact hunting.

Defence of legality

In the 1960s and 1970s, the cultural administration in Spain consisted of a handful of honorary positions whose holders hardly had any technical background or capacity to act. Even if they had known of illegal removals – carried out by metal detector users or otherwise – there was little they could do other than convey this information to the mayors of the towns where the removals had occurred in the hope that they, in turn, would report them to the Guardia Civil for investigation. Were this lengthy bureaucratic process to have any result at all, it would be months after the events had taken place, when there was virtually no chance of success.

Contemporaneous joint efforts by archaeologists and police in Extremadura likewise failed to yield notable results in terms of criminal convictions.[53] However, they were useful insofar as they left a record of the illegality of these behaviors. In Catalonia, the other autonomous community for which data are available for the 1980s, joint actions by the Mossos d'Esquadra [Catalan regional police] and archaeologists were also sporadic.[54]

Although the Cuerpo Nacional de Policía [National Police] had a task force dedicated to investigating crimes against historical heritage since 1977, its main focus was art theft.[55] It

[49] Rodríguez Temiño 2012a; Yáñez 2018.
[50] Guisasola Lerma 2001.
[51] Núñez Sánchez 2018.
[52] Rufino Rus 2018; Yáñez and Rodríguez Temiño 2018.
[53] Enríquez Navascués and González Jiménez 2000.
[54] Joan Rodríguez 2021.
[55] Montero González 2001.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

was due to the impetus of the LPHE, which provided for the creation of police units especially dedicated to the prosecution of crimes against historical heritage in general, and archaeological looting in particular, that specialized units were created in these fields, in both the Policía Nacional and the Guardia Civil – which attributed these powers mainly to the Servicio de Protección de la Naturaleza [Nature Protection Service or Seprona].[56] However, as noted, it was the regional legislation that classified the offending behaviors as crimes, making it possible for complaints filed with the administrative authorities to result in sanctioning proceedings.[57]

To improve these services, several autonomous regions began to offer specific training and awareness-raising courses for these police units concerning the fight against archaeological looting. To extend these courses' effectiveness beyond mere attendance, short manuals were published explaining how to proceed in investigations of archaeological looting.[58]

Separately, concern for the proliferation of crimes against historical and, quite especially, archaeological heritage led to the specialization of public prosecutors in this field, together with environmental and town-planning offences. The first manifestation of this specialization emerged in Andalusia, with the creation of the first Red de Fiscales Medioambientales [Environmental Prosecutors Network] in 2004,[59] subsequently established on a national scale in 2006.[60]

In the 1990s, all the aforementioned factors began to come together, enabling a practical response to artifact hunting that did away with the sense of impunity that had prevailed until then: social awareness,[61] both amongst the general public and at the political and professional levels; the criminal and administrative legislative framework for the exercise of *ius puniendi*; government agencies more directly involved in the territory and equipped with professional experts; and, finally, specialized bodies in both the Policía Nacional and the Guardia Civil, as well as in the provincial public prosecutors' offices.

The first actions taken by the Guardia Civil against archaeological looting mainly consisted of site surveillance as a preventive measure. This led to the filing of the first reports and the identification of people caught using metal detectors at archaeological sites. These reports were forwarded to the regional authorities for the initiation of the appropriate administrative sanctioning proceedings. Once in operation, the administrative machinery began to produce its first effects in the second half of the 1990s. In nearly all the autonomous communities, sanctioning proceedings were initiated against artifact hunters who had been caught *in flagrante delicto.*[62] However, for various reasons, many autonomous communities abandoned the practice towards the end of the decade and in the early 2000s in favor of bringing criminal charges, as in the cases of Castilla y León[63] or Galicia.[64] In other autonomous communities, such as Madrid[65] or Aragón,[66] it has recently been reactivated. But two autonomous communities have successively led on this type of

[56] Sánchez Arroyo 1998.

[57] Rodríguez Temiño 2012a, Contreras Sánchez 2018.

[58] CARM 1996; Guardia Civil 1998; Junta de Andalucía 2002, 2006; Generalitat de Catalunya 2007; Rabadán Retortillo 2015; Picón 2018; Romeo Marugán and Matas Adamuz 2020; Joan Rodríguez 2021.

[59] Rodríguez León 2006.

[60] Roma Valdés 2008.

[61] *El Semanal*, 30 November 2008: "Expolio arqueológico: 'Los otros hombres del saco'" [Archaeological looting: The other sack men].

[62] Yáñez 2018.

[63] Escribano Velasco and Del Val Recio 2018.

[64] Pena Puentes and Díaz Otero 2018.

[65] López González 2018.

[66] Romeo Marugán 2018.

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administrative reproach for the unauthorized use of metal detectors: first, Andalusia and, more specifically, the province of Seville,[67] and, today, Extremadura.[68]

Whilst there is no unified count of sanctioning proceedings in Spain, it can conservatively be estimated that several thousands have been carried out in the last thirty years. It should also be noted that the administrative sanctions imposed are usually challenged by means of judicial review. However, in most cases, the courts have ruled in favor of the sanctioning authorities, confirming the fines imposed.[69]

Police action has not solely – or even mainly – consisted of the filing of complaints through administrative channels. Rather, in keeping with its investigative role, it has largely focused on identifying networks dedicated to antiquities looting and trafficking, ranging from those who systematically use metal detectors to hunt for artifacts, equipped with the necessary prior information to select the best places to loot – whether due to weaker surveillance or the corruption of their guards – to the main recipients or collectors.[70] The first police investigations aimed to combat the illicit trade in archaeological artifacts at fairs and street markets in different Spanish towns and cities, such as in the Plaza del Cabildo in Seville or the Plaza Mayor in Madrid.[71] However, the judicial consequences were always the same: a failure to press charges against the parties involved and the restoration of the objects to them. This happened because it was impossible to prove the artifacts' provenance or the date on which they had been removed from the subsoil, even though some of them still bore traces of soil. And whilst the illicit market suffered as a result, and some of the parties involved did give up this illegal activity, the message these failures sent to professional looters was that their impunity remained intact.[72]

Separately, it is worth recalling that in the 1990s, a large number of private collections included archaeological artifacts that were the product of looting. The first major police operations were carried out in that decade. The main one was Operation Tambora in 2001, which resulted in the seizure of the aforementioned collection of Ricardo Marsal, with more than 100,000 objects from sites in the Guadalquivir River Basin,[73] but it was not the only one. In Operation Cerro Gil[74] and Operation Pozo Moro,[75] the Guardia Civil not only seized a large number of artifacts but also acted against small-time collectors who played the role of local scholars.

These operations were followed by others (Lirio, Dionisos, or Pitufo), in which thousands of objects were seized and dozens of people were charged, albeit with a smaller than expected impact in terms of the judgments. This process culminated in Operation Tertis, carried out by the Guardia Civil in 2007, possibly the largest operation ever undertaken against archaeological looting in Spain. More than 300,000 pieces were seized (although not all were the product of looting), and 53 people were charged. However, three years later, the investigating court dismissed the case and ordered that the objects be returned to their owners.[76] The reason given by the investigating magistrate was that the police investigation had failed to prove the pieces' illegal provenance. The Guardia Civil recognized that it had

[67] Rodríguez Temiño 2012a.

[68] Contreras Sánchez 2018.

[69] Yáñez 2018 (in general), Rodríguez Temiño 2012a (for Andalusia), Contreras Sánchez 2018 (for Extremadura).

[70] Morales Bravo de Laguna 2015; Guasch 2018.

[71] Sánchez Arroyo 1998; Cortés Ruiz 2006.

[72] Guasch Galindo 2018.

[73] Rodríguez Temiño 2012a.

[74] *Abc*, 13 February 2001: "La Guardia Civil recupera 2.000 piezas expoliadas de yacimientos arqueológicos en Cuenca" [The Guardia Civil recovers 2,000 pieces looted from archaeological sites in Cuenca].

[75] *El Mundo*, 19 November 2003: "La Guardia Civil interviene en Albacete piezas de hasta 60 millones de años antigüedad" [The Guardia Civil seizes artifacts up to 60 million years old in Albacete].

[76] Rodríguez Temiño 2012a.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

been a mistake to focus on collections, taking their illegal provenience for granted. Since then, the investigative criteria have changed. Now, the investigators first document the objects' illegal removal; they then follow the thread from there to the final recipients.[77] Successive operations, such as Operations Necrópolis or Badía, have followed this pattern. Using surveillance and camera footage of the suspects as they loot, investigators then track the objects and online sales until a sufficiently solid case can be made to bring sure charges of criminal conduct.

One of the most interesting aspects of this succession of police operations may be the smaller quantity of archaeological artifacts seized, which suggests that the collections are recent. This is not due to ignorance on the part of investigators or the police of potential hidden collections, as large covert collections may not exist in Spain or even outside Spain with objects from the country. Spanish authorities were aware of the case of the lots of pre-Roman helmets from Aranda de Moncayo (province of Saragossa), although they inexplicably failed to take all the necessary steps to stop the site's looting.[78] This impression is corroborated by the abundance of forgeries found in these seizures, as well as in the lots offered on various portals.

Likewise, both the administrative and the criminal fight against looting have made it necessary to design reliable systems for assessing the damage caused to sites. Initially, criminal cases faced the obstacle of the low value of the damage since only the objects seized by the police from the *piteros* were assessed – in most cases, a few bronze coins or buttons from a modern military uniform. The value of the damage was not high enough to be considered a criminal offence. Thanks to the duality of the Spanish *ius puniendi*, in cases of administrative offences, it was not necessary to assess the damage, but rather the seriousness of the nature of the administrative offence. In the case of users of metal detector devices, the unfulfilled duty of having requested prior authorization was considered. For the administrative offence, it is irrelevant whether objects have been found or not because the core of the offence is an unfulfilled obligation. Logically, if objects have been found, this will be an aggravating factor for the sanction, but nothing more. Thanks to this circumstance, administrative sanctioning procedures could be carried out, which culminated in fines for the people reported. Only cases of "severe plundering" (that is, when archaeological structures are affected) were prosecuted through criminal proceedings.

Another significant issue that needed to be addressed was the reliance on the notion of the "priceless value" of archaeological remains. It is necessary to put forward reliable quantifications based on the very essence of archaeological heritage, as well as the conceptualization of the effects of the harmful action. Fortunately, Spain is making progress in this regard on an international scale.[79]

Results

No social problem can be solved exclusively by police means, and archaeological looting is no exception. When the issue of the coexistence of metal detector users and archaeological heritage conservation is addressed, there tends to be a major division between countries that adopt a "liberal model" and those that use a "restrictive model," with most of the emphasis being placed on the benefits of the former.[80] We believe that archaeological heritage management in Spain cannot be called "restrictive" insofar as it does not restrict

[77] Morales Bravo de Laguna 2015.
[78] González Villaescusa and Graells i Fabregat 2021.
[79] Rodríguez Temiño 2012b, 2019; Romeo Marugán *et al.* 2017; Yáñez and Rodríguez Temiño (eds) 2021.
[80] Deckers, Lewis and Thomas 2016.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

any pre-existing right to use a metal detector to hunt for archaeological artifacts.[81] In our view, the main difference between Spain and those countries that use a "liberal" (or, perhaps, more accurately, "permissive") model lies in the priority that Spanish legislation places on the conservation of archaeological heritage, because of its social role, as opposed to the supposed right to collect or sell such artifacts for personal gain, one of the main drivers of metal detector use in England.[82]

The Spanish conservationist model has proved to have positive effects, especially in terms of containing the number of metal detector users, who total less than 4,000.[83] One could say that it has contained the so-called *cobra effect*, meaning situations in which measures intended to solve a problem end up making it worse. In this sense, although the permissive model seeks to minimize the negative impact of metal detector use on archaeological heritage, it has increased the number of people who use these devices, irremediably increasing the pressure on it. It must not be forgotten that archaeological artifacts are especially vulnerable to damage and destruction, therefore, any increase in indiscriminate hunting cannot have positive consequences, especially in countries with legal systems endowed with weak structures for the protection of archaeological heritage.[84]

In any case, the exercise of *ius puniendi* is only one piece of the strategy to minimize the adverse effects of illegal metal detector use on archaeological heritage. The other mainly consists of incorporating those users who so wish into archaeological research projects in which the use of these devices is critical to improving the archaeological record.

The Spanish legal framework for archaeological heritage subjects both excavations and surveys or other activities that might impact archaeological artifacts to prior authorization by the competent cultural authority. This requirement is primarily meant to verify the existence of a research project detailing the aims and methodology of the intended archaeological intervention, even in the case of preventive actions.[85]

Within this framework, which has generally excluded metal detector users, a productive integration of amateur detectorists is taking place,[86] despite the structural separations maintained by archaeologists and the users of these devices as social stakeholders.[87]

This integration was brought about by projects undertaken in collaboration with the Spanish memorialist movement to locate and excavate mass graves of people executed by the pro-Franco forces during the Spanish Civil War and the subsequent repression. To locate the mass graves, it is essential to find the shells from the bullets fired during the execution, as the grave is usually close by.[88] This has led to studies of battlefields, camps, and Roman roads, to cite just a few examples.[89]

Channelling the participation of metal detector users in archaeological research projects has led to the recognition of the importance of "citizen science" or "citizen scientist" programs. Such programs blend education and participation in projects in which interested members of the public can work alongside scientists, combining elements of scientific outreach models.[90]

[81] Barcelona Llop 2020.
[82] Lewis 2016.
[83] Yáñez and Rodríguez Temiño 2020.
[84] Rodríguez Temiño, Yáñez and Ortiz Sánchez 2019.
[85] Ruiz Rodríguez 1989 (for Andalusia), Rodríguez Temiño 2009 (in general)
[86] Almansa Sánchez and Matas Adamuz 2018
[87] Rodríguez Temiño and Matas Adamuz 2013, González Ruibal 2018.
[88] Ferrandiz 2014.
[89] Ocharán Larrondo and Unzueta Portilla 2002, Rodríguez Morales et al. 2012.
[90] Lee and Roth 2003, Williams 2010.

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press

To arrive at these and other collaborations, both archaeologists and metal detector users have travelled a path parallel to that of the defence of legality. In the late 1990s, we participated in online detectorist forums such as Detectomania.com, discussing the legality or illegality of the use of metal detectors. It was through that experience, which lasted more than three years, that we came to understand that whilst our "language games" were antagonistic,[91] there were possibilities for dialogue. However, that dialogue required prior recognition of the legal framework. Therefore, after warning multiple times that the website should not advise users on where to dig to find ancient objects, we ultimately filed a complaint with the Prosecutor's Office of the High Court of Justice of Andalusia, which led to the website's voluntary closure.[92] Since then, a myriad of working groups, meetings, and forums with detectorist associations have been held, most recently in Madrid in December 2019, before the COVID-19 pandemic and the ensuing shelter-in-place orders.[93] The positions are no longer so confrontational, and we are able to discuss collaboration calmly. In fact, the metal detector users offer their own experience to identify the traces left by various types of search patterns.[94]

At the turn of the century, it was not uncommon to see demonstrations by metal detector users protesting the pressure they were being subjected to[95] and, logically, some remain outside the law, trusting they will never be caught … until they are.[96] On the other hand, beach detectorism has emerged as an option with an increasing number of followers.

As one of the authors (IRT) was writing this paper, in June 2024, he went to a coastal town in the province of Cádiz with his family for a weekend. Sunday morning, the beach was bustling with a group of people in a large fenced-off area. He quickly realized that it was a metal detecting contest. There were around a hundred participants. Thirty years ago, you would only occasionally see someone using a metal detector on the beach at dusk; now, dozens of them were engaging in their favorite hobby, namely, finding buried objects using a device especially designed for that purpose. They seemed to be enjoying the contest, but for him, the most important thing was that they were doing it in a place that posed no risk to archaeological heritage.

We do not have the data yet to evaluate the extent to which the two lines discussed in this paper for combating archaeological looting have actually helped to displace activities from the countryside to the beach, but we are reluctant to believe the two phenomena are unrelated. While looting still exists in Spain, the impact of metal detectors seems to be lower – especially in areas where it was large forty years ago – and new forms of communication and collaboration with detectorists are on the rise.

While watching the contestants on the beach with curiosity, the title for this paper (courtesy of the Coen brothers) came to mind. Spain might be no country for furtive detectorists, and an alternative model to deal with this phenomenon.

Acknowledgments. This paper has been written within the R&D&I project "ValTArq," with reference PID2021-124498NB-I00P and funded by MICIU/AEI /10.13039/501100011033 and by ERDF, EU.

[91] Rodríguez Temiño and Matas Adamuz 2013.

[92] *El País*, 29 October 2007: "Los arqueólogos de [la Consejería de] Cultura [de la Junta de Andalucía] luchan contra los daños al patrimonio" [Archaeologists from the Government of Andalusia's Culture Department fight against damage to heritage].

[93] Yáñez and Rodríguez Temiño 2020.

[94] Romeo Marugán and Matas Adamuz 2020.

[95] *Diario Córdoba*, 22 December 2002: "Los usuarios de detectores de metales piden leyes más justas" [Metal detector users call for fairer laws].

[96] *El País*, 17 December 2009: "Veteranos del expolio" [Looting veterans].

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Cite this article: Rodríguez-Temiño, Ignacio and Jaime Almansa-Sánchez. 2025. "Spain: No Country for Furtive Detectorism." *International Journal of Cultural Property* 32, no. 2: 132–148. https://doi.org/10.1017/S0940739125000104

https://doi.org/10.1017/S0940739125000104 Published online by Cambridge University Press