

INTRODUCTION

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# Introduction: Heritage legislation and management

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The cultural expressions of humanity take many forms: tangible and intangible, moveable and immovable, ancient and contemporary, privately or publicly owned. The law in its various forms—traditional law, constitutions, statutory law, treaties, and administrative regulations—is a key tool for protecting cultural heritage. To effectuate these legal protections, governmental agencies are created or designated with management responsibilities for implementing and enforcing the provisions found in law.

Laws to protect the cultural heritage arose at different times in different regions of the world. In classical antiquity, archaeological remains of ancient kingdoms and religious sites were acknowledged as the heritage of past generations, and their protection was the subject of edicts issued by Greek and Roman rulers. Similar approaches to protecting heritage were taken in the Islamic Caliphates and Imperial China and can be found in different world civilisations over time. It can be argued that the roots of contemporary heritage law go back to late 17th century Europe. The royal Placat of 1666 issued by the governing council under the minority of King Charles XI of Sweden is often cited as the first example of heritage law in modern times. In the 18th century other examples of edicts protecting archaeological and architectural resources can be found in Russia, Spain, Portugal and France. However, it was in the 19th century that what we recognise as modern heritage legislation began to appear. The earliest concerns focused on protection of heritage as a basis of national identity. This approach to cultural heritage was carried by European powers to territories around the

world where it influenced the development of heritage legislation in colonial empires.

By the end of the century there were laws that recognised antiquities as the property of the state (Greece), a reorganised system of heritage management (Italy) and preservation of architecture and its setting (France). Perhaps one of the most influential acts because of the influence and reach of the British Empire, was the 1882 *Ancient Monuments Protection Act*. The beginning of international heritage treaties also can be traced to this period. The Hague Conventions of 1899 and 1907 addressed the protection of cultural heritage in time of war along with property associated with arts, sciences and education. During the years between the First and Second World Wars, a number of countries updated their heritage legislation, and the devastation of the Second World War provided further impetus for new and updated heritage legislation.

There were several emerging themes during the post-war period. First, states with a history of heritage legislation updated it, often including provisions for effective documentation and recording. Second, there was an impetus to establish international rules to protect cultural heritage, recognising that heritage extends beyond national heritage to human heritage. Third, states without a history of heritage legislation began to enact it, often based on existing models like British heritage laws, UNESCO conventions, or cultural heritage charters created by professional bodies. Modern legal protection and management practices developed differently in various world regions, there are many common concerns and approaches.

In North America, the two largest states, Canada and the United States, were both influenced by European models and the emergence in the 19th century

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of non-governmental historical societies and similar organisations. In both countries, control over historic properties was largely vested in provincial and state governments with limited regulatory power over privately-owned property. It was not until 1966 that a comprehensive federal law based on a collaborative partnership among federal, state and local governments was enacted in the United States.

In Central and South America, heritage legislation was influenced largely by Spanish colonial policies and recognition of indigenous heritage by newly independent countries. Mexico, for example, first declared archaeological sites state property and set up an institution to document these properties, later extending that to colonial heritage. In 1930, inspired by the Venice Charter, Mexico established a government agency responsible for interpreting and preserving its cultural heritage. In the region as a whole, legislation first focused on archaeology and looting, and it was not until the after the middle of the 20th century that legislation focused more strongly on establishing government agencies charged with managing cultural resources.

A long-standing reverence for the past and continuity of culture influenced the development of heritage legislation in Asia. As in Latin America, European powers influenced the law of colonial governments, and the desire of collectors for the region's antiquities helped to form the first attempts to protect cultural property. In China and Japan, imperial mandates were the source of cultural heritage protection until the late 19th and early 20th century. Heritage legislation in Japan began in the 1890s with protection of ancient shrines and temples and developed a complexity over the years that included structures, landscapes, archaeological sites and traditional crafts. Having no tradition of legislative government, China did not consolidate its heritage law until the latter part of the 20th century.

Heritage law in Oceania has been influenced by British and American law. In Australia, for example, heritage laws exist at the national, state and territorial levels, while aboriginal cultural heritage and sacred sites are generally regulated by separate legislation. Heritage properties are also protected through local government planning schemes.

In Sub-Saharan Africa, there was a long history of protecting sacred places through customary laws, taboos and traditional regulatory practices. Most formal heritage legislation dates from after 1960 following countries' independence, and reflects the laws of colonial powers and UNESCO conventions. Many in the region were part of the British Commonwealth and share common legal approaches. South Africa provides an example. Its *National Monuments Act* of 1969, only eight years after independence, protected archeological properties along

with paleontological and mineralogical properties. Additional environmental legislation was passed in the 1980s and 90s culminating in the comprehensive *National Heritage Resources Act* of 1999.

Interest in controlling the collection of antiquities by Europeans and others was an impetus for modern regulation of cultural heritage in the Arab Region. To prevent foreign acquisition of antiquities, the Ottoman Empire passed its first laws in the late 19th century protecting archaeological sites and objects and establishing imperial ownership of antiquities. After the fall of the Ottoman Empire, much of the region fell under British and French control and antiquities laws reflected European influence. Many countries did not update their laws until after the 1970s.

Since the latter part of the 20th century, domestic legislation and policies affecting cultural heritage have been strongly influenced by international and regional legislation. The UNESCO conventions on protection of cultural property in armed conflict, preventing illicit transfer, protecting underwater cultural heritage, and recognising intangible cultural heritage have all been influential. However, the 1972 UNESCO *Convention concerning the Protection of the World Cultural and Natural Heritage* (World Heritage Convention) has had the most influence on shaping domestic legislation and management practices for the built heritage. Although the Convention sets out a system for listing natural and cultural heritage properties possessing 'outstanding universal value' on the World Heritage List, the convention calls on signatories to recognise that they have responsibility for 'identification, protection, conservation, presentation and transmission to future generations' of all their natural and cultural heritage. Several world regions have also developed treaties for cultural heritage protection including Latin America, the Pacific and Europe. The Granada Convention and the LaValetta Conventions in Europe are examples of regional legislation aimed at protecting aspects of the architectural and archaeological heritage.

Cultural heritage legislation protecting archaeological sites, designated buildings, conservation areas or districts, and cultural landscapes continues to vary across the world. Within different countries, primary authority over heritage may be the purview of national, regional or local authorities, or a combination thereof. On the national level, heritage conservation is generally overseen by a government ministry with authority over designation and protection of heritage properties and in some cases control of development that would affect their character. In other cases, a ministry may be responsible for protecting both natural and built sites or have purview over both culture and a related area such as tourism. Urban conservation is often the purview of agencies responsible for town planning. Other agencies such as those responsible for the

environment, transportation, or energy may also impact cultural heritage. In some countries there is a separate system for regulating the conservation of religious buildings. At the local level, heritage conservation is often part of the land use planning and development processes which are seen as a basic conservation tool. In addition to cultural property regulation, other laws dealing with tourism, construction codes, life safety, disability access, and human rights also impact the conservation of cultural heritage.

Today, heritage legislation and management practices continue to evolve. While concerns that motivated the creation of earlier heritage legislation remain relevant, a number of new issues are helping to shape its further development. These include the role of contemporary architecture in historic environments, new technologies for heritage management, the rights of indigenous people and local communities to control their cultural heritage, the role of cultural heritage in sustainable development, and the impact of climate change on both natural and cultural heritage.

This special issue of *Built Heritage* examines the approach of several countries and regions as they address common concerns and unique challenges.

In his article ‘The Development and Institutional Characteristics of China’s Built Heritage Conservation Legislation’ Song Zhang traces the development of China’s national cultural heritage legislation from the late Qing Dynasty to the present, with an emphasis on built heritage. He argues that while the legislative system for heritage conservation that emerged after 2000 had contributed positively to the conservation, use and regeneration of the urban and rural heritage, there remains a lack of national legislation that supports regional efforts. He notes that the ongoing extensive reform of the urban and rural planning management system has a great impact on the management of the historic urban landscape, creating an urgent need for updating the relevant legislation for historic cities. He also suggests that more attention must be paid to balancing individual property rights and the public’s rights to the management and conservation of heritage.

Afolasade Adewumi examines the development of the cultural heritage management systems in Nigeria from the pre-colonial, colonial, and post-colonial eras in her article ‘Built Heritage and Planning Laws in Africa: the Nigerian Experience’ In many ways, the Nigerian experience is representative of the experience of other countries in the region. Adewumi argues that Nigeria must document the traditional management systems that have sustained indigenous heritage sites through the centuries and incorporate them in a holistic approach to harmonise the various heritage management systems. At the same time, a strong coordination between urban planning and heritage preservation authorities is necessary to facilitate sustainable development while preserving the built heritage.

Many states in the Arab Region have seen major updates to their national heritage legislation, incorporating many provisions of the World Heritage Convention. Michał Wosiński’s article, ‘New Perspectives on World Heritage Management in the GCC Legislation,’ examines the recent legislation and its potential to improve management systems in terms of integrated approaches, monitoring and enforcement. He observes that planning regulations in the region do not provide strong support for cultural heritage in terms of cohesion between heritage law, planning law, environmental protection and impact assessment.

Climate change is one of the greatest threats facing the world’s cultural and natural heritage and addressing this critical situation has become an urgent priority. Current legislative frameworks are often inadequate to address the growing challenge. Building on earlier comparative cultural law scholarship, Ryan Rowberry examines the legislative and management tools used by three countries to protect their coastal resources in his article, ‘Climate Change, Coastal Built Heritage, and Critical Challenges Facing Heritage Law Frameworks on the United States, United Kingdom, and France.’ By utilising comparative case studies that identify critical challenges and the inadequacy of current legal and management frameworks, he illustrates the need for innovative tools and international cooperation to address this growing threat.

Together these articles provide insight into the challenges facing the cultural heritage in different regions of the world and the threats posed by global crises such as climate change and unsustainable development while highlighting the potential of legislation and management approaches that can be used to address them.

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