Mateusz M. Bieczyński
University of the Arts, Poznań
mateusz.bieczynski@uap.edu.pl
ORCID: 0000-0002-4108-9449

From *the Codex Theodosianus* to the Nicosia Convention: The protection of cultural heritage as a means of secularisation[1]

1. Introduction

Cultural heritage has been characterised by researchers representing so-called "critical heritage studies" as a category conditioned by many social and political factors. Much has been said about the national, political, economic, or cultural conditions of the process in which a certain good or value is transformed into a legally protected object of cultural heritage. In academic publications, the mechanism in which this heritage is created – the mechanism of "becoming heritage" of a state (nation), a continent (e.g. Europe), or the world (humanity) – is often referred to as "heritagisation".[2]

The meaning of this term has undergone a thorough transformation and is still not fully accepted by scholars in all countries (some editorial boards rejected it until 2008). "In the English-speaking world, the term *heritagisation* was first used by Walsh in 1992, as a pejorative way to refer to 'the reduction of real places to tourist space (…) that contribute[s] to the destruction of actual places';[3] focusing the idea of the destruction of culture produced by tourism".[4] Nonetheless, the understanding of this notion become more general over the years.[5] In the most recent sources, it is used to describe

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[2] D.C. Harvey, "Heritage Past and Heritage Presents: Temporality, Meaning and Scope of Heritage Studies", *International Journal of Heritage Studies* 2001, vol. 7, no. 4, p. 320.
[3] K. Walsh, *The Representation of the Past: Museums and Heritage in the Post-modern World*, The University of York, York 1992, p. 4.
[4] S. Sánchez-Carretero, "To walk and to be walked… at the end of the world" [in:] *idem*, *Heritage, Pilgrimage and the Camino to Finisterre: Walking to the End of the World*, Springer, New York 2015, p. 12.
[5] For a detailed description of the evolution of the term "heritagisation", see: S. Sánchez-Carretero, "Significance and Social Value of Cultural Heritage: Analyzing the Fractures of Heritage" [in:] *Science and Technology for the Conservation of Cultural Heritage,* eds. M.A. Rogerio-Candelera, M. Lazzari, E. Cano, A Balkema Book, London 2013, pp. 388–400.

the transformation of objects (e.g. buildings) or meanings (e.g. specific traditions) into cultural heritage, mostly with reference to preservation efforts after the Second World War.[6] Welsh's original concept was preserved in defining this process as "a process in which heritage is used as a resource to achieve certain goals".[7] It corresponds with another term – "patrimonialisation" – that describes the same process, but considered from the point of view of political decision-making.[8]

"The term *patrimonialisation* is of Latin origin and derives from the word *patrimonium* that means "something inherited from the father", but also "assets". This word, however, points not to the object, but rather to the existence of a certain relationship to the heritage, a certain policy of creating heritage. It also emphasises the act of selecting things that are yet to become heritage".[9]

Understanding cultural heritage in the processual sense opens a new scholarly perspective – research on heritage-related practices and not only on 'heritage' as a subject. As characterised by Tomislav S. Šola, "the concept of heritage that unifies the occupations growing on it, in all variety of their practices and competencies, entails a theory which is formed on the (…) wide foundation. Thus, heritage science is a logical notion, and its derivative term, be it heritology (…) challenges the change of the current state of affairs (…)".[10] Viewing the social practices related to heritage as parts of a historical process makes it possible to understand that the concept had emerged much earlier than the first conscious theoretical reflection on it. Until the late 1990's, most studies devoted to the history of heritage as a legal issue situated its starting point at an arbitrary date. British authors, for example, referred to William Morris and The Ancient Monuments Protection Act 1882.[11] German-speaking researchers would begin with Alois Riegl and the *Denkmalschutzgetsetz* of 1903,[12] while the French situated its origins in The Law of 1887 on protection of historical monuments.[13]

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[6]   Cf. D. McCrone, A. Morris, R. Kelly, *Scotland – The Brand: The Making of Scottish Heritage,* Polygon, Edinburgh 1995, p. 1; D. Lowenthal, *The Heritage Crusade and the Spoils of History,* Cambridge University Press, Cambridge 1998, p. 1; B.J. Graham, G.J. Ashworth, J.E. Tunbridge, *A Geography of Heritage: Power, Culture, Economy*, Arnold, London 2000, p. 1.

[7]   Y. Poria, "The Story behind the Picture: Preferences for the Visual Display at Heritage Sites" [in:] *Culture, Heritage and Representation: Perspectives on Visuality and the Past,* eds. E. Waterton, S. Watson, Ashgate, Burlington 2010, p. 218.

[8]   M.-B. Fourcade, *Patrimoine et patrimonialisation: entre le matériel et l'immatériel*, Presses de l'Université Laval, Paris 2007, p. 138.

[9]   H. Schreiber, "Patrymonializacja w stosunkach międzynarodowych. Wybrane tendencje w międzynarodowej ochronie dziedzictwa kulturowego (2006–2016)" [in:] *Księga jubileuszowa z okazji 40-lecia Instytutu Stosunków Międzynarodowych Uniwersytetu Warszawskiego*, eds. M. Gawrycki *et al*., Wydawnictwo Naukowe Scholar, Warszawa 2016, p. 396.

[10]   T.S. Šola, *Mnemosophy: An Essay on the Science of the Public Memory*, Rostov Velikĭ, Zagreb 2015, p. 11.

[11]   See: *William Morris: The Critical Heritage,* ed. P. Faulkner, Routledge, New York 1973; A.E. Donovan, *William Morris and the Society for the Protection of Ancient Buildings*, Routledge, New York 2008.

[12]   E. Bacher, "Alois Riegl und die Denkmalpflege" [in:] *idem, Kunstwerk oder Denkmal? Alois Riegl Schriften zur Denkmalpflege,* Wien – Koln – Weimar 1995, pp. 13–48; see also: A. Riegl, *Der moderne Denkmalkultus: sein Wesen und seine Entstehung* [in:] *idem*, *Gesammelte Aufsätze,* Augsburg 1928, pp. 144–193.

[13]   M. Roellinger, "Centenary of the French Law on Historic Monuments", *Art Antiquity & Law* 2014, vol. 19, no. 4, p. 327.

This article goes beyond this narrow perspective and tries to present the "establish-ing process of cultural heritage" in a broader perspective, in which national legal regu-lations are only indicators of some general tendencies. It focuses particularly on the transformation of religious sites and objects into legally protected cultural heritage.

The main thesis of this article is that the process of "heritagisation" of religion-related artifacts can be considered a political means of secularisation. Therefore, this discus-sion forms part of heritological research. Among others, this article aims to answer two main questions – what happens when religious sites, objects, and practices become heritage? Is it possible to extract a functional path in legal regulations giving an ac-count of the protection of religious artifacts as cultural heritage in European history that changed their social perception? Is the "heritagisation" of religious objects equal to their conscious secular "patrimonialisation", or is secularisation just a side-effect of their being protected by legal regulations?

It seems, however, that the need to protect religious artifacts originated much ear-lier than the above-mentioned modern laws created in the nineteenth century. The beginnings of state normativisation in this field dates back to antiquity. This article raises the question of whether the approach of valuating the religious heritage that emerged then still remains valid. If it does, then to what extent was it valid for the later periods of historical evolution and development of the laws regarding the protection of cultural heritage?

The analysis is based on examples described in chronological order. They indicate a certain continuity of a so far not fully delineated tendency. It proposes an alternative idea for describing the origins of "heritagisation" of religious art. Special attention is given to the normative regulations of *The Codex Theodosianus* and the revolutionary activity of Abbé Grégoire and Alexandre Lenoir that resulted in the establishment of the *Musée national des Monuments Français* in 1795.[14]

Another part of this article is dedicated to the development of nineteenth- century standards regarding the protection of cultural heritage, their post-war internationali-sation, and the latest tendencies in this field. One issue I shall address in detail will be the problem of incompatibility of existing standards with the so-called "living cultural heritage" of a religious nature, which, despite being protected, still has a religious con-text. As a contrast, I shall also discuss the desecularisation of religious cultural her-itage – a process that began after the year 2000 and is a result of a change in the understanding of the term "cultural heritage" in the process of applying for UNESCO conventions on its protection.

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[14]   J.L. Sax, "Heritage Preservation as a Public Duty: The Abbé Grégoire and the Origins of an Idea", *Michigan Law Review* 1989, no. 88, pp. 1143–1144; Ch.M. Greene, "Alexandre Lenoir and the Musée Des Monuments Français during the French Revolution", *French Historical Studies* 1981, vol. 12, no. 2, p. 213 (200–222).

2. *The Codex Theodosianus* as the original source of secular "heritagisation"

An investigation into the heritagisation of religious objects and constituencies in the longitudinal historical perspective requires a search for the earliest manifestations of such legislative strategies. In *The Codex Theodosianus* one can observe foundational regulations containing legal norms referring to relicts of Roman culture from the pre-Christian period. Among many regulations determining the attitude towards the pre-Christian art, one especially relevant is expressed in the Roman constitution dated 382. It states the following: "we decree, for the authority of the public Council, that temples once used for gatherings and already for common use, can stay open, if there are statues in them more appreciable for their artistic value than for the deity depicted, and we don't allow any imperial response, obtained with excuses, to be opposed to our decree. Since they are reason for unity in the city and when it's clear that gatherings happen often, your experience can evaluate to allow the temple to be open for any festive assembly, according to our sentences, but without meaning that forbidden sacrifices can be allowed during these occasions".[15]

There are at least three important elements of this regulation that are crucial for the matters discussed in this article. Firstly, it urges emperors to protect old temples and statues from destruction. Secondly, preference is given to artifacts not serving religious practices that are to be admired for their artistic value. Thirdly, the regulations authorises the organisation of gatherings and festive assemblies of a non-religious character in order to keep the "heritage" living. The Byzantine emperors pointed to the fact that preserving such practices was justified from the socio-political point of view – "they are reason for unity in the city".[16] The aspects of the aforementioned regulation – the secular protection of old art in order to keep it alive – can be regarded as early examples of a contemporary social and political issue in the legal field of cultural heritage protection. The special meaning of those norms has not yet been fully recognised in the scholarly literature.[17]

The call to evaluate works of pagan art in terms of their artistic and not religious value was an extremely important regulation in the history of European culture. In order to understand its importance, one must take into account the specific political circumstances in which those regulations came into being. They were first included in the Roman constitution of 382 CE. At that time, as a result of the Edict of Milan (313 CE), Christianity had been one of legally recognised religions of the Roman Empire for more than fifty years. It was also ten years before it became the official state religion.

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[15] *Codex Theodosianus*, XVI.10.8, http://www.giornopaganomemoria.it/theodosian1610.html (accessed: 15.09.2020).

[16] *Ibidem*.

[17] T. Tsivolas was however recalling rule XVI.10.8 but only partly. He was putting the accent only on the anti-pagan overtone of this rule; cf. T. Tsivolas, *Law and Religious Cultural Heritage in Europe*, Springer, New York 2014, p. 6.

But already then, the followers of this relatively new monotheistic religion expressed their negative attitude towards the religious art of other faiths, often through physical destruction. By protecting the religious art of the old religions, efforts were made to ensure the durability of the culture of the Roman Empire, expressed in high-class artistic achievements. At the same time, Emperor Theodosius issued a series of edicts that made pagan worship illegal.[18]

The regulation included in the Roman constitution of 382 was later repeated in Libro XVI pn. 10.8. of *The Codex Theodosianus* that was published in 438. It was the last legal act signed by the emperors of both parts of the Roman Empire after its division in 395. At that time, the territory of Rome had already been considerably reduced by the attacks of barbarians. Invaders would destroy imperial monuments on the conquered lands. Those circumstances changed the meaning of the cited legal act. From then on, preserving the legacy of pagan Rome became a political and a civic duty.

The superiority of Roman culture over the cultures of invaders was symbolised in the high level of artistic culture of the former period. The norm from the XVI Libro Theodosiani pn. 10.8. excluded high-class art objects from the rules prohibiting pagan religion. It turned them into public property. The reason behind their protection was socio-political, and therefore secularised – social integrity. Of course, that does not mean that the Roman Empire was ever a secular state. It means, however, that in this case, the state consciously used law directed towards the preservation of cultural heritage as a mean of secularisation. The rule XVI.10.8. from *The Codex Theodosianus* remained valid even during the Byzantine iconoclastic civil wars.[19] While religious images created in the Christian period were destroyed, pagan Greek and Roman sculptures collected by the Emperor Justinian and assembled in Constantinople around the patriarchal cathedral of Hagia Sophia and The Hippodrome survived.[20] There were works of a different artistic level – outstanding pieces like *Hercules* by Lysipus or the famous statue depicting Romulus and Remus fed by a she-wolf, as well as those of inferior quality. Together, they surrounded the circus, emphasizing its eclectic and conservative character. This abundance of ancient art inspired visitors over the next several centuries, and was also admired by the Crusaders who arrived in Constantinople in the thirteenth century.[21] Byzantine regulations aimed at protecting ancient religious art as a secularised cultural heritage constituted a normative basis for the next few centuries.[22] They paved the way for the separation of religious and secular art in the

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[18]   A. Nagel, *The Controversy of Renaissance Art*, Chicago University Press, Chicago – London 2011, p. 175.
[19]   P.J. Alexander, "Church Councils and Patristic Authority the Iconoclastic Councils of Hiereia (754) and St. Sophia (815)", *Harvard Studies in Classical Philology* 1958, vol. 63, p. 493 (493–505).
[20]   C. Mango, "Antique Statuary and the Byzantine Beholder", *Dumbarton Oaks Papers* 1963, vol. 17, pp. 57–58; S. Guberti Bassett, "The Antiquities in the Hippodrome of Constantinople", *Dumbarton Oaks Papers* 1991, vol. 45, p. 87.
[21]   C. Mango, "Antique Statuary…", p. 55.
[22]   J. Trilling, "Daedalus and the Nightingale: Art and Technology in the Myth of Byzantine Court" [in:] *Byzantine Court Culture from 829 to 1204*, ed. H. Maguire, Harvard University Press, Washington 1997, p. 217.

Middle Ages.[23] Their influence was clearly visible in the admiration that the Catholic Church expressed towards Roman and Greek pagan art in the Renaissance (*rinascita del arte*).[24] They can be regarded as theoretical foundations for the recognition of ancient art as a model to follow by academia, from the late baroque (1648) to the end of the nineteenth century (academism).[25]

In the history of protection of religious works of art and architecture by the state in the late Roman Empire and in the Byzantine Empire, normative order was created around a new, different religion. One more aspect – related to the transition of the political and social system – has to be considered. For late Western and Eastern Roman rulers, it was important to keep the cultural integrity of society around a firm state identity. Religion and tradition, also this artistic tradition, were the main instruments used for the implementation of this policy. Both elements – pagan art and Christianity – appear partly contradictory. In this context, the decision to protect pagan art due to its artistic value and despite its religious functions was a political decision, which can be interpreted as one of the earliest examples of "patrimonilisation".

3. Secularisation of religious art during the French Revolution

The outbreak of the French Revolution in 1789 resulted in a dilemma similar to the late Roman transformation of the political and religious system. Overthrowing the monarchy and depriving the Catholic Church of its privileged position set before the revolutionary government the task of determining the status of church property of significant historical, cultural, and artistic value within the framework of a secular state.[26]

Initially, the government of the French Republic did not suppress spontaneous or organised acts of iconoclastic destruction of religious art that the commoners identified with their recent class oppression. However, as early as in July 1790, the revolutionary government issued a ban on the destruction of historical monuments.[27] The definite downfall of the monarchy on 10 August 1792 yet again set free forces of destruction. The French fell victim to the "epidemic of iconoclasm" that, above all, led to the destruction of religious art. The detailed report prepared by Abbé Grégoire in 1794

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[23] C. Lord, C. Lewine, "Secular Imagery in Medieval Art", *Source. Notes in the History of Art*, Spring/Summer 2014, vol. 33, no. 3/4, Special Issue on Secular Art in the Middle Ages, pp. 1–2.

[24] A. Nagel, Ch.S. Wood, *Anachronic Renaissance*, Zone Books, New York 2020, p. 182; see also: A. Dunlop, *Painted Palaces: The Rise of Secular Art in Early Renaissance Italy,* Pennsylvania State University Press, Pennsylvania 2009, p. 43.

[25] R. Nelson, *The Spirit of Secular Art: A History of the Sacramental Roots of Contemporary Artistic Value,* Monash University Press, Clayton 2007, p. 05.10; see also: L.L. Meixner, "Courbet, Corot, and Democratic Poetics" [in:] *French Realist Painting and the Critique of American Society, 1865–1900,* Cambridge University Press, Cambridge 1995, pp. 142–193.

[26] J.L. Sax, "Heritage Preservation…", pp. 1143–1144; Ch.M. Greene, "Alexandre Lenoir…", p. 213.

[27] S.J. Idzerda, "Iconoclasm during the French Revolution", *The American Historical Review* 1954, vol. 60, no. 1, p. 15.

revealed the true scale of the damage.[28] It prompted the revolutionary government to adopt a protective policy regarding the works of art gathered in natonalised churches. It was ordered that such works of art be stored in newly-created warehouses, with the intention to later display them in the form of a museum collection of medieval art. The first collection of religious art was under the protection of Alexandre Lenoir (1761–1839) – it was the collection in the Petits-Augustins.

The final version of Abbé Grégoire's report was disclosed to the public in August 1794.[29] Its content was something more than just a concise description of acts of revolutionary vandalism. It also contained the author's personal reflection on the events he described. Abbé Grégoire considered the revolutionary call to destroy artifacts "an unpatriotic destruction of the history and the cultural heritage of the French nation".[30] Grégoire's firm stance against vandalizing monuments[31] proved very effective. In his report, he compared the destructive acts of the French nation to the ancient acts of vandalism that had led to the downfall of the Roman Empire. It stirred the imagination of the revolutionary leaders, and they could not ignore the author's call to take appropriate countermeasures. The Government of the Republic, however, dreaded using the argument about the anti-patriotic nature of acts of vandalism – if works of religious art had been nationalised and belonged to everyone, vandalizing them was to annihilate one's own culture and decreasing the amount of one's own property. The measures taken by the government made it possible to save, among other works, *The Dying Slave*, a sculpture by Michelangelo that initially embellished the tomb of Pope Julius II. The sculpture was relocated to the Musée Central.[32]

Alexandre Lenoir played an important role in the process of protection of France's religious cultural heritage. He organised a series of exhibitions of religious art staged in former churches. Lenoir created conditions for redefining artistic creation connected

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[28]   H. Grégoire, *Rapport sur les destructions opérées par le Vandalisme et les moyens de le réprimer*, Paris, 31 August 1794.

[29]   Abbe Gregoire finished his report on revolutionary vandalism on 13 August 1794 (R. Reichardt, H. Kohle, *Visualizing the Revolution: Politics and the Pictorial Arts in Late Eighteenth Century France*, London 2008, p. 247). In his diary, which he kept in the years 1806–1807, Gregoire claimed to have been the first author to use the term "vandalism" to describe "a physical destruction of objects" (D. Gamboni, *The Destruction of Art: Iconoclasm and Vandalism since the French Revolution,* Reaktion Books, London 2012, p. 18). This term appears to be a more universal reference to the Vandals – the barbaric tribe that wreaked havoc in ancient Rome. Dario Gamboni defined the differences between the term "iconoclasm" and "vandalism". According to Gamboni, "iconoclasm" is mostly used to describe the destruction of works of religious art. In a symbolic sense, it can be understood as the act of rejecting the beliefs and institutions associated with them. "Vandalism", on the other hand, refers to any action aimed at destroying the material traces of the past, as well as any other objects that have a defined, mostly significant, cultural value. Destruction caused by vandalism is barbaric, full of ignorance, blind.

[30]   J.L. Sax, "Heritage Preservation…", pp. 1143–1144.

[31]   The French word *monuments* has a different meaning from English *monuments* or Polish *monumenty*. It also referred to works of a movable character that symbolised specific historical values, such as medallions or chronicles.

[32]   A. McClellan, *Inventing the Louvre: Art, Politics and the Origins of the Modern Museum in Eighteenth-Century Paris*, New York 1994, p. 159; *idem*, "Nationalism and the Origins of the Museum in France", *Studies in the History of Art* 1996, vol. 47, p. 35.

with the monarchy, and he also created a whole theory of their protection.[33] His activity can be perceived as the beginning of modern monument protection understood as type of praxis but also as an area of law. To achieve his goals, Lenoir even became a politician and lobbied for the protection of works of art of high artistic valued that opposed the political line of the Revolutionary Committee. He openly opposed the *Comité d'Instruction Publique* – a revolutionary institution whose purpose was to clear public spaces of signs and symbols of the monarchy. Lenoir was also against the Jacobin dictatorship and a cultural policy based on the destruction of the cultural achievements of the ancien régime.[34] The success of Lenoir's plan depended on the recognition of works of religious art as historical artifacts rather than symbolic representations and carriers of the old socio-political order.[35] This recalls the issue governed by *The Codex Theodosianus* – works of art, apart from their religious value, are also of artistic value and, therefore, must not be destroyed. It clearly demonstrates how cultural heritage and its representations in many historical contexts became "a product of ideology".[36]

4. Cultural heritage concepts of the second half of the 19th century

In the nineteenth century, in most European countries, various types of associations calling for the legal protection of national cultural heritage began to operate. Soon, their actions were reflected in national agendas. Legislative initiatives were taken to draft laws in this area. Similar problems occurred in the second half of the nineteenth century in most European countries.[37] "Paradoxically, while heritage is used as a universal category in public discourse, the origins of international concern for heritage are perceived to be relatively recent, only dating from the post-war period. Instead, historians have sought explanations for the birth of heritage during the late eighteenth and the nineteenth century overwhelmingly in national contexts".[38] The scale of the phenomenon can be seen, for example, in the number of laws adopted before the outbreak of the First World War concerning the protection of cultural heritage in various

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[33] A. Lenoir, "Foreword to the 'Historical and Chronological Description of the Monuments of Sculpture'" [in:] *Art in Theory 1648–1815: An Anthology of Changing Ideas*, eds. Ch. Harrison, P. Wood, J. Gaiger, London 2000, p. 733.

[34] Ch.M. Greene, "Alexandre Lenoir…", p. 213.

[35] F. Haskell, *History and Its Images*, Yale 1993, p. 241.

[36] K. Kuutma, "The Politics of Contested Representation: UNESCO and the Masterpieces of Intangible Cultural Heritage" [in:] *Prädikat „Heritage": Wertschöpfungen aus kulturellen Ressourcen*, *Studien zur Kulturanthropologie. Europäischen Ethnologie*, eds. D. Hemme, M. Tauschek, R. Bendix, no. 1, Berlin 2007, p. 177 (177–195).

[37] C. Miele, "Heritage and Communities: Reflections on the English Experience in the Nineteenth and Twentieth Centuries" [in:] *idem*, *Towards World Heritage: International Origins of the Preservation Movement 1870–1930,* Routledge, London – New York 2011, pp. 155–180.

[38] A. Swenson, "Introduction" [in:] *idem*, *The Rise of Heritage: Preserving the Past in France, Germany and England, 1789–1914,* Cambridge University Press, Cambridge 2013, p. 1; C. Miele, *Towards World Heritage…*, p. 7.

countries: Greece (1834, 1899), Sweden (1867), Hungary (1881), Britain (1882, 1913), Finland (1883), Turkey (1884), Tunisia (1886), France (1887, 1914), Bulgaria (1889), Romania (1892), Portugal (1901), Italy (1902, 1909) and India (1904)",[39] as well as in the German states of Hesse (1902) and Oldenburg (1911)".[40]

There were several reasons for this increase in interest in the second half of the nineteenth century. In addition to an obvious desire to ensure the security of national treasuries threatened by the ever-increasing art market, numerous political reasons were a driving force for public authorities. Increased awareness of the public value of the relics of the past resulted, among other factors, from clear social transformations consisting in the gradual democratisation of societies. Individual countries competed with each other in the field of culture, and having significant resources of a well-protected cultural heritage became a marker of status in international relations. In internal relations, the introduction of provisions to protect cultural heritage was an opportunity for the authorities to enlarge their patrimonial field. The tools for this could be protective provisions ensuring the protection of private property and expropriation on the grounds of public utility to the status of corporate bodies, such as Churches and communes. In the reality of the time, the inclusion of church property, e.g. medieval temples, within the scope of administrative conservation authority was a breach of the sacred immunity exempting church property from the jurisdiction of secular authority. For example, "the 1887 [French – M.B.] Act was not only an Act for the better protection of monuments, but also a measure to enhance a centralist approach and weaken the influence of local communities and the Catholic Church".[41] The situation was similar in Germany at a federal level. Some member states of the Union of German States feared the loss of control over artistic and architectural objects of considerable value located on their territory if a unified law were to be adopted conferring competence for their protection on the central state authorities.[42] No wonder, then, that solutions of this kind aroused considerable public opposition and caused significant delays in the legislative processes.

Activism in the field of conservation legislation revealed many of the social tensions that existed previously, but which now gained a new field of play. It should be noted that the debates held on the planned laws differed in terms of content from country to country. Austrian law developed by the art historian Alois Riegl is considered to be of particular importance for the development of monument conservation and museums.[43] The definitions of terms he developed, "monument", "historic value", and "preservation of monuments", were the starting point for many subsequent Euro-

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[39] A. Swenson, "The Law's Delay? Preservation Legislation in France, Germany and England" [in:] *Toward World Heritage. International Origins of the Preservation Movement, 1870–1930,* ed. M. Hall, Ashgate, Burlington 2011, p. 140.

[40] *Ibidem*, p. 140.

[41] *Ibidem*, p. 142.

[42] See: W. Speitkamp, *Die Verwaltung der Geschichte: Denkmalpflege und Staat in Deutschland 1871–1933,* Vandenhoek & Ruprecht, Goettingen 1996, pp. 154–163.

[43] T. Rudkowski, "Ochrona zabytków. Niektóre aspekty filozoficzne i socjologiczne" [in:] *Dzieło sztuki i zabytek. Materiały pokonferencyjne*, Stowarzyszenie Historyków Sztuki, Warszawa 1975, pp. 13–16.

pean regulations.[44] The significance of Riegl's ideas lay in the complete rejection of the aesthetic criterion when assessing the historical value of the artifact and its inclusion in the collection of monuments.[45] Although this has long been considered a mistake, as contemporary artistic practice shows, the aesthetic criterion is not the fundamental and most important criterion for all works of art.[46] At that time, however, the thinking about art was dominated by an idea of art that was completely subordinated to the principles of aesthetics. Even Karl Marx writes that, contrary to animals, "man therefore also forms objects in accordance with the laws of beauty".[47] This only seems to confirm the then deeply rooted belief in the normative nature of aesthetic precepts.

In 1903, Alois Riegl published a book entitled *The Modern Cult of Monuments: Its Character and Origin*.[48] The author includes numerous reflections on the values justifying the policy of protecting material traces of the past.[49] He creates a previously unknown typology of axiological justifications for the value of ancient objects used as criteria for granting them legal protection. He identifies "art value" (*Kunstwollen*), "historical value" resulting from the age of a given work, "commemorative value" and "use value".[50] He also shows that the concept of a monument refers to both intentional monuments, i.e. those constructed deliberately to commemorate an event or a person, as well as "unintentional monuments", the value of which results from their uninterrupted existence and their function of representing the achievements, attitudes and beliefs of previous generations.[51]

Riegel's contribution to the development of the legal theory of monument protection also consisted in changing the policy of art restoration. Previously, attempts had been made to recreate the original form of works of art at all cost, often at the cost of losing their historical character.[52] Riegel's theses[53] enabled the recognition of beauty in the footsteps of time and convinced the supporters of aesthetic justifications

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[44] For more on this subject, see: A. Gerecka-Żołyńska, *Ochrona zabytków w Polsce. Zbiór podstawowych aktów prawnych z krótkim komentarzem*, Ośrodek Badania Rynku Sztuki Współczesnej, Poznań 2006, pp. 8–9.

[45] H. Zerner, "Alois Riegl: Art, Value and Historicism", *Daedalus* 1976, vol. 105, no. 1, p. 178.

[46] E. Naginski, "Riegl, Archeology and Periodisation of Culture"*, RES: Anthropology and Aesthetics* 2001, no. 40, pp. 135–152.

[47] K. Marx, *Rękopisy ekonomiczno-filozoficzne z 1844 r.*, Warszawa 1958, p. 517.

[48] A. Riegl, "Der moderne Denkmalkultus…", pp. 144–193; English version: *idem*, "The Modern Cult of Monuments", *Oppositions* 1982, no. 25, pp. 21–51.

[49] See: M. Gubser, "Time and History in Alois Riegl's Theory of Perception", *Journal of the History of Ideas* 2005, vol. 66, no. 3, p. 457.

[50] G. Araoz, "Preserving Heritage Places under a New Paradigm", *Journal of Cultural Heritage Management and Sustainable Development* 2011, no. 1, p. 56.

[51] See: M.A. Holly, "Review of Margaret Iverson's *Alois Riegl: Art History and Theory*", *Central European History* 1994, vol. 27, no. 4, pp. 537–539.

[52] T. Arrhenius, "The Cult of Age in Mass Society: Alois Riegl's Theory of Conservation"*, Future Anterior: Journal of Historic Preservation, History, Theory and Criticism* 2004, vol. 1, no. 1, pp. 75–81.

[53] See, *inter alia*: A. Riegl, "The Modern Cult of Monuments: Its Essence and Its Development" [in:] *Historical and Philosophical Issues in the Conservation of Cultural Heritage*, eds. N.S. Price *et al.*, The Getty Conservation Institute, Los Angeles 1996, pp. 69–83.

to abandon practices which could lead to the obliteration of traces under the rubric of reconstruction and renovation.[54]

Recognition of the importance of works created in the past for the development of national culture was conducive to the autonomy of art, which consists in separating its social value from the religious, political or propaganda functions attributed to it. The decision on what constitutes historical value and what qualifies as a monument was left to the state authorities, as a result of which they became one of the factors co-shaping the cultural policy of the state[55]. The legal regulation of cultural heritage in technical terms, regardless of the social functions attributed to it – past and present – significantly changed the way individual items are perceived in society. The medieval cathedral was no longer just a temple. As a result of the professionalisation of conservation protection of old works of art or architecture, religious works of art were moved from the symbolic sphere to the scientific sphere. The recognition of a work of art or an architectural object as part of the cultural heritage of a country or nation resulted in the change of its status from an object of worship subject only to the church to an object of social value accorded by the secular state. Ensuring the protection of valuable religious objects, therefore, meant, in practice that they were, to a greater or lesser extent, placed under the authority of the state administration.

5. The protection of cultural heritage after the Second World War

The Second World War, which ruined many invaluable artistic and architectural testimonies of the past, was a driving force for action at an international level to create supranational protection instruments. To this end, UNESCO was set up at the UN – the United Nations Educational, Scientific and Cultural Organisation. Under its auspices, new – in the intention of its creators – universal rules for dealing with cultural heritage of various types under various conditions were developed. "In response to specific circumstances, UNESCO has fostered the creation of standard-setting instruments and international organisations like the International Centre for the Study of Preservation and Restoration of Cultural Property (ICCROM) and the International Council on Monuments and Sites (ICOMOS). Standard-setting instruments include sets of recommendations on archeological excavations from 1956 (UNESCO), landscapes from 1962 (UNESCO), cultural property endangered by public or private works (UNESCO 1968), and historic urban areas from 1976 and 2011 (UNESCO). In addition, there are fully fledged UNESCO conventions, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the Convention Concerning the Protection of the World Cultural

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[54]   D. Reynolds Cordileone, *Alois Riegl in Vienna 1875–1905: An Institutional Biography*, Ashgate, Burlington 2014, p. 276.
[55]   H. Schreiber, "Patrymonializacja w stosunkach międzynarodowych…", pp. 385–398.

and Natural Heritage, or World Heritage Convention (1972), the Convention on the Protection of the Underwater Cultural Heritage (2001)".[56] This long list of technical instruments among other kinds of heritage also covers religious heritage. This activates the above-mentioned problem of possible secularisation through "heritagisation". This problem was, in fact, considered. In many UNESCO-affiliated publications the problem of the religious provenance of heritage sites has been channeled through references to concepts such as "religious diversity" and "worldview pluralism".[57] Until the 1980s, the issue of "living cultural heritage" was not the subject of any extensive theoretical or practical reflection.[58] This caused "a growing dissatisfaction among many developing countries, especially in the Latin American, African, and Asian-Pacific regions, with the 1972 Convention (…), which was viewed as 'Eurocentric' both in its operation and conception".[59] In this body of UNESCO international legal acts , both through the standards and procedures adopted for protection and through the very layer of language used to describe religious objects, buildings, places, and traditions, a hierarchy of normative order was established – the primacy of secular law over religious law; and the primacy of the state over the church. In this vision of culture, traditional social practices, including religious ones, were seen as "an obstacle for (…) development".[60] It should be noted, however, that a policy of secularisation of this kind, which is veiled in language, is being opposed by conservative circles in various countries. Therefore, especially in many recent studies, attention is drawn to the need for the sacralisation of cultural heritage of religious provenance, in order to meet social needs more widely and to restore the full validity of the voice of human communities.[61]

The situation began to change with the establishment of new protection instruments – the Convention for the Safeguarding of the Intangible Cultural Heritage (2003), and the Convention on the Protection of the Diversity of Cultural Expressions (2005) – and practical guidelines for their application. The fact that greater account was taken of the interests of people actively benefiting from a cultural heritage, including a religious heritage, only confirmed that the previous line of interpretation was a consequence of the implementation of a specific policy and was not the result of

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[56]   C. Cameron, "UNESCO and Cultural Heritage: Unexpected Consequences" [in:] *A Companion to Heritage Studies,* eds. W. Logan, M.N. Craith, U. Kockel, Wiley Blackwell, Oxford 2016, pp. 322–323.

[57]   Cf. F. Champion, "Diversity of Religious Pluralism", *The Public Management of Religious Diversity, International Journal on Multicultural Societies (IJMS)* 1999, vol. 1, no. 2, pp. 40–54.

[58]   Janet Blake sees the origins of the change in the re-examination of the notion "culture" at the World Conference on Cultural Policies (MONDIACULT) held in Mexico in 1982.

[59]   J. Blake, "From Traditional Culture and Folklore to Intangible Cultural Heritage: Evolution of a Treaty", *Santander Art and Culture Law Review* 2017, no. 2, p. 44; cf. G. Boccardi, "Authenticity in the Heritage Context: A Reflection beyond the Nara Document", *The Historic Environment: Policy & Practice* 2018, vol. 10, no. 1, p. 1; K. Chainoglou, "The Protection of Intangible Cultural Heritage in Armed Conflict: Dissolving the Boundaries Between the Existing Legal Regimes?", *Santander Art and Culture Law Review* 2017, no. 2, pp. 109–134; A.F. Vrdoljak, *Minorities, Cultural Rights and the Protection of Intangible Cultural Heritage*, 2005, http://www.esil-sedi.eu/sites/default/files/Vrdoljak09-05.pdf (accessed: 21.09.2020).

[60]   J. Blake, "From Traditional Culture…", p. 44.

[61]   See: S. Samida, "On the Genesis of Heritage: Cultural Heritage between 'Sacralisation' and 'Eventisation'", *Zeitschrift fur Volkskunde,* January 2013, no. 109(1), pp. 77–98.

objective limitations of the system.[62] As Lucas Lixinski rightly points out, "we are thus moving away from physical remnants and towards living cultures; from States toward communities of practice; from preservation to safeguarding; and from Western-centric appreciations of 'Outstanding Universal Value' towards culturally-sensitive engagements which represent all peoples. In short, the 2003 Convention contains elements that can turn international heritage law on its head".[63] This shift can be connected with the influence of a "human rights-based orientation".[64]

6. Contemporary contexts of the secularisation of cultural heritage

The process of secularisation through heritagisation is still awaiting a careful investigation. Some authors referring to this topic problematise other aspects like, for instance, the economic dimension of that process. Anne Formerod and invited authors show in a monograph entitled *Funding Religious Heritage* a problem that is a consequence of the above process. That is, how to bear the costs of maintaining religious objects that have become protected under the cultural heritage law?[65] This financial burden that falls on local authorities has forced some of them to sell or destroy some religious buildings.[66]

The economic aspect of a joint process of "patrimonialisation" (named by some authors as "politicisation"[67]) or "heritagisation" also applies to Muslim countries. For example, it has been noticed in the Maghreb that religious sites and rituals have been incorporated within national and international tourism strategies, so that traditional religious practices have undergone far-reaching commercialisation.

It is worth noting that "all religious communities have norms on the construction, maintenance, and protection of their religious sites and objects, many of which norms may or may not be mirrored in those of the State".[68] They are generally a combination of rules resulting from guidelines for religious worship (e.g. defining the rules of accessibility of places considered sacred) and general standards aimed at protecting the material substance of the objects (e.g. defining the responsibility for supervising the condition of architectural objects). The inclusion of these religious cultural her-

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[62] Cf. K. Zalasińska, "Building Bridges Between the 1972 and 2003 Conventions – Searching for an Integrated Protection of Cultural Heritage under UNESCO's Cultural Conventions System", *Santander Art and Culture Law Review* 2017, no. 2, pp. 77–90.

[63] L. Lixinski, "Intangible Cultural Heritage: Successes, Disappointments, and Challenges", *Santander Art and Culture Law Review* 2017, no. 2, p. 18 (17–20).

[64] J. Blake, "From Traditional Culture…", p. 41.

[65] *Funding Religious Heritage,* ed. A. Fornerod, Routledge, New York 2015.

[66] The Saint-Pierre-aux-Liens, a nineteenth-century neo-gothic parish church was scheduled for demolition in 2007 by the city council.

[67] K. Boissevain, "Studying Religious mobility: Pilgrimage, Shrine Visits and Religious Tourism from the Maghreb to the Middle East" [in:] *New Pathways in Pilgrimage Studies: Global Perspectives,* eds. D. Albera, J. Eade, Routledge, New York 2019, p. 99.

[68] N. Doe, "Foreword" [in:] T. Tsivolas, *Law and Religious…*, p. vii.

itage sites within the scope of secular law results in a dualism in their legal status. They, thus, become a kind of *res mixtae*, subject to two legal systems simultaneously.

It would be wrong to understand the secularisation tendencies described in this paper as unequivocally negative, or marked with a hidden meaning. The policy of secularising cultural heritage itself seems to be an attempt to protect it from the antagonistic aspects of the practices of believers of different faiths, manifesting itself in the destruction of valuable historical or artistic objects in the name of religious precepts. Examples of such religiously motivated destruction are easy to find. It is enough to remember the events in the Middle East that have been broadcast or re-transmitted all over the world – the destruction of monuments to the Buddha of Bamyan in Afghanistan, Palmyra in Syria, or the collection of the Museum in Mosul.[69] These cases have aroused world public opinion and prompted many governments to prepare a new convention to combat offences relating to cultural property, known as The Nicosia Convention (form the place of its signing),[70] and "The Blood Antiquities Convention", which is a response to a rising level of cultural vandalism. Of particular importance has been the extensively reported trial at the International Court of Justice in The Hague of Ahmad Al Mahdi Al Faqui (the Al-Mahdi case), the commander in charge of a group of Muslim fighters responsible for the crime of intentional attacks directed against protected cultural heritage monuments in Timbuktu in Mali.[71]

Both the Nicosia Convention and the Hague trial files reveal, at a linguistic level, the above mentioned "technicisation" of the treatment of religious cultural heritage as a protected asset because of its artistic and historical value, and not as a religious asset, above all in terms of its material sustainability. For many commentators, the Nicosia Convention, in particular, was also a disappointment for other procedural reasons.[72] In this sense, both in the Convention and in the judicial proceedings, the legislative strategy launched by *The Codex Theodosianus* to counter religious iconoclasm has continued.

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[69] See: M.M. Bieczyński, "Destrukcja dzieł sztuki a prawo w ujęciu historycznym", *Studia Politologiczne* 2018, vol. 50, pp. 217–236.

[70] M.M. Bieczyński, "The Nicosia Convention 2017: A New International Instrument Regarding Criminal Offences against Cultural Property", *Santander Art and Culture Law Review* 2017, no. 2/3, p. 256.

[71] Cf. K. Wierczyńska, A. Jakubowski, "Individual Responsibility for Deliberate Destruction of Cultural Heritage: Contextualizing the ICC Judgement in the Al-Mahdi Case", *Chinese Journal of International Law* 2017, vol. 16, issue 4, pp. 695–723; see also: M. Lostal, *International Cultural Heritage Law in Armed Conflict: Case Studies of Syria, Libya, Mali, the Invasion of Iraq, and the Buddhas of Bamiyan,* Cambridge University Press, Cambridge 2017.

[72] J. Stepnowska, "The Blood Antiquities Convention and Asian Cultural Property. A Remedy or Dissapointment? The Case of Cambodia", *Gdańskie Studia Azji Wschodniej* 2019, no. 15, pp. 133–140; D. Fincham, "The Blood Antiquities Convention as a Paradigm for Cultural Property Crime Reduction", *Cardozo Arts & Entertainment* 2019, vol. 37(2), pp. 299–336.

7. De-sacralisation of cultural heritage as a sign of resistance to global trends

The UNESCO heritage protection regime prior to 2000 was accused in the field of theo-retical assessments of the "'fabrication' of cultural heritage (…) which breaks the con-tinuity of the time".[73] It has been pointed out that the criteria used for inclusion on the World Heritage List closely link the sites with the time of their creation, turning them into dead entities that lose their connection with the present.

Against this background, the post-war standards of cultural heritage protection formulated within global organisations dealing with its protection and conservation, in particular those from International Centre for Study and Restoration of Cultural Property (ICCROM), are criticised. One particularly active publicist is Gamini Wijesu-riya, former Director Conservation of the Department of Archaeology of Sri Lanka (1983–2000), Vice President of the World Archaeological Congress (WAC) and ICCROM staff member responsible for organisation of Training Courses and activities related to World Heritage. In his publications he takes a critical approach towards conservation philosophy, which – in his opinion – "in its formative stages was rooted in the con-temporary secular values of the Western world".[74] In his interpretation, until more or less the end of the twentieth century, cultural heritage was dominated by a European approach based on the paradigm of protecting primarily its material substance, with complete disregard for the values it had for the community making it, in for particular religious use ("living monuments", i.e. those which continue to serve the purposes for which they were originally intended). He goes as far as to comment on "the ignorance of all values thereby distancing heritage from the society".[75] He directly refers to the notion of secularisation understood as "a phenomenon of the separation or distancing between materiality (i.e. the fabric or the sites) and spirituality (i.e. the concerns of the people connected to the sites) and overemphasizing the importance of the former".[76] According to Wijesuriya, most acts of international law, such as the UNESCO and Coun-cil of Europe conventions, have had such an impact, particularly the Venice Charter. He also refers to the critical remark made by Andrzej Tomaszewski, Chair of the ICOMOS International Scientific Committee on Theory and Philosophy: "From the period be-tween the two world wars, we may observe a paucity of deeper-theoretical studies (…) Instead of these, we have seen the creation of increasing numbers of documents con-cerning conservation, of very variable scientific potential (…) As a rule, they contain empty desiderata presented for acceptance and use and not only theoretical reflection.

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[73]   T. Poddubnych, "Heritage as a Concept through the Prism of Time", *Social Evolution & History*, Sep-tember 2015, vol. 14, no. 2, p. 108 (108–131).
[74]   G. Wijesuriya, "Towards the De-secularisation of Heritage", *Built Heritage* 2017, no. 1(2), p. 1 (1–15).
[75]   *Ibidem*, p. 1.
[76]   G. Wijesuriya, "From Venice Charter to Nara+20: Beyond Heritage Secularisation", Paper presented at the international Symposium on the Conservation of Brick Monuments at World Heritage Sites, Ayuttahaya, 19–20 October 2017.

Philosophy and theory have been replaced by doctrine".[77] In response to these short-comings, Wijesuriya calls for an open rather than restrictive interpretation of existing international law, so that the social or community cultural dimension of religious heritage can be taken into account. However, he believes that after 2000, there has been a clear change in the interpretation of the provisions of international legal instruments on the protection of cultural heritage, one that is conducive to taking into account the needs of religious communities interested in the lively enjoyment of their cultural heritage. This was particularly noticeable in the text Operational Guidelines of the World Heritage Convention (2005), Council of Europe Framework Convention on the Value of Cultural Heritage for Society (2005), the UNESCO Recommendation on Historic Urban Landscapes (2014), and Policy for Integrating a Sustainable Development Perspective into the Processes of the World Heritage Convention (2015). Despite the positive assessment of this noticeable trend, Wijesuriya notes that it is necessary to monitor conservation and protection practices in order to restrain the de-secularisation process. As he points out, "there are evident changes over the last two decades that have captured the concerns of people and integrated them into conservation and management practice",[78] but "it is recognised that some of these themes and ideas are in the early stage of development and only have a history of two decades".[79]

This criticism is particularly important as it comes from the peripheries of the world of conservation. The Sri Lankan author invokes numerous examples of spontaneous revitalisation of heritage damaged by bombings or natural disasters carried out without initiating formal and administrative procedures. He claims that "Times have changed. Other cultures have earned respect and the differences which they represent in relations to those of the West have enriched the vision which humanity has of itself and of its culture".[80] This last quoted sentence situates the problem in another heritological context – post-colonial studies. It has often been noted that for a long time the "heritagisation" of conquered lands was perceived by the invading countries (i.e. Britain, France, Germany) as a "civilizing mission",[81] which resulted in detaching cultural heritage from its original contexts. As a result of these processes, a "living" religious heritage became a "dead" one. Thus, "globally, heritage is increasingly promoted as a force of good",[82] but it had and has some "bad" dimensions, or at least scope for improvement.

In this context, the concept of de-secularisation proposed by Wijesuriya seems to be tantamount to sensitising today's practices related to the creation, protection, and

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[77] A. Tomaszewski, "Conservation: its Future as Discipline and its Theory" [in:] *Cultural Heritage in the 21st Century: Opportunities and Challenges,* eds. M.A. Murzyn, J. Purchla, International Cultural Centre, Kraków 2007, pp. 163–170.

[78] G. Wijesuriya, "Towards the De-secularisation…", p. 13.

[79] *Ibidem*, p. 10.

[80] *Ibidem*, p. 5.

[81] Cf. *Cultural Heritage as Civilizing Mission: From Decay to Recovery. Proceedings of the 2nd International Workshop on Cultural Heritage and the Temples of Angkor (Chair of Global Art History, Heidelberg University, 8–10 May 2011)*, ed. M. Falser, Springer, Heidelberg 2015.

[82] A. Swenson, "Introduction"…, p. 1.

revitalisation of religious cultural heritage to the complicated consequences of previ-
ous practices in this field. According to the author, "de-secularisation is about recon-
necting or reestablishing the flouted linkages between heritage and people and eas-
ing the dominance or authority of secularisation".[83]

The perspective described by Wijesuriya is also reflected in the texts of other au-
thors[84]. In a slightly more balanced tone, Giovanni Boccardi draws attention to a similar
processes, stating that "accepting the relative validity of different views on heritage,
as the Nara Document on Authenticity implicitly seems to do, may certainly provide
some advantages. It reflects the need to democratise heritage and to introduce a more
people-centered approach to its identification, conservation and management within
a larger sustainable development perspective".[85]

Other authors also point to the need for a change in protection of "living religious
monuments". Olivia Niglio, for instance, argues that "it is essential to deepen the knowl-
edge of priorities in enhancing the cultural heritage and to reaffirm the centrality of
man, the community and all those principles that represent the milestones of a growth
based on interculturalism, which necessarily implies a process of a constructive and
proactive interest in other cultures towards our neighbours".[86] This is why the cultural-
religious heritage has a crucial role, with culture reemerging as a main priority within
policies of sharing; it is also useful in supporting an open dialogue and development,
to the benefit of individual freedom".[87]

Calls for a change in cultural policies regarding the interpretation of international
legal acts aimed at the protection of religious cultural heritage are a fresh voice in the
discussion. Although the proposed changes seem positive (they meet people's needs),
it should be remembered that static law, despite its dynamic interpretation, changes
slowly (exemplifying the necessity of so-called legal certainty). "The living dynamic
heritage is a relatively new concept. With the creation of the UNESCO Intangible Herit-
age Convention in 2003 and the introduction of the 'Intangible Heritage' concept it-
self, UNESCO basically created new standards for cultural heritage selection. Cultural
heritage must, from now on, be defined in a dynamic view of culture",[88] including in
its religious dimension.[89] Although an increasing number of authors point to the need

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[83]   G. Wijesuriya, "Towards the De-secularisation…", p. 7.
[84]   See: R.W. Khalaf, "Authenticity or Continuity in the Implementation of the UNESCO World Herit-
age Convention? Scrutinizing Statements of Outstanding Universal Value, 1978–2019", *Heritage* 2020,
no. 3, pp. 243–274; *idem*, "The Implementation of the UNESCO World Heritage Convention: Continuity
and Compatibility as Qualifying Conditions of Integrity", *Heritage* 2020, no. 3, pp. 384–401; *idem*, "Con-
tinuity: A Fundamental Yet Overlooked Concept in World Heritage Policy and Practice", *International
Journal of Cultural Policy* 2019, vol. 27, pp. 102–116.
[85]   G. Boccardi, "Authenticity in the Heritage Context…", p. 12.
[86]   Cf. F. Follo, "Inculturation ou inter-culturalite et rencontre des cultures?" [in:] *Reflexion*, Mission En-
trageres de Paris, April 2010, pp. 63–67.
[87]   O. Niglio, "Knowing, Preserving and Enhancing: The Cultural-Religious Heritage", *Alma Tourism*
2017, no. 15, p. 153.
[88]   T. Poddubnych, "Heritage as a Concept…", p. 116.
[89]   Cf. A. Leblon, "A Policy of Intangible Cultural Heritage Between Local Constraints and International
Standards: 'The Cultural Space of the yaaral and the dengal'" [in:] *Heritage Regimes and the State*, series:

to open up the doctrine of protecting cultural heritage to religious aspects and to revitalise it in a certain way, this subject still requires sectoral and cross-industry negotiations.

8. Conclusions

The processes described in this article related to state legal and political legitimacy and institutionalisation of cultural heritage are only a part of a multi-faceted research field and certainly do not meet the criteria for an overall historical theory. Rather, the aim of this study is to draw attention to an extremely important and, as yet, not fully developed research area, which is the inclusion of the heritagisation of religious cultural heritage as a tool of secularisation. In a sense, this giving (heritagisation) of works of sacred art and buildings serving cult purposes is a manifestation of and at the same time a testimony to the church's subordination to state power ("patrimonialisation"). In the first stage, this subordination takes place in the language field.

The renouncement of the symbolic aspect of religious objects in statutory nomenclature and a limitation to the technical definition of their (former, original) function leads to their meaningful detachment from the source contexts – "in many instances the reformation of religious forms as *heritage* entails a process of profanisation through which their initial sacrality is being lost".[90] Similar processes also take place with regard to folklore, which, when included in the scope of protective regulations and called cultural heritage, loses its connection with the communities in which it was formed.[91] Although this significant flattening of religious contexts is often explained by reasons of accessibility (e.g. for tourists), the protests of the social groups concerned only confirm David E. Harvey's statement that "it certainly cannot be claimed that heritage is *only* about the economic practices of exploitation".[92] Cultural heritage appears to be a "value loaded concept"[93] bringing together the interests of many public-life actors representing different and often opposing interests. This concept is, in fact, a broad field of social mediation in which "the evidence of history cannot be so easily separated from the interpretation built upon it".[94] Any change in the legal status of a religious object – past or present – has many practical consequences for members of religious communities. Just as any representation, whether verbal or pictorial, arouses the interest of the audience and becomes a point of reference for them, so does religious cultural

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Göttingen Studies in Cultural Property, eds. R.F. Bendix, A. Eggert, A. Peselmann, Göttingen University Press, Göttingen 2013, pp. 97–110.

[90] B. Meyer, M. de Witte, *"*Heritage and the Sacred: Introduction", *Material Religion: The Journal of Objects, Art and Belief* 2013, vol. 9, issue 3, p. 277 (274–280).

[91] K. Kuutma, "From Folklore to Intangible Heritage" [in:] *A Companion to Heritage Studies*…, p. 42.

[92] D.C. Harvey, "Heritage Pasts and Heritage Presents…", p. 324.

[93] D. Hardy, "Historical Geography and Heritage Studies", *Area* 1988, vol. 20, no. 4, pp. 333-338.

[94] N. Johnson, "Historical Geographies of the Present" [in:] *Modern Historical Geographies*, eds. B.J. Graham, C. Nash, Prentice Hall, Harlow 2000, p. 252 (251–272).

heritage changes in terms of the relationship between particular epistemologies. In other words, cultural heritage, including religious heritage, appears to be "an integral part of a broader set of cultural, social, political and economic practices".[95]

In the view in this paper, it is becoming a field of symbolic practice oriented towards the present day of the acting entity, on which it imprints a mark of its political power. Like other fields of state, political, and legal activity, the protection of cultural heritage and the process of its constitution is subject to historical changes.[96] Keir Reeves and Gertjan Plets express this attitude succinctly: "One of the core principles of culture, and in turn heritage, is that it is not stable. Instead, culture is constantly reproduced and revised in relation to both internal and external changes and perceived needs".[97] In these changes, it is possible to identify clear trends, one of which is the translation into this field of broader conditions related to the definition of relations between the church and the state. The revision of UNESCO's interpretation paradigms in the twenty-first century gives an opportunity for a more balanced development of the sphere of protection of religious cultural heritage. "Contrary to all the discussions opposing development and preservation, the concept of living heritage aims at proving the possible simultaneous coexistence of both preservation and development, where the preservation is not considered as a frozen moment but as a mechanism of continuity".[98]

A separate question that could be asked, as it were, in the margins of this article is that of two other trends in heritage creation practices – the opposite, the de-sacralisation of religious sites protected under secular law, which consists of restoring rituals, and the practice of giving sites, buildings and objects recognised as cultural heritage the character of uniqueness – the sacralisation of secular artefacts. This third trend has already been pointed out by several authors in relation to various sites and locations around which a certain form of worship followed by many adherents has appeared.[99] It would require conducting separate research to compare three processes – the secularisation of religious cultural heritage, the de-sacralisation of previously secularised heritage and the sacralisation of secularised heritage. Brigit Meyer and Marleen de Witte, editors of *Heritage and the Sacred: Introduction* published in 2015, argue that, "two processes are at the heart of the interplay between the fields of *heritage* and *religion*. First, the *heritagisation of the sacred*: how religious traditions become represented and recognised (or contested and rejected) in the framework of *heritage*. And second, the *sacralisation of heritage*: how certain heritage forms become imbued

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[95] K. Reeves, G. Plets, "Cultural Heritage as a Strategy for Social Needs and Community Identity" [in:] *A Companion to Heritage Studies…*, p. 203.
[96] *Ibidem*, p. 206.
[97] *Ibidem*, p. 207.
[98] T. Poddubnych, "Heritage as a Concept…", p. 117.
[99] M. Hall, "Niagara Falls: Preservation and the Spectacle of Anglo-American Accord" [in:] *Towards World Heritage: International Origins of the Preservation Movement 1870–1930,* ed. M. Hall, Routledge, London – New York 2011, pp. 23–44; T.G. Otte, "'The Shrine at Sulgrave': The Preservation of the Washington Ancestral Home as an 'English Mount Vernon' and Transatlantic Relations" [in:] *Towards World Heritage…*, pp. 109–138.

with a sacrality that makes them appear powerful, authentic, or even incontestable"[100]. Sacralisation would consist of the two aforementioned types.

Jennie Sjoeholm makes accounts even more complicated by indicating that "the changes in meaning during the heritagisation process can be divided into four dimensions to analyze the complicated relationship between different interests and strategies (…). Heritagisation can refer to: the addition of new heritage; reaffirmation of already designated heritage; re-interpretation of already designated heritage; rejection of previous designated heritage".[101] This shows that patrimonialisation as a part of the cultural policy of the countries and international communities acting through UNESCO and its branches is made concrete in concrete strategies, including the broad concept of heritagisation. This suggests that all the processes described above – heritagisation, de-heritagisation, re-heritagisation, secularisation (as a result) – can be linked together. However, demonstrating the extent to which one of these results from the other would require further, more detailed research. But even by just simply suggesting such parallels, a new research field unfolds. This suggests that a specific cult of monuments may be the cultural equivalent of a weakening or deliberately weakened religion, and the processes of patrimonialisation of religious cultural heritage described in this article can be perceived as a root of it.

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Summary

Mateusz M. Bieczyński

From *the Codex Theodosianus* to the Nicosia Convention:
The protection of cultural heritage as a means of secularisation

This article tries to present the establishing process of cultural heritage in a broader perspective, in which national legal regulations are only indicators of some general tendencies. It focuses particularly on the transformation of religious sites and objects into legally protected cultural heritage. The main thesis of this article is that the process of "heritagisation" of religion-related artifacts can be considered a political means of secularisation. Therefore, this discussion forms part of heritological research. Among others, this article aims to answer two main questions. What happens when religious sites, objects, and practices become heritage? Is it possible to extract a functional path in legal regulations giving an account of the protection of religious artifacts as cultural heritage in European history that changed their social perception? Is the "heritagisation" of religious objects equal to their conscious secular "patrimonialisation", or is secularisation just a side-effect of their being protected by legal regulations?

Keywords: *The Codex Theodosianus*, The Nicosia Convention, protection of cultural heritage, process of "heritagisation"

Streszczenie

Mateusz M. Bieczyński

Od *Kodeksu Teodozjusza* do konwencji z Nikozji – ochrona dziedzictwa kultury
jako narzędzie sekularyzacji

W artykule podjęto próbę przedstawienia procesu kształtowania się dziedzictwa kultury w szerszej perspektywie, w której krajowe regulacje prawne są jedynie wyznacznikiem pewnych ogólnych tendencji. Skoncentrowano się przede wszystkim na przekształcaniu miejsc i obiektów kultu religijnego w prawnie chronione dziedzictwo kultury. Autor stawia tezę, że proces „udziedziczania" religijnych artefaktów można uznać za polityczny środek sekularyzacji. Stąd też artykuł stanowi część badań heritologicznych. Ma na celu między innymi odpowiedzieć na dwa główne pytania. Po pierwsze, co się dzieje, gdy miejsca, obiekty i praktyki religijne stają się dziedzictwem? Po drugie, czy w przepisach prawnych można wyodrębnić funkcjonalną ścieżkę opisującą ochronę artefaktów religijnych jako dziedzictwa kultury w historii Europy, która zmieniła ich społeczne postrzeganie? Czy „odziedziczenie" obiektów religijnych jest równoznaczne z ich świadomą świecką „patrymonializacją", czy też sekularyzacja jest tylko skutkiem ubocznym ich ochrony za pomocą regulacji prawnych?

Słowa kluczowe: *Kodeks Teodozjusza*, konwencja z Nikozji, ochrona dziedzictwa kultury, proces „udziedziczania"