

University of Gdańsk  
Faculty of Law and Administration

Paula Chmielowska

**MONUMENTA ARCHAEOLOGICA IN USU COMMERCIALI**  
Liberalism versus communitarianism debate in cultural heritage law

Doctoral dissertation in legal studies  
written under the supervision of  
prof. dr hab. Kamil Zeidler

Gdańsk 2025



“We beseech you, in behalf of an ancient city founded by command of the gods, in behalf of a glory that has become great and a name that has pervaded the whole world, in behalf of the many temples it contains and of its gods who have done you no wrong. Do not deprive them of their nightly festivals, their processions and their solemnities. Deprive not the tombs of the dead, who harm you no more, of their offerings. If you have pity for us (as you say that out of pity you yield us another dwelling-place), spare the city's hearth, spare our forum, spare the goddess who presides over our council, and all else that is dear and precious to the living. What fear can you have of Carthage when you are in possession of our ships and our arms and the elephants which you grudge us? As to a change of dwelling-place (if that is considered in the light of a consolation), it is impracticable for our people, a countless number of whom get their living by the sea, to move into the country. We propose an alternative more desirable for us and more glorious for you. Spare the city which has done you no harm, but, if you please, kill us, whom you have ordered to move away. In this way you will seem to vent your wrath upon men, not upon temples, gods, tombs, and an innocent city.”<sup>1</sup>

Appian, *Roman History*

---

<sup>1</sup> Appian, *Roman History*, translated by H. White, vol. I, book 8, chapter 12, p. 545 (When the Romans began to destroy Carthage – end of the Third Punic War).



<b>Introduction</b> .....	9
<b>Methodology and concept of the book</b> .....	17
<b>Chapter 1</b>	
<b>Archaeological monuments as a part of cultural heritage</b> .....	25
Introduction.....	25
1.1. Reconstruction of basic concepts (cultural heritage, cultural good, cultural property, monument).....	29
1.2. Other concepts (common heritage of humankind, cultural rights).....	37
1.3. Concept of archaeology, archaeological monument and archaeological stewardship.....	43
Minor conclusions 1.....	52
<b>Chapter 2</b>	
<b>The law of protection of archaeological monuments</b> .....	57
Introduction.....	57
2.1. International law.....	60
2.1.1. UNESCO conventions.....	61
2.1.2. Council of Europe conventions.....	82
2.1.3. UNIDROIT convention.....	90
2.1.4. Other international agreements and soft law.....	92
2.2. European law.....	99
2.3. Domestic law in Poland as an example of regulatory framework.....	105
2.3.1. Constitution.....	107
2.3.2. Earlier regulations concerning archaeological monuments.....	111
2.3.3. Key regulations in the Act of 2003 on the protection of monuments and the preservation of monuments, regarding archaeological monuments.....	118
2.3.3.1. Definition of archaeological monuments.....	119
2.3.3.2. Ownership of archaeological monuments.....	124
2.3.3.3. Obligations over archaeological monuments.....	141
Minor conclusions 2.....	146
<b>Chapter 3</b>	
<b>Archaeological monument in the liberalism vs communitarianism debate</b> .....	149
Introduction.....	149

3.1. Liberalism – an outline.....	151
3.2. Communitarianism – an outline.....	158
3.3. Liberalism vs communitarianism in the 21st century.....	164
3.4. Referring the dispute between liberalism and communitarianism to archaeological monuments.....	172
Minor conclusions 3.....	178

## **Chapter 4**

### **The institution of *res extra commercium* and *res in commercio* in the cultural heritage**

<b>law.....</b>	<b>183</b>
Introduction.....	183
4.1. <i>Res extra commercium</i> in Roman law and in contemporary civil law.....	185
4.2. The concept of <i>res extra commercium</i> in the cultural heritage law.....	192
4.3. The dispute over the status of an archaeological monument as <i>res extra commercium</i> .....	200
4.3.1. Permanent and temporary export of a monument abroad.....	203
4.3.2. Trafficking of archaeological monuments and illicit trade.....	205
Minor conclusions 4.....	214

## **Chapter 5**

### **Discretionary authority of conservators in the protection of archaeological**

<b>monuments.....</b>	<b>219</b>
Introduction.....	219
5.1. The discretion of the authorities.....	221
5.2. Issues related to the definition of archaeological monuments.....	225
5.3. The so-called mass archaeological monuments.....	231
5.3.1. Storage and conservation of mass archaeological artefacts.....	236
5.3.2. Social utility of mass archaeological monuments.....	241
Minor conclusions 5.....	244

## **Chapter 6**

### **Models of protection of archaeological monuments in selected European**

<b>countries.....</b>	<b>249</b>
Introduction.....	249

6.1. The conservative model: protection of archaeological monuments in Italy.....	250
6.1.1. Regulations concerning archaeological monuments.....	253
6.2. The liberal model: protection of archaeological monuments in England.....	256
6.2.1. Regulations concerning archaeological monuments.....	261
6.3. The conservative-liberal model: protection of archaeological monuments in Germany.....	265
6.3.1. Regulations concerning archaeological monuments.....	268
Minor conclusions 6.....	271
 <b>Maior conclusions, or proposals <i>de lege ferenda</i> (between public and private rights).....</b>	 277
 <b>Sources of law.....</b>	 291
<b>International law.....</b>	291
<b>Soft law.....</b>	291
<b>European law.....</b>	292
<b>Domestic law.....</b>	292
<b>Poland.....</b>	292
<b>Italy.....</b>	293
<b>England and Wales.....</b>	293
<b>Germany.....</b>	293
 <b>Court decisions.....</b>	 294
 <b>Literature.....</b>	 295
 <b>Internet sources.....</b>	 308
 <b>Summary.....</b>	 311
<b>Streszczenie.....</b>	<b>315</b>



## Introduction

Cultural heritage represents people's and societies' collective memories and identities, encapsulating a rich tapestry of history, traditions, and values that have evolved over generations. Defined broadly, cultural heritage includes tangible elements, such as monuments, artworks, artefacts, and buildings, and intangible aspects, such as oral traditions, languages, customs, and practices that define the cultural fabric of communities.<sup>2</sup> As societies navigate the complexities of modernity, preserving and promoting cultural heritage have emerged as critical areas of focus for scholars, policymakers, and communities alike. The significance of cultural heritage is multifaceted. It fosters a sense of belonging and identity among individuals and groups, serving as a vital conduit through which cultural narratives and histories are communicated. Heritage sites and practices often act as focal points for community engagement and social cohesion, fostering pride and continuity in rapid change. Additionally, cultural heritage can play a pivotal role in local and national economies through tourism. Well-preserved heritage sites attract visitors, generating revenue and stimulating economic growth while enhancing cultural appreciation.

However, the preservation of cultural heritage is increasingly challenged by a host of contemporary pressures. Globalisation has led to the homogenisation of cultures, often undermining local traditions and practices. Cities and communities are undergoing significant transformations, sometimes at the expense of their historical and cultural legacies. Urban development, in particular, poses a considerable threat as new infrastructure projects can destroy or alter significant heritage sites. Moreover, the effects of climate change are increasingly felt in many parts of the world, jeopardising heritage locations vulnerable to environmental degradation, rising sea levels, and extreme weather events.

In response to these challenges, the field of cultural heritage studies has evolved, drawing on diverse disciplines such as anthropology, archaeology, history, and environmental science to develop more holistic approaches to heritage management. Heritage conservation has shifted toward a more inclusive model that seeks to preserve physical artefacts and recognises the importance of community involvement and intangible heritage. Collaborative approaches prioritising local communities' voices and perspectives have shown promise in creating sustainable heritage practices that respect the cultural significance of places and practices. Technological advancements have also provided new avenues for documenting and

---

<sup>2</sup> K. Zeidler, *Prawo Ochrony Dziedzictwa Kultury* [Cultural Heritage Protection Law], Wolters Kluwer, Warszawa 2007, p. 26.

disseminating cultural heritage. Digital heritage initiatives, from virtual museums and interactive archives to augmented reality, have transformed how heritage is perceived and experienced. These technologies enable broader access to cultural resources, preserving narratives that might remain obscured. Furthermore, they create opportunities for education and engagement, as diverse audiences can explore and connect with cultural heritage remotely.

A particular part of the cultural heritage is archaeological heritage, which is often misunderstood and mistreated while being treated differently from the rest of cultural heritage. Archaeological heritage encompasses the physical remnants of past human activity, including artefacts, structures, and sites that reflect bygone civilisations' cultural, social, and economic practices. The ownership rights of archaeological heritage are a multifaceted issue interwoven with legal, ethical, cultural, and historical considerations. Central to the debate is the intrinsic value of archaeological heritage to cultural identity and national history. Countries often assert claims of ownership over their archaeological resources, arguing that these artefacts and sites are crucial for understanding their unique cultural narratives. Nations contend that safeguarding these resources is vital for education, tourism, and fostering national pride. A prominent example is the ongoing dispute over the Elgin Marbles, taken from Greece and currently housed in the British Museum, which has become a focal point in discussions about cultural heritage repatriation.<sup>3</sup> This case exemplifies how countries demand the return of artefacts that hold significant historical importance to their cultural legacy. Recognising the global significance of archaeological heritage, various international conventions have been established to regulate its protection and ownership rights. The UNESCO World Heritage Convention, adopted in 1972, emphasises preserving sites of outstanding universal value. Additionally, the 1970 UNESCO Convention addresses the illicit import, export, and transfer of ownership of cultural property, promoting international cooperation to combat the illegal trade of archaeological artefacts. These agreements underscore the notion that archaeological heritage transcends national borders and belongs to humanity, necessitating collective efforts for its preservation.

The intersection of private and public rights complicates discussions of ownership further. In some jurisdictions, landowners may claim ownership of artefacts discovered on their property, while others have laws that assign ownership to the state. This divergence can lead to conflicts between private land rights and the public interest in preserving archaeological sites. The debate calls for clear legal frameworks that balance the rights of individuals with the collective cultural heritage that belongs to society as a whole, this will be called as a dispute

---

<sup>3</sup> See: J.H. Merryman (ed.), *Imperialism, Art and Restitution*, Cambridge University Press, Cambridge-New York 2010.

between liberalism and communitarianism. Indigenous rights also play a crucial role in the conversation about archaeological heritage ownership. Many indigenous communities have deep cultural and spiritual connections to archaeological sites and artefacts on their ancestral lands. These connections challenge conventional ownership paradigms, as indigenous perspectives often emphasise stewardship rather than ownership. Increasingly, discussions about archaeological heritage include calls for repatriating artefacts to indigenous communities, acknowledging their rights to control and protect their cultural heritage. Such movements emphasise the importance of an ethical archaeological approach that respects indigenous relationships with the past.

The legal framework governing the trade in antiquities is export and ownership rights. If one tries to avoid it, the illegal excavation and trafficking of archaeological artefacts severely threaten cultural heritage. The global demand for antiquities has resulted in widespread looting, often leading to the destruction of significant archaeological sites, particularly in conflict zones. International agreements, like the 1970 UNESCO Convention, seek to address this issue by promoting the return of stolen artefacts to their countries of origin. However, the effectiveness of these measures is often undermined by a lack of enforcement mechanisms and the complicity of various actors in the illicit trade and export. One of the primary problems of looting is destroying the archaeological context in which artefacts are found. Excavation by looters is often indiscriminate and lacks scientific methodology, resulting in the removal of objects without any record of their original placement, stratigraphy, or association with other findings. This loss of context deprives historians and archaeologists of critical information that could enhance our understanding of past societies, including their social structures, cultural practices, and interactions with other groups. The scientific value of these artefacts is significantly diminished when they are taken out of their archaeological context.

Looting also represents a profound loss of cultural heritage for the communities these monuments and artefacts belong to. Heritage is not merely a collection of physical objects, it embodies people's stories, traditions, and identities. When looters remove artefacts from their sites, they sever the connection between the objects and the cultural narratives they represent, erasing a community's history and identity. This alienation can harm local populations, who may feel a sense of loss and disconnection from their heritage, impacting their cultural pride and continuity. The illicit antiquities trade is a lucrative global market that often thrives in regions with unstable economies. Looters may be motivated by poverty and lack of employment opportunities, viewing looting as a means of survival. However, this short-term economic gain for individuals does not benefit the broader community and can result in long-term financial

consequences. Potential avenues for sustainable economic development through responsible tourism and cultural heritage promotion are lost as sites are destroyed. In contrast, adequately managed archaeological sites can generate jobs and revenue while fostering community engagement with their heritage.

The looting of archaeological monuments is often linked to organised crime and international trafficking networks. The illegal trade of antiquities can fund other forms of criminal activity, including drug trafficking and human rights abuses. This situation complicates the efforts to combat looting, requiring coordinated law enforcement action across borders to dismantle these networks. The involvement of criminal organisations further exacerbates the risks to heritage, as they often resort to violence and intimidation to protect their operations. The issue of looting and illegal export raises significant ethical dilemmas for collectors, museums, and governments. Many institutions grapple with the provenance of artefacts in their collections, raising questions about their acquisition and role in perpetuating looting. The challenge lies in balancing the preservation of cultural heritage with legal ownership and ethical considerations regarding return, restitution and repatriation. In response to these challenges, international organisations, both governmental and nongovernmental, such as UNESCO and the International Council of Museums (ICOM), have developed conventions and guidelines to combat the illicit trade and trafficking in cultural property and promote the significance of protecting archaeological sites.

Trading with archaeological monuments can question cultural heritage, historical knowledge, and community identity. Addressing this complex issue requires a multifaceted approach, including better education about the importance of heritage preservation, enhanced legal frameworks, and international cooperation to combat trafficking networks. By fostering a greater understanding of the value of archaeological sites and promoting responsible tourism and cultural engagement, societies can work towards protecting their cultural heritage for future generations. Ethical considerations are also paramount in discussions about ownership rights of archaeological heritage. Archaeologists are increasingly called to adopt practices prioritising collaboration with local communities, transparency, and respect for cultural sensitivities. The ethical imperative to engage with stakeholders, including local populations and indigenous groups, fosters a more inclusive understanding of heritage and ownership. This collaborative approach helps build trust and ensures that archaeological research benefits the communities whose heritage is being studied.

Besides the illicit trade and trafficking of archaeological artefacts, it is imperative that each artefact be appropriately stored, inventoried, conserved, and made accessible for research

purposes. However, the process of managing these artefacts is both costly and time-consuming. The challenges are exacerbated by the insufficient infrastructure and available space for the proper storage and preservation of such a large volume of materials. The requisite procedures for handling archaeological artefacts, including cataloguing, conservation, and accessibility, are not only resource-intensive but also necessitate the employment of specialised personnel and facilities equipped to ensure the artefacts' protection and integrity. As a result, a significant backlog of items often accumulates, further hampering the efficiency and effectiveness of archaeological institutions.

Moreover, the increasing volume of archaeological finds occurs in the context of limited financial resources, competing priorities, and administrative constraints, which collectively hinder the adequate stewardship of cultural heritage. Consequently, there is an urgent need for a comprehensive strategy that addresses these logistical challenges, ensuring that archaeological objects are preserved in accordance with best practices, protected from deterioration, and remain accessible for ongoing research and educational inquiry. This strategy should also consider the establishment of collaborative frameworks among local, national, and international entities to enhance resource allocation, capacity building, and the overall management of archaeological heritage. The state being the sole owner of archaeological heritage might not be the only answer to those problems anymore.

The assertion that state ownership of archaeological heritage may not be the singular solution to the myriad challenges associated with the management, preservation, and accessibility of such heritage, preventing looting and illicit trade warrants careful examination. While state ownership has traditionally been viewed as a viable mechanism for safeguarding cultural artefacts, it presents several limitations that necessitate the exploration of alternative or complementary frameworks. Firstly, centralising ownership within the state can sometimes lead to bureaucratic inefficiencies. Government agencies often face challenges related to funding, staffing, and logistical constraints, which can impede effective stewardship. As a result, many archaeological finds may remain unprocessed or improperly stored, diminishing their potential for research and public engagement. Moreover, the concentration of ownership can foster a disconnect between communities and their cultural heritage. When the state serves as the sole custodian, local communities may feel alienated from their historical assets, leading to a lack of cultural engagement and stewardship at the grassroots level. This disconnect can undermine efforts to foster a broader public appreciation for archaeology and heritage conservation. Furthermore, the complexities of modern archaeology often require interdisciplinary approaches that may not align neatly with traditional state-centric models of ownership.

Collaborations with indigenous groups, local stakeholders, private entities, and non-governmental organisations can probably enhance the management of archaeological resources by integrating diverse perspectives and expertise. Such partnerships can lead to more innovative solutions for conservation and provide pathways for sustainable development that benefit both communities and their heritage. In addition, there is growing recognition of the importance of ethical considerations in the stewardship of archaeological heritage. Instead of strictly viewing cultural artefacts as state property, it may be more beneficial to adopt frameworks that prioritise shared responsibility and co-management or simply private ownership. Lastly, the advent of modern technology offers new strategies for the documentation and dissemination of archaeological knowledge. Digital platforms, virtual exhibitions, and decentralised databases can complement traditional state-run initiatives, allowing broader access to artefacts and information related to archaeological heritage. While state ownership of archaeological heritage and treating it differently from the rest of cultural heritage has its merits, the complexities of contemporary challenges necessitate a reevaluation of this paradigm.

As societies become more aware of the significance of their cultural heritage, the discourse surrounding ownership will continue to evolve. Acknowledging the perspectives of nations, communities, and the global population is essential for fostering respectful and effective stewardship of archaeological resources. Through international cooperation, legal reform, and ethical practices, we can work towards a shared understanding that honours the past while safeguarding the future of our collective cultural heritage. By doing so, we can navigate the complexities of ownership rights in a manner that reflects the diverse values and historical narratives embedded within archaeological heritage. Looting, destroying, and illegal trade and trafficking of archaeological monuments presents a significant threat to cultural heritage worldwide, leading to irreversible damage to historical sites and the loss of invaluable knowledge about past civilisations. Various factors drive this illicit activity, including economic gain, antiquity demand, and inadequate legal protections. The consequences extend beyond the immediate destruction of monuments, they have far-reaching implications for archaeology, cultural identity, and society.<sup>4</sup>

Additionally, over time, there has been a noticeable shift in the legal and economic framework governing state-owned property, with more and more assets transitioning from the sphere of *imperium* (state authority and public law) to the sphere of *dominium* (private

---

<sup>4</sup> J.H. Merryman, *The Public Interest in Cultural Property*, California Law Review, vol. 77, no. 2, Berkeley 1998; L.V. Prott, P.J. O’Keefe, ‘*Cultural Heritage*’ or ‘*Cultural Property*’, *International Journal of Cultural Property*, vol. 1, no. 2, Cambridge University Press, Cambridge 1992, also: J.L. Sax, *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures*, The University of Michigan Press, Michigan 2001.

ownership and civil law relations). This transformation reflects broader trends in privatisation, decentralisation, and changing attitudes toward the management of public assets. One of the most striking examples of this shift is the privatisation of roads, which were once exclusively under public ownership. In many jurisdictions, roads and infrastructure that were historically maintained by the state are now in the hands of private entities, whether through direct ownership or long-term concessions. This shift signifies a move toward a model where even essential public services are managed within private legal frameworks. A similar trend is visible in the realm of monuments and archaeological heritage. Historically, such cultural assets were regarded as belonging to the state, preserved under strict public law regulations. However, an increasing number of monuments are now privately owned, sometimes incorporated into commercial ventures such as museums, hotels, or event spaces. Archaeological heritage, once considered an inalienable public good, is also becoming subject to private ownership, often through acquisitions, inheritance, or transfers from the state to private entities or local authorities. This transformation is not merely a legal shift but also reflects the changing societal and economic roles of monuments and heritage. Where they were once primarily viewed as national symbols under state protection, today, they are increasingly treated as assets that can be developed, repurposed, or even commodified. Private ownership of heritage sites has introduced new dynamics, balancing conservation with economic exploitation. While this can lead to better preservation through investment and management by dedicated owners, it also raises concerns about access, long-term protection, and potential commercialisation at the expense of historical integrity. As the distinction between *imperium* and *dominium* continues to blur, the role of the state is evolving from an exclusive owner and guardian to a regulator overseeing the transfer and management of such assets. This ongoing transformation prompts critical legal and ethical debates about how to balance private property rights with the broader public interest in preserving historical and cultural heritage.



## Methodology and concept of the book

In the present dissertation, the primary methodologies employed are dogmatic analysis, empirical examination, and theoretical descriptive frameworks. It is essential to recognise that each legal instrument possesses both normative and empirical dimensions. Specifically, the validity of the norms encapsulated within a legal act constitutes one facet, while the practical application of said norms represents a distinct but equally significant aspect, hence the descriptive part of the currently legally binding legislation, together with the application of those norms.

To enhance the robustness of this analysis, various international instruments, particularly those established by UNESCO, have been integrated into the framework of inquiry. Additionally, relevant national legislations, Polish, and from three disparate jurisdictions within the Europe has been meticulously examined, two of them as a members of the European Union. The rationale for this selective focus on European legal paradigms for the comparison of ownership rights pertaining to archaeological monuments is predicated on the comparative similarities inherent in the sources of law and the overarching legal systems prevalent in these jurisdictions being in one continent. This methodological approach aims to elucidate the nuances and variances in the interpretation and enforcement of ownership rights, while situating the discussion within a broader context of international legal standards and regional legal practices but keeping it within certain borders. The interplay between normative validity and empirical application presents a fertile ground for further scholarly inquiry, particularly in the sphere of cultural heritage law.

The justification for employing a Latin title in this dissertation also requires an explanation. Primarily, the term *res extra commercium*, which translates to "things outside of commerce," is a well-established Latin phrase originating from Roman law. This concept pertains to items that are not subject to private ownership or commercial transactions, encompassing objects and resources regarded as too vital or significant to society to be commodified. While it would be reasonable to select a title that would explicitly reflect the thesis of this dissertation, namely, that archaeological monuments should not categorically be classified as *res extra commercium*, adhering strictly to established terminology may constrain the introduction of innovative perspectives and novel ideas. The absence of a definitive counterpart to the concept of *res extra commercium* suggests the merit in utilising the Latin phrase *res in commercio* or "things in trade." This choice is not intended to create a new legal

category but rather to signify the potential for commercial transactions involving archaeological artefacts.

Moreover, the field of archaeology often conjures imagery of significant historical discoveries, such as the remains of ancient Egypt, mummies, pyramids, and monumental tombs. Popular culture representations, embodied by figures like Lara Croft and Indiana Jones, evoke a sense of adventure and exploration associated with historic treasures, including gold, jewellery, and other artefacts. When contemplating archaeology, one predominantly envisions antiquity and ancient civilisations. The use of Latin is particularly fitting, as it was the *lingua franca* during the Roman era when the doctrine of *res extra commercium* was first conceptualised, and it continues to resonate within the realm of legal discourse, particularly regarding the early papal bulls that addressed the protection of the property of the Catholic church, including monuments. One of the states whose legislation is to be discussed, Italy, for centuries, used Latin as its prime language. While this dissertation will expand the definition of archaeology beyond mere antiquity to encompass a broader temporal and cultural spectrum, the allure of antiquity, often represented by visually striking, timeworn artefacts, tends to be more readily accessible to the reader's imagination than more modern metallic or plastic objects from the twentieth century. In sum, the decision to adopt a Latin title aims to convey a sense of historical continuity and scholarly rigour while also providing a platform for discussing the complexities and nuances surrounding the commercial potential of archaeological artefacts. By doing so, this work seeks to challenge prevailing notions associated with *res extra commercium* and stimulate a discourse on the dynamic interplay between cultural heritage and commerce in the modern context.

Worth mentioning is also that the thesis is grounded in the theoretical and philosophical aspects of law, with a particular focus on some civil law principles. While it incorporates civil law perspectives to support its arguments, issues related to criminal and penal law have been deliberately excluded from the scope of this work. This decision was made to maintain a clear and focused analysis within the chosen legal framework, ensuring a more in-depth exploration of the selected theoretical and philosophical concepts.

Certain concepts have been intentionally excluded from the scope of this work, particularly the issue of human remains and their classification as cultural heritage, including archaeological monuments. This exclusion is largely due to the absence of clear and comprehensive legal frameworks, both in Polish national law and in the majority of countries around the world. Moreover, the handling of human remains in cultural heritage contexts is often subject to significant discretion by conservation authorities and archaeologists, leading to

a lack of consistency in approach.<sup>5</sup> This lack of standardised regulation was further highlighted by the discussions at the ICOMOS-ICLAFI meeting held in Poland in June 2023, entitled "Human Remains in the Context of Cultural Heritage," where participants acknowledged the wide variety of legal responses to this issue and noted that some countries have no legal provisions in place whatsoever. Given the absence of targeted legal regulations in Poland and the considerable flexibility allowed in addressing this issue, it was decided to exclude this subject from the analysis in this work.

Another area excluded from the scope is the concept of space heritage, particularly in relation to auctions where such artefacts have already been sold at. Some of these items could be classified as archaeological monuments, especially those that have been retrieved through research methodologies commonly applied in archaeology. However, the legal complexities surrounding the trade of space-related cultural objects, as well as the challenges in defining their status within the framework of cultural heritage law, led to the decision to omit this topic from the current study as well. Both topics- human remains and space heritage- present unique challenges that require specialised legal analysis beyond the scope of this work.

The primary research thesis posited in this work articulates the assertion that ownership of property by an entity does not inherently restrict the legal circulation of that property unless it is explicitly mentioned in a legal act. Specifically, this inquiry focuses on the State Treasury's ownership rights concerning archaeological artefacts. At its core, the thesis suggests that merely owning property does not provide an automatic barrier to its transfer or circulation in legal terms. This points to a broader legal principle: the distinction between ownership and the rights associated with that ownership. Ownership implies control and the right to use, but unless there are specific legal restrictions stated in a contract, law, or another legal act, the owner may not have the unilateral power to prevent the transfer of that property to others. Through this multifaceted exploration, the thesis aims to contribute to the ongoing dialogue about property rights, cultural ownership, and the responsibilities of state entities in preserving and managing archaeological artefacts for future generations. This central thesis is systematically substantiated throughout the subsequent chapters by employing a variety of examples and case analyses, which encompass the philosophical conflict between liberalism and communitarianism, as well as the application of relevant civil law provisions.

---

<sup>5</sup> This lack of standardised regulation was further highlighted by the discussions at the ICOMOS-ICLAFI meeting held in Poland in June 2023, entitled "Human Remains in the Context of Cultural Heritage," where participants acknowledged the wide variety of legal responses to this issue and noted that some countries have no legal provisions in place whatsoever.

In addition to the main thesis, several ancillary theses are explored to further substantiate the leading argument. Among these supplementary theses is the exploration of the aforementioned tension between liberalism and communitarianism, which ought to be considered within the broader context of cultural heritage preservation rather than being narrowly confined to the specific domain of archaeological heritage. This perspective underscores the implications of state ownership over archaeological artefacts and its influence on public access and cultural engagement. Moreover, it is posited that the legal concept of *res extra commercium*, which denotes objects excluded from commerce, does not confer any additional protective measures for archaeological heritage. Instead, this designation may inadvertently foster an unjustified separation between archaeological artefacts and the public, thereby limiting communal appreciation and engagement with cultural heritage. Furthermore, the discourse highlights that private individuals possess the capacity to ensure equivalent protection for archaeological heritage as does the state. This notion emphasises that the interests of private entities in relation to archaeological artefacts do not necessarily conflict with those of the state. The safeguarding of archaeological heritage, therefore, remains a crucial function that transcends the identity of the rights holder.

The examination of ownership rights as a fundamental aspect of property law within the specific context of archaeological artefacts reveals a complex landscape. In the Polish national law exists a minimum of five distinct legal scenarios in which ownership of archaeological artefacts may be held by entities other than the State Treasury. These scenarios must be carefully examined, as they imply a recognition of various forms of ownership and stewardship that can coexist alongside state interests, ultimately enriching the dialogue surrounding the protection and management of archaeological heritage within broader societal contexts. Thus, this research endeavours to contribute to the scholarly discourse on property rights, cultural heritage, and the intricate balance between public and private interests in the realm of archaeological preservation.

Moreover, it is increasingly advocated in one of theses that, rather than employing the concept of ownership in relation to archaeological heritage, the terminology of stewardship should be adopted. The employment of the term "stewardship" conveys a more nuanced understanding of the relationship between individuals or entities and archaeological artefacts. Unlike ownership, which inherently implies absolute control and entitlement over an object, stewardship emphasises a fiduciary responsibility to protect, preserve, and manage cultural heritage for current and future generations. This is not only "semantics", this shift in terminology reflects a broader recognition that archaeological artefacts and sites are not merely

commodities to be owned, but integral components of cultural identity and collective heritage that require careful management and conservation. Adopting the concept of stewardship serves to acknowledge the interconnectedness of communities and their cultural heritage. It asserts that archaeological items and sites belong to the collective heritage of humanity, transcending individual claims of ownership. The notion of stewardship also reinforces the duty of care that individuals, organisations, and governments have towards archaeological heritage. It implies that stakeholders have an obligation to engage in practices that ensure the protection and accessibility of such heritage, as well as to foster public education and engagement regarding its significance. Through stewardship, the emphasis shifts from possessive rights to collaborative efforts that involve local communities, scholars, and cultural institutions in the conservation and interpretation of archaeological sites and artefacts.

In addition to reinforcing the primary thesis, the secondary thesis asserts that the research findings do not reveal significant connections between the levels of illegal trade in archaeological artefacts, encompassing both black and grey markets, and the intentional destruction of these artefacts and their subsequent reduction in legal protection. This observation raises important questions about the effectiveness of current legal frameworks in safeguarding archaeological artefacts. It suggests that the mere existence of legal protections may not significantly deter illegal activities or the deliberate damage inflicted upon these culturally significant items. This could imply that enforcement mechanisms or the legal definitions surrounding protection are insufficient or inadequately applied. Moreover, archaeological artefacts, which are often viewed as integral pieces of cultural heritage, are already circulating within the art market. This situation highlights a notable inconsistency: certain items are excluded from legal circulation due to a misinterpretation of the legal principle known as *res extra commercium*, which traditionally pertains to things that are outside of commerce and cannot be owned or traded. The thesis posits that such artefacts should be recognised as legitimate components of the art market, akin to other forms of cultural heritage, such as fine art, paintings, or sculptures. By advocating for the official inclusion of these archaeological artefacts in the art market, the thesis suggests a reevaluation of existing legal frameworks.

The work was written in a way that it is structured into six separate chapters, each dedicated to a specific aspect of the overarching subject matter. Each chapter concludes with succinct summaries of key findings, while the final section of the work presents comprehensive major conclusions that synthesise the insights drawn from the preceding discussions.

Chapter One is dedicated to the deconstruction of various concepts, including fundamental terms such as cultural heritage, cultural goods, and monuments, with a particular focus on archaeological artefacts as integral components of cultural heritage. Additionally, it addresses the challenges associated with defining archaeological heritage. In this chapter, a critical examination of the terminology and frameworks is done that underpin the discourse surrounding cultural heritage. By deconstructing these concepts, the chapter seeks to clarify their meanings and implications, thereby establishing a solid foundation for the analysis that follows in subsequent chapters.

Chapter Two is dedicated to the examination of legal frameworks governing the protection of archaeological heritage. It explores a spectrum of regulatory approaches, beginning with general legal instruments in which archaeological heritage is subsumed under the broader category of cultural heritage, and extending to more specialized legislative measures enacted specifically to address the unique characteristics and preservation requirements of archaeological assets. This chapter subsequently presents an in-depth analysis of the legal regime applicable in Poland, offering a comprehensive overview of the national system for the protection of cultural heritage. Within this context, particular attention is given to the statutory and institutional mechanisms for safeguarding archaeological monuments, which serve as a representative case study of how a domestic legal system can implement heritage protection policies. The very typical model of the legal regulation- example of Polish law is used to illustrate the interplay between international obligations, national legislation, and administrative practice in the field of cultural heritage conservation.

Chapter Three is grounded in the philosophical and normative debate between liberalism and communitarianism. It begins by defining and contextualising these two theoretical frameworks, tracing their evolution and examining their relevance in contemporary political and legal discourse. The analysis then transitions into an exploration of how the core tensions and principles underlying this debate inform differing conceptions of collective responsibility, individual rights, and the role of the state. Building upon this foundation, the chapter applies the liberal-communitarian debate to the field of cultural heritage protection, with particular emphasis on the safeguarding of archaeological sites and monuments. It critically assesses how liberal and communitarian paradigms influence legal and policy approaches to heritage preservation, whether emphasizing universal individual rights and market-based solutions, or prioritising collective memory, identity, and community-based stewardship. Through this lens, the chapter seeks to elucidate the normative assumptions that

underpin legal regimes for cultural heritage protection and their practical implications for archaeological conservation.

Chapter Four focuses on the Roman legal concept of *res extra commercium*, as it pertains to the subject matter of the study. The chapter begins with an examination of the historical origins and development of this institution in classical Roman law, particularly its function in designating certain objects or properties as outside the bounds of private commerce due to their sacred, public, or otherwise inalienable nature. The discussion then transitions to contemporary legal interpretations and applications of *res extra commercium*, especially in relation to cultural and archaeological heritage. The chapter analyses how this concept has been adapted or invoked in modern legal systems to restrict the commodification of cultural assets, positioning certain categories of heritage, such as archaeological artefacts, as belonging to the public domain and thus exempt from private ownership and trade. Furthermore, the chapter explores the legal mechanisms governing the possession, ownership, and commercial exchange of archaeological objects. It reviews both permissible and prohibited practices under frameworks, highlighting the legal tension between cultural property protection and private market activity. Through this lens, *res extra commercium* is presented not only as a historical doctrine, but also as a normative foundation for contemporary legal efforts aimed at the preservation and ethical stewardship of cultural heritage.

Chapter Five addresses the issue of discretionary authority exercised by heritage conservation officials and the potential adverse consequences that may result from its unregulated or inconsistent use. The chapter critically examines the legal and administrative dimensions of conservation powers, focusing on how broad discretion, when not clearly defined or subject to oversight, can lead to inefficiencies, legal uncertainty, or even the mismanagement of cultural property. Special attention is given to the challenges posed by the management of mass heritage, that is, large volumes of artefacts or sites, particularly archaeological objects that are unearthed in significant numbers. The chapter explores the complexities involved in the proper storage, documentation, and conservation of such artefacts, especially when institutional resources are limited. Moreover, it considers the issue of *social utility* of heritage objects: how and to what extent cultural property, especially archaeological finds, can be made accessible and meaningful to the public. This includes discussions on the balance between preservation and public engagement, the educational and cultural roles of archaeological heritage, and the criteria by which the social value of an artefact is assessed. Through this discussion, the chapter raises broader normative questions about the objectives of heritage protection, whether it should

serve primarily as a legal safeguard for historical authenticity, or also as a tool for community development, cultural dialogue, and public benefit.

Chapter Six presents a comparative analysis of three selected legal frameworks governing the protection of archaeological heritage, each representing a distinct regulatory approach. The chapter begins with an examination of the highly conservative model employed in Italy, where state ownership and strict control over archaeological assets are central features. Italian law reflects a strong presumption in favour of state custodianship, with limited space for private ownership or market circulation of archaeological objects. Then, the analysis turns to Germany, which represents an intermediate or hybrid approach. German law combines state oversight with certain allowances for individual participation and private ownership within *lands*, provided that key protections and reporting obligations are upheld. This system seeks to strike a balance between public interest and individual rights in the treatment of archaeological heritage. The chapter also explores the liberal model of England, where the legal framework is comparatively permissive. The purpose of this comparative inquiry is to critically evaluate the strengths and weaknesses of each model in order to determine which regulatory approach offers the most effective, sustainable, and socially beneficial framework for the protection of archaeological heritage. The chapter seeks to identify best practices that could inform future policy development, taking into account legal clarity, enforcement capacity, stakeholder engagement, and the broader cultural significance of heritage conservation.

The dissertation concludes with a synthesis of key findings related to the protection of archaeological heritage. It reflects on the broader normative tensions between liberalism and communitarianism, particularly as they influence legal and policy approaches to cultural heritage. The final chapter offers critical insights into how these competing philosophical frameworks shape the goals, limitations, and implementation of heritage protection systems. Importantly, the conclusion also proposes a possible pathway toward reconciling these perspectives. Rather than viewing liberal and communitarian models as mutually exclusive, it suggests an integrative approach, one that acknowledges the importance of individual rights and market participation while also affirming the collective value, identity, and continuity embedded in archaeological heritage. This proposed resolution aims to inform future legal reforms and policymaking, ensuring that the protection of archaeological heritage remains both effective and socially grounded.

## Chapter 1

### Archaeological monuments as a part of cultural heritage

#### Introduction

Cultural heritage is an intricate concept that invites diverse interpretations based on individual experiences, cultural backgrounds, and societal values. While it encompasses a shared inheritance of history, traditions, and artefacts, the meanings and significance attributed to these elements can vary widely.<sup>6</sup> One of the most intriguing aspects of cultural heritage is the way in which people assign names to places, practices, and objects, reflecting their unique perspectives. This chapter explores the impact of nomenclature on our understanding of cultural heritage. It elucidates the significant ways in which both individual and collective identities inform our perceptions regarding the subsequent protection of such heritage. The terminology used in reference to cultural heritage can carry broad or narrow interpretations, influencing various dimensions of protection, interpretation, and appreciation. The concept of cultural heritage encompasses a range of elements, including tangible assets such as artefacts, monuments, and historic sites, as well as intangible elements, including traditions, oral histories, and cultural practices. Notably, certain aspects of cultural heritage, such as intangible heritage, have only been formally acknowledged in recent years, reflecting a growing understanding of the diversity and complexities inherent in cultural heritage. The gradual recognition of these different dimensions of cultural heritage is crucial, as it shapes legal frameworks and policies designed for its protection.

The shift towards a more inclusive definition underscores the importance of considering both individual and collective identities in the discourse surrounding cultural heritage. The interplay between naming and identity can directly influence advocacy efforts, funding priorities, and legal protections associated with various forms of cultural heritage. Consequently, the manner in which cultural heritage is conceptualised and labelled not only impacts public perception but also guides the allocation of resources and the formulation of protective measures. This chapter illustrates that the naming of cultural heritage significantly influences our understanding and interpretation of its value and importance. The evolution of these concepts, particularly concerning the recognition of intangible heritage, serves to enhance

---

<sup>6</sup> UNESCO Institute for Statistics, UNESCO Framework for Cultural Statistics 2009; see: *What is Cultural Heritage? Whose Culture? The Curation and Management of World Heritage*, Department of History and Art and Architecture, Harvard University, <https://projects.iq.harvard.edu/whoseculture/what-world-heritage>; Cultural Heritage, Culture and Creativity, European Commission, <https://culture.ec.europa.eu/cultural-heritage> [available on: 08.11.2025].

the frameworks for cultural heritage protection and underscores the necessity for a comprehensive approach that acknowledges the intricate nature of cultural identity in safeguarding human's shared heritage.

Names carry weight, they encapsulate histories, evoke emotions, and hint at deeper meanings. There are various names for a single object or concept within different cultures. For example, the ubiquitous "tree." In English, it's simply called a tree, but in different languages, it might be referred to as *árbol* in Spanish, *arbre* in French, or *baum* in German. Each word has its cultural connotations and associations that resonate with speakers in distinct ways. Within a language, the words may evoke various narratives or traditions associated with trees, sacred groves in one culture, symbols of life in another,<sup>7</sup> or resources for sustenance in a third. This principle extends to broader aspects of cultural heritage, such as festivals, rituals, and historical sites. The name given to a cultural practice can shape its perception. For instance, the harvest festival might be celebrated under various names, Thanksgiving in the United States, Chuseok in Korea, or Pongal in India.<sup>8</sup> Each term embodies not only the act of giving thanks for a bountiful harvest but also encapsulates the values, history, and unique practices of the community celebrating it.

The interpretation of cultural heritage is equally diverse, shaped by individual experiences, societal changes, and historical contexts. What one group celebrates as a symbol of triumph, another may perceive as a reminder of conflict. For example, the ruins of colonial-era buildings. Some may view them as historical landmarks that showcase architectural prowess and resilience, while others might see them as painful reminders of colonial oppression and cultural erasure.<sup>9</sup> Taking the case of historical monuments in many countries, monuments commemorate figures considered heroes, yet they can provoke controversy when different groups interpret their legacies differently.<sup>10</sup> In the United States, the debate surrounding statues of Confederate leaders reflects how interpretations of heritage can be seen through varying lenses of memory.<sup>11</sup> For some, these statues represent a connection to ancestry and history,

---

<sup>7</sup> Why our symbol is tree? University of Strathclyde, Glasgow, <https://www.strath.ac.uk/studywithus/ourcampus/whatsoncampus/faithspiritualitysupport/whyoursymbolisatree/#:~:text=The%20Tree%20of%20Life%20represents,and%20the%20interconnectedness%20of%20everything> [available on: 30.12.2024].

<sup>8</sup> See: <https://geographical.co.uk/news/the-holidays-as-big-as-thanksgiving-around-the-world>.

<sup>9</sup> K. Górny, A. Górna, *Dismantling Colonial Monuments in African Cities- an Example of Bissau. In an Empty Plinth Still a Monument?*, *Prace i Studia Geograficzne*, vol. 67.3, Uniwersytet Warszawski, Warszawa 2022, pp. 77-94.

<sup>10</sup> See: The Contested Histories Initiative, *Columbus Monument in Buenos Aires, Contested Histories Case Study #4*, June 2021, [contestedhistories.org/wp-content/uploads/Argentina\\_-Columbus-Monument-in-Buenos-Aires.pdf](https://contestedhistories.org/wp-content/uploads/Argentina_-Columbus-Monument-in-Buenos-Aires.pdf) [available on: 15.11.2025].

<sup>11</sup> See: D.R. Gerhardt, *Law in the Shadows of Confederate Monuments*, *Michigan Journal of Race and Law*, vol. 27, Michigan 2021, pp. 1-89.

while for others, they symbolise systemic racism and oppression. The variance in interpretation highlights the importance of context and the dialogues surrounding heritage.

Naming and interpretation are inextricably linked to the concept of memory, which is inherently a fluid and evolving construct. Individual experiences, familial narratives, and community traditions significantly influence collective memory. This inherent fluidity permits cultural heritage to be dynamic rather than static, allowing for ongoing reinterpretation and adaptation. For instance, a family may transmit heirlooms or traditional culinary recipes across generations. However, each succeeding generation may choose to modify these items to resonate with contemporary social realities or to reflect new cultural understandings. Notably, a traditional recipe may evolve in terms of its ingredients or methods of preparation, yet it retains its cultural significance, serving as a reflection of the family's identity and continuity over time. The same is happening with the definition of cultural heritage, which is evolving and ever-changing gaining new meanings and new parts.

Additionally, oral histories are pivotal in the construction and preservation of cultural heritage. Numerous cultures depend on storytelling as a primary means of knowledge transmission. Through these narratives, community members are empowered to reclaim, reinterpret, and recontextualise their historical experiences. Consequently, the collective memory of a community, a narrative intricately woven from individual experiences, intersects with its cultural heritage. This interplay illustrates how diverse perspectives can coexist and be appreciated within a unified cultural framework, underscoring the complexity and richness of cultural identity.

As we navigate these complexities of naming and interpretation, it is essential to foster inclusivity in discussions surrounding cultural heritage. Acknowledging that multiple viewpoints exist can lead to richer storytelling and preservation efforts. This approach allows for a more comprehensive understanding of heritage that honours all voices. Cultural heritage management can benefit from participatory methodologies that invite community members to share their interpretations and experiences of heritage. Involving local voices in the documentation and presentation of heritage ensures that diverse narratives are recognised, valued, and preserved. This process not only enhances community engagement but also fosters a deeper appreciation for the diversity inherent in cultural heritage.

The act of naming and the varied interpretations of cultural heritage underscore the richness and complexity of human experience. As we encounter the myriad ways cultural elements are defined and understood, we are reminded of the importance of perspective. Our

heritage is not merely a collection of objects and practices, it is a living tapestry that reflects our collective and individual stories.

Archaeological heritage here represents a pivotal intersection among the cultural heritage of our past, present, and future, encapsulating the remnants of human histories that have shaped civilisations across time and space. It encompasses a vast array of material remains, such as ancient artefacts, architectural structures, inscriptions, and entire landscapes, that provide a tangible link to the lives, beliefs, and practices of those who came before us. As a sub-discipline of cultural heritage, archaeological heritage underscores the significance of understanding human civilisations in their totality, revealing how societies have developed, interacted, and transformed over millennia. The allure of archaeological heritage lies in its ability to transport us back to epochs long gone, offering a window into the complexities of human existence.

From the enigmatic stone structures of Stonehenge to the elaborate burial tombs of the Pharaohs in Egypt and the vast ruins of the Mayan cities, archaeological sites tell stories of innovation, adaptation, and resilience. These remnants serve not just as symbols of pristine historical moments but as narratives woven into the fabric of humanity's collective experience, highlighting achievements, struggles, and the continuous quest for meaning. Furthermore, archaeological heritage is critical for understanding the diversity of cultures that have existed throughout history. Each artefact and site reflects distinct socio-political contexts, religious beliefs, and economic systems, showcasing the myriad ways in which humans have expressed their creativity and formulated their identities. Studying these materials allows us to appreciate the rich tapestry of human culture, emphasising that our stories are interlinked and that variation is a fundamental aspect of our shared heritage, but first, there is a need to understand the meaning and background of all of those basic concepts.

It is particularly important to characterise the specific subject of the concepts discussed. Therefore, firstly this chapter reconstructs the concept of cultural heritage in literature, together with the subconcepts included in the term of cultural heritage, such as cultural property, cultural goods, and monuments. Later, these terms are explained in acts of international law. Subsequently, there is a short cogitation on other concepts, like the possibility of having one common heritage of humankind and cultural rights to the cultural heritage, to finally start the discussion around the concept of archaeology, archaeological monuments, and archaeological stewardship, again, first in literature and later in legal acts and doctrine.

### **1.1. Reconstruction of basic concepts (cultural heritage, cultural good, cultural property, monument)**

Cultural heritage encompasses the practices, expressions, knowledge, and artefacts that societies regard as valuable and seek to transmit across generations. This concept can be classified into two principal categories: tangible heritage, which comprises physical objects such as buildings, monuments, and artworks etc., and intangible heritage, which includes oral traditions, rituals, festivals, and traditional knowledge. The understanding of cultural heritage is subject to significant variation contingent upon the particular cultural context and community.<sup>12</sup> For instance, Indigenous cultures frequently interpret heritage as an intrinsic connection to natural landscapes, viewing it as a living entity infused with ancestral significance and traditional practice.<sup>13</sup> This interpretation contrasts with a predominantly Western perspective that prioritises artefacts and monuments as static representations of historical narratives.<sup>14</sup>

Moreover, cultural heritage is not a mere archive of the past but a dynamic construct that reflects and adapts to contemporary identities and societal requirements. Communities may engage in the revitalisation of older practices, contextualising them to maintain relevance in modern society. Monuments represent a specific subset of cultural heritage, often serving as tangible markers denoting historical significance. These structures include statues, sculptures, memorials, and buildings erected to commemorate noteworthy figures, events, or ideologies. The meaning attributed to monuments can diverge dramatically based on the perspectives of various stakeholder groups. The ethical considerations surrounding the preservation of monuments necessitate a critical examination of whose history is being commemorated, as well as which narratives are foregrounded or marginalised. Engaging with these inquiries is essential to fostering a nuanced understanding of the dual nature of cultural heritage as embodiments of historical importance and reflections of contemporary societal values.

---

<sup>12</sup> J. Blake, *On Defining the Cultural Heritage*, *The International and Comparative Law Quarterly*, vol. 49, no. 1, Cambridge University Press, Cambridge 2000, pp. 61-85.

<sup>13</sup> D. Archibald, *Indigenous Cultural Heritage: Developing New Approaches and Best Practices for World Heritage Based on Indigenous Perspectives and Values*, *Proceeding, Recommendations, and Outcomes of the ICOMOS International Scientific Committee Conference and Forum on Indigenous Cultural Heritage, 2019, Protection of Cultural Heritage: New Research, Materials and Technologies in the Protection and Conservation of Historical Monuments*, no. 9, Polish National Committee of International Council on Monuments and Sites ICOMOS-POLAND, Warszawa 2020, pp. 1-13.

<sup>14</sup> D. O'Connor, *The Role of Cultural Heritage in Shaping Modern Identity: A Comparative Study of Eastern and Western Perspectives*, *Journal of Education, Humanities and Social Research*, vol. 1, George Brown Press, Hong Kong 2024, pp. 37-45.

The task of constructing definitions for concepts such as "art," "cultural heritage," and "cultural goods" is inherently complex due to the versatile nature of these terms and their varying interpretations across different legal systems and cultural contexts. These concepts are not only academically rich but also deeply embedded in societal values, historical contexts, and political frameworks, which can influence how they are understood and applied within the law.<sup>15</sup>

The starting point for accurately assessing the scale of the contemporary concept of heritage should be the traditional understanding of a monument. This traditional definition of a monument was established in the early 20th century when the foundational principles of a systematic approach to monuments and their preservation were first formulated.<sup>16</sup> The traditional understanding of a monument has emerged as a construct of European culture, specifically developed for the purpose of safeguarding the continent's architectural heritage and that of several prominent, now-extinct civilisations. However, the monuments thus defined represent only a minor portion of the entirety of architectural and urban assets, being restricted to a select group of canonical objects and specific functions, including ecclesiastical structures, public buildings, military edifices, and historic urban complexes. The framework for evaluating these specifically defined monuments was primarily oriented toward their artistic, scientific, and historical significance. Within this delineated resource, it became feasible to unequivocally assess value, thereby facilitating a clear differentiation between "monuments" and "non-monuments" and later what was considered as a cultural heritage. Consequently, the compendium of monuments was well-defined, quantifiable, and finite, which allowed for the establishment of explicit conservation principles that could be universally applied. Conservators retained the autonomy to determine the methods and approaches to the maintenance of such a collection of monuments. The limited quantity of monuments, combined with their elevated value, further justified the selection of suitable contemporary uses for these artefacts, ensuring that such uses aligned with conservation mandates. Additionally, this particular conception of a monument fostered the conviction among conservators that they were empowered to independently delineate both the objects of their focus and the methodologies employed in their undertakings, thus representing a fully autonomous discipline.<sup>17</sup>

---

<sup>15</sup> B.T. Hoffman, Introduction: Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy (in:) B.T. Hoffman (ed.) *Art and Cultural Heritage: Law, Policy and Practice*, Cambridge 2006, p. 14.

<sup>16</sup> See: J. Jokilehto, *A History of Architectural Conservation*, Butterworth-Heinemann, Oxford 2002; N.S. Price (ed), *Historical and Philosophical Issues in the Conservation of Cultural Heritage*, Getty Conservation Institute, Los Angeles 1996; L. Schmidt, *Architectural Conservation; An Introduction*, Westkreuz-Verlag, Bonn 2008.

<sup>17</sup> B. Szmygin, *Światowe Dziedzictwo Kultury UNESCO - Charakterystyka, Metodologia, Zarządzanie* [UNESCO World Cultural Heritage - Characteristics, Methodology, Management] Polski Komitet Narodowy ICOMOS-Politechnika Lubelska, Warszawa-Lublin 2016, p. 15.

However, the word ‘monument’ is very often interchangeable with ‘cultural property’ or ‘cultural good’. Cultural goods comprise the physical products and items generated by a culture that possesses both socio-economic and symbolic value. This category includes a range of items, including traditional crafts, artworks, food, and clothing. Cultural goods are significant not merely for their aesthetic qualities but for the cultural narratives they convey, encapsulating traditions, beliefs, and community values. The contextual understanding of cultural goods varies considerably. In certain societies, artefacts may be regarded as sacred or as embodiments of communal identity, while in others, their value may be primarily commercial. The commodification of cultural goods raises pertinent issues concerning authenticity, ownership, and sustainability. For example, the global market for Indigenous crafts has the potential to exploit artisans and dilute cultural significance when traditional practices are modified for mass consumption.

Cultural goods also serve as vehicles for cultural exchange and dialogue. Through the sharing of cultural products, communities can create opportunities for cross-cultural understanding and appreciation. Festivals, exhibitions, and collaborative projects facilitate such exchanges, allowing diverse cultures to learn from one another. However, it is critical that these exchanges occur with due respect for the originating communities to prevent appropriation and to honour the context from which these cultural goods emerge.

The legal definition of cultural heritage is encompassed by vast international cultural heritage law contained in various cultural conventions, specialist areas of international law, and general international law developed in the last century and ever-changing and evolving.<sup>18</sup> In chronological order, from the first Convention, in 1954, the definition started with tangible heritage and its protection in the Convention for the Protection of Cultural Property in the Event of Armed Conflict.<sup>19</sup> In article 1, cultural property is considered as:

- a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of

---

<sup>18</sup> A.F. Vrdjolak, F. Franconi, Introduction [in:] F. Franconi, A.F. Vrdjolak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 2.

<sup>19</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 240 – further: the 1954 Hague Convention.

archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centers containing monuments".

Almost two decades later, in Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,<sup>20</sup> the cultural heritage gained the meaning of cultural property

which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories: (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ;(d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs ; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections ; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; (k) articles of furniture more than one hundred years old and old musical instruments.

In the 1995, UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects,<sup>21</sup> cultural heritage is diminished to

cultural objects which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

---

<sup>20</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970, entered into force 24 April 1972) 823 UNTS 231 – further: the 1970 UNESCO Convention.

<sup>21</sup> UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (adopted 24 June 1995, entered into force 1 July 1998), 34 International Legal Materials 1322, art 1 and annex – further: the 1995 UNIDROIT Convention; art 1 and annex.

While the 1954 Hague Convention, together with the 1970 UNESCO Convention, referred to cultural property in 1972, there was a shift towards cultural heritage. In this manner, the Convention concerning the Protection of the World Cultural and Natural Heritage<sup>22</sup> defines in article 1 cultural heritage:

as monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

This Convention also creates a definition of natural heritage.

In 2001, under the Convention on the Protection of Underwater Cultural Heritage<sup>23</sup> was distinguished a new subcategory of cultural heritage- an underwater cultural heritage, being described in article 1 as:

all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character; (b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage. (c) Installations other than pipelines and cables placed on the seabed and still in use, shall not be considered as underwater cultural heritage.

---

<sup>22</sup> Convention concerning the Protection of the World Cultural and Natural Heritage (adopted on 16 November 1972, entered into force 17 December 1975), 1037 UNTS 151 – further: the 1972 UNESCO Convention.

<sup>23</sup> Convention on the Protection of Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009) 2562 UNTS 1 – further: the 2003 UNESCO Convention.

Finally, in 2003, with the Convention for the Safeguarding of the Intangible Cultural Heritage,<sup>24</sup> to the material, tangible part of cultural heritage was added intangible cultural heritage, described in article 1 as:

the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage.

Ultimately in 2005 with the Convention on the Protection and Promotion of the Diversity of Cultural Expressions<sup>25</sup> cultural diversity was announced as evident not only in the various ways that humanity's cultural heritage is expressed, enhanced, and communicated through different cultural forms, but also in the multiple methods of artistic creation, production, dissemination, distribution, and appreciation, regardless of the means and technologies employed.<sup>26</sup>

".... for various reasons, each Convention and Recommendation has a definition drafted for the purposes of that instrument alone; it may not, at this stage, be possible to achieve a general definition suitable for use in a variety of contexts."<sup>27</sup> The "battle of concepts" between cultural heritage and cultural property, cultural goods or maybe even notion of monument, both in literature and in international law revolves around the distinction and relationship between these terms. Cultural property refers to tangible items that have cultural significance, while cultural heritage encompasses a broader, more abstract concept that includes the values, traditions, and practices associated with those items.

The incorporation of the term "cultural heritage" has necessitated a fundamental transformation in the underlying rationales for protective measures. It has become evident that mere physical protection is inadequate, given the recognition of the dichotomy between the tangible 'property' and intangible 'cultural' aspects of monuments and artworks. The traditional notion of "property," which pertains to tangible cultural objects, emphasises the potential for ownership, centres on maintaining physical integrity, and suggests that such marketable assets possess inherent financial value. However, this framework is enhanced by acknowledging the "cultural" aspects, which encompass the symbolic and scientific values attributed to cultural

---

<sup>24</sup> Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003, entered into force 20 April 2006) 2368 UNTS 1 – further: the 2003 UNESCO Convention.

<sup>25</sup> Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007), 2440 UNTS 311– further: 2005 UNESCO Convention.

<sup>26</sup> Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007), 2440 UNTS 311, part. III-Definitions, art. 4, point 1.

<sup>27</sup> L.V. Prott and P.J. O'Keefe, *Law and the Cultural Heritage*, vol. 1, Professional Books, Oxford 1984, p. 34.

objects, values that transcend mere aesthetic appeal and monetary worth. Consequently, the introduction of the concept of cultural heritage has allowed for a broadening of protective measures beyond the physical structural integrity of cultural assets. This evolution incorporates their intangible human dimension, recognising the profound significance imbued in such objects. These meanings are invaluable to individuals and communities as they serve as the foundation of identity and a testament to their ancestors' histories, societies, and environments. The acknowledgement of both tangible and intangible aspects of cultural heritage underscores the need for comprehensive protection mechanisms that honour and preserve the complex nature of cultural identity.<sup>28</sup>

The debate highlights that cultural property should not be viewed in isolation, it is essential to establish the factual and legal links between cultural property and the specific cultural heritage it represents. This connection is crucial for determining ownership and legal protection. Some argue that while cultural heritage is an ideal concept, cultural property is a concrete manifestation of that heritage. Thus, protecting cultural property is seen as a means to achieve the broader goal of safeguarding cultural heritage.<sup>29</sup>

As different terminology is used to define and reflect the objectives and purposes of the differing legal regimes, there are two aspects of understanding cultural heritage. The first is the movement from emphasis on cultural property to cultural heritage. Accentuating a broader concept of cultural heritage marks a significant evolution in how societies perceive, value, and manage cultural assets. This shift reflects a growing understanding of cultural and historical significance beyond mere ownership and materiality, recognising the dynamic and living nature of culture itself. Historically, the concept of cultural property has focused primarily on tangible assets, such as artefacts, monuments, and artworks, that are often viewed as commodities to be owned, bought, sold, or traded. This property-centric approach emphasises legal ownership, market value, and the protection of specific items based on their historical, artistic, or monetary worth.

However, this focus on cultural property has increasingly been recognised as inadequate to address the complexities of cultural identity and the significance of practices, traditions, and expressions that do not always have a physical form. The move towards the concept of cultural heritage embodies a broader, more inclusive understanding that encompasses both tangible and intangible elements. Cultural heritage acknowledges that the value of cultural expressions lies

---

<sup>28</sup> T. Loulanski, *Revising the Concept for Cultural Heritage: The Argument for a Functional Approach*, *International Journal of Cultural Property*, vol. 13, Cambridge University Press, Cambridge 2016, p. 213.

<sup>29</sup> M. Frigo, *Cultural Property v Cultural Heritage: A 'Battle of Concepts' in International Law?*, *International Review of the Red Cross*, vol. 86, no. 854, Cambridge University Press, Cambridge 2000.

not merely in the objects themselves but also in the knowledge, practices, and meanings associated with them. Thus, cultural heritage encompasses not only artefacts and landmarks but also languages, rituals, customs, and social practices that give life to cultural identity.<sup>30</sup>

The second aspect is the promotion of a holistic understanding of cultural heritage. A holistic understanding of cultural heritage encompasses a comprehensive and integrated perspective that recognizes the interconnectedness of various elements constituting a community's cultural identity. This approach goes beyond merely preserving physical artefacts or sites, it acknowledges the significance of intangible aspects such as traditions, languages, rituals, and community practices that collectively shape a culture. The practices of United Nations human rights bodies, particularly those focused on Indigenous peoples, along with the jurisprudence of regional human rights courts, have underscored the interconnectedness of all forms of cultural heritage, as well as the relationship between natural and cultural heritage.<sup>31</sup>

Cultural heritage is governed by a wide range of legal documents that establish their importance, outline frameworks for preservation, and set standards for safeguarding significant sites. At the national level, many countries have specific laws and regulations regarding the protection of cultural heritage and monuments (chapters 2 and 6). Such laws usually define criteria for designating sites as heritage properties, outline preservation processes, and establish mechanisms for public participation in heritage management. The international mechanism frequently inspires national definitions. Local governments may also implement their own heritage management policies, including zoning laws and local heritage designations aimed at conserving sites of local significance.

Introducing the term "cultural heritage" has necessitated the expansion of international protective frameworks to encompass a broader range of cultural expressions beyond mere artefacts, monuments, and physical sites.<sup>32</sup> This evolution reflects an increased understanding of culture as a compound concept that includes both tangible and intangible components, such as traditions, customs, languages, and artistic expressions. As a result, legal instruments and local regulations have gradually adapted to recognise and safeguard these diverse manifestations of cultural identity. This shift in focus has led to the acknowledgement that protection is not solely about preserving physical items or sites, it also involves safeguarding the cultural practices, beliefs, and expressions that define communities. As national and

---

<sup>30</sup> F. Franconi, A Dynamic Evolution of Concept and Scope: From Cultural Property to Cultural Heritage (in:) A.A. Yusuf (ed.), *Standard Setting in UNESCO, vol. II: Conventions, Recommendations, Declarations and Charters Adopted by UNESCO*, UNESCO, Paris 2007, pp. 221-236.

<sup>31</sup> A.F. Vrdjolak, F. Franconi, Introduction..., p. 4.

<sup>32</sup> A. Chechi, *The Settlement of International Cultural Heritage Disputes, Cultural Heritage Law and Policy*, Oxford University Press, Oxford 2014, pp. 9-36.

international laws evolve, they increasingly reflect the importance of nurturing culture's material and immaterial aspects. This comprehensive approach to cultural heritage aims not only to preserve historical artefacts but also to ensure that living cultural traditions are respected and maintained, thereby fostering a more holistic understanding of cultural identity in an interconnected world. The transformation in legal paradigms highlights the need for collaborative efforts that engage communities in the preservation of their heritage, recognising their active role as custodians of their own cultural narratives.

Furthermore, various international soft law instruments including charters and declarations, like the Venice Charter for the conservation and restoration of monuments and sites,<sup>33</sup> or the Nara Document on Authenticity,<sup>34</sup> provide foundational principles for best practices in cultural heritage conservation, serving as guidelines for member states. These legal instruments collectively emphasise the critical importance of cultural heritage and monuments in preserving identity, historical continuity, and community well-being. They create necessary frameworks for the identification, protection, and sustainable management of cultural heritage, fostering global cooperation and raising awareness of cultural significance worldwide.

## **1.2. Other concepts (common heritage of humankind, cultural rights)**

The concept of the "common heritage of humankind" encompasses the idea that certain resources, cultural practices, and historical artefacts belong not solely to individual states or communities but to all humanity. This principle has gained prominence in international legal discourse, particularly concerning areas such as environmental resources (seabed, ocean floor, subsoil),<sup>35</sup> Antarctica,<sup>36</sup> outer space and Moon,<sup>37</sup> and scientific knowledge.<sup>38</sup>

Historically, the governance and stewardship of archaeological and cultural heritage were often viewed through the lens of state interests. Nations asserted ownership over artefacts, monuments, and sites within their territories, prioritising national pride, economic benefits from tourism, and the preservation of specific cultural narratives. This state-centric perspective

---

<sup>33</sup> International Charter for the Conservation and Restoration of Monuments and Sites, The Venice Charter 1964, International Council on Monuments and Sites.

<sup>34</sup> Nara Document on Authenticity, in Relation to the World Heritage Convention, held at Nara, Japan, from 1-6 November 1993.

<sup>35</sup> United Nations Convention on the Law of the Sea (UNCLOS), (adopted on 10 December 1982, entered into force 16 November 1994, 21 ILM 1261, United Nations, 1982.

<sup>36</sup> Antarctica Treaty (adopted on 1 December 1959, entered into force 23 June 1961), 402 UNTS 71, 1959.

<sup>37</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (adopted in January 1967, entered into force October 1967), 610 UNTS 205, United Nations, 1966.

<sup>38</sup> A. Chechi, *The Settlement of International...*, p. 17.

frequently led to conflicts, particularly in contexts where borders and territorial claims were contested, resulting in the loss or exploitation of cultural resources. However, there has been a notable shift towards recognising common interests associated with the shared heritage stewardship. This transition reflects a broader acknowledgement that cultural and natural resources possess an intrinsic value that transcends national boundaries, serving as a foundation for collective identity and knowledge.

Treaties and conventions concerning cultural heritage illustrate this evolution by promoting the idea that cultural and environmental sites should be preserved for the benefit of all humanity rather than solely for the interests of individual states. This paradigm shift emphasises collaborative preservation efforts and the importance of including diverse voices in cultural heritage management. It encourages international cooperation and dialogue, fostering an understanding that the protection of archaeological and cultural resources contributes to a shared global heritage. This common interest approach seeks to address historical injustices, allowing for the repatriation of artefacts to source communities and recognising the cultural rights of indigenous and marginalised groups. The transition from a state-centred perspective to one that embraces common heritage reflects a more ethical and inclusive framework for cultural preservation. It underscores the necessity of collective responsibility in safeguarding the resources that define our shared human identity, ensuring that future generations can engage with and learn from the rich tapestry of cultures that constitute the heritage of humankind, encompassing both cultural relics and natural heritage. This includes historical artefacts, architectural complexes, and ruins that hold particular historical value or have significant relevance to art or science. Additionally, it encompasses the habitats of plants and animals and natural areas that necessitate protection or preservation.<sup>39</sup>

Nonetheless, as noted by certain scholars, the concept of the common heritage of humankind is not applicable to cultural heritage due to its failure to meet essential criteria,<sup>40</sup> which include: 1) cultural heritage cannot be subject to appropriation; 2) there must be an established international management system that allows all users within the international community to share and utilise it; 3) it should be designated solely for peaceful purposes; and 4) it necessitates an active sharing of benefits derived from it.<sup>41</sup> While the notion of a common heritage of humankind holds promise for fostering international cooperation, the unique characteristics of cultural heritage necessitate a more nuanced approach. Policymakers and

---

<sup>39</sup> The Common Heritage of Mankind, UNESCO video and sound collections, <https://www.unesco.org/archives/multimedia/document-3437> [available on: 14.01.2025].

<sup>40</sup> M. Frigo, *Cultural Property...*, p. 296.

<sup>41</sup> K. Baslar, *The Concept of the Common Heritage of Mankind in International Law*, Martinus Nijhoff Publishers, The Hague-Boston-London 1998, pp. 79- 116.

stakeholders must carefully consider the implications of these fundamental principles, ensuring that cultural heritage is preserved, respected, and shared in ways that honour its deep connections to the communities from which it originates. Cultural resources are not found in areas beyond national jurisdiction, with the exception of wrecks located in international waters, they are instead governed by the sovereignty of the territorial state or owned by private individuals or public institutions. Consequently, claims founded on the principle of the common heritage of humankind may come into conflict with the competing interests of the societies from which these items originate.<sup>42</sup>

Additionally, during armed conflicts, cultural heritage often becomes subject to targeted destruction, looting, and illicit trafficking, resulting in severe repercussions for both the cultural assets themselves and the communities that revere them.<sup>43</sup> The assertion that cultural heritage can be classified as a common heritage of humankind is fundamentally undermined by the fact that these resources are frequently utilised in contexts beyond peaceful intentions. The intricate nature of cultural heritage renders it difficult to isolate these resources for solely peaceful purposes. In the context of military operations, artefacts and cultural sites can be exploited strategically, utilised to bolster claims of legitimacy, or even targeted as symbols of opposing factions. This utilisation further complicates the notion of a universal cultural heritage, which ought to be preserved and respected by all. While legal frameworks impose obligations on parties involved in conflicts to respect and safeguard cultural properties, these provisions often face significant implementation challenges. The realities of armed conflict, including chaos, limited oversight, and competing military priorities, frequently impede effective protection measures. The concept of military necessity can serve as a rationale for exceptions, allowing for actions that may contravene the objective of safeguarding cultural heritage. Consequently, the use of cultural heritage during military conflicts not only jeopardises its preservation but also calls into question the premise of its designation as a common heritage.

A further complication arises in the context of restitution requests, particularly when the concept of identity is invoked to argue for the imperative of restoring cultural and emotional connections between specific artefacts and the communities that are currently living. This raises broader questions about the validity of the notion of a "common heritage of humankind." The argument for identity in restitution signifies that cultural objects are not merely relics of the past but are fundamentally intertwined with the ongoing histories, traditions, and identities of

---

<sup>42</sup> D. Gillman, *The Idea of Cultural Heritage*, Institute of Art and Law, Leicester 2006, p. 9.

<sup>43</sup> T. Kono, Recovery and Reconstruction of Cultural Heritage - the ICOMOS Matrix for Case Studies [in:] M. Marcinkowska, K. Zalasńska (eds.), *The Challenges of World Heritage Recovery*, Narodowy Instytut Dziedzictwa, Warszawa 2019, p. 38.

the communities from which they originate. Proponents of restitution assert that these objects hold significant emotional and cultural value that cannot be adequately appreciated or understood outside their original context. When such items are removed, they sever the essential ties that link them to living communities, disrupting their historical continuity and collective memory. However, the assertion of a common heritage of humankind challenges the acknowledgement of these specific cultural ties. If heritage were genuinely "common," it may imply a shared ownership that dilutes the significance of localised identity claims. This notion tends to overlook the unique cultural narratives and histories tied to individual communities, suggesting instead that cultural heritage belongs to all of humanity equally. In reality, this perspective can undermine the rightful claims of communities seeking restitution, as it positions items as universally applicable rather than recognising their specific importance to particular groups. Ultimately, the argument that there is a common heritage of humankind risks trivialising the significance of cultural objects and the vital emotional and identity-based connections that communities maintain with them. Recognising that heritage is often deeply rooted in specific cultural contexts is essential for understanding the full implications of restitution claims. It highlights the necessity of prioritising the needs and claims of individual communities, allowing them to reclaim their cultural identities and restore the connections with their heritage that have been disrupted by the displacement of these artefacts.

Consequently, in light of the absence of exclusion regarding sovereignty or armed conflicts, the concept of the common heritage of humankind can only imply that protection and conservation efforts are conducted by the territorial state for the benefit of the international community.<sup>44</sup> Therefore, it has been proposed that the matter of protecting cultural heritage ought to be framed within the broader concept of the "common concern of humankind."<sup>45</sup> The concept of the "common concern of humankind" establishes a framework for addressing global challenges. Issues of common concern are those that, by their nature, surpass the borders of any one state and require a coordinated collective response.<sup>46</sup> This concept is particularly applicable to environmental issues which do not adhere to national borders. At a minimum, designating an issue as a common concern underscores the necessity for international collaboration through robust global institutions to confront shared challenges. Where the concept has been invoked, it has facilitated innovative mechanisms for international cooperation and compliance.

---

<sup>44</sup> A. Chechi, *The Settlement of International Cultural Heritage Disputes, Cultural Heritage Law and Policy*, Oxford University Press, Oxford 2014, p. 18.

<sup>45</sup> K. Baslar, *The Concept of the Common Heritage...*, p. 116.

<sup>46</sup> D. Shelton, *Common Concern of Humankind*, Environmental Law and Policy, vol. 39, issue 2, Grassroot Institute, Canada 2009, p. 83.

Furthermore, international administrative or governing bodies that engage with matters of common concern must be equally accountable to all member states, reflecting the collective nature of the issues at hand.

The concept of the common concern of humankind is related to, yet distinct from, the principle of the common heritage of mankind. While the common heritage of mankind typically pertains to geographical areas or resources, the common concern of humankind is focused on specific issues. Consequently, the common heritage framework is more aptly suited for the sustainable management of shared resources, whereas the common concern framework provides a basis for the protection of shared resources that face threats from global challenges. Issues considered to be of common concern are, by their very nature, likely to have enduring adverse effects, which could be catastrophic for future generations. A common concern of humankind emphasises the principle of intergenerational equity.<sup>47</sup> This concept, however, persists as an "embryonic legal notion", lacking a clear and precise definition and probably being too far from the common heritage of humankind concept.

Although the concepts of common heritage of humankind and common concern of humankind may not be universally recognised, human rights undeniably are. The Universal Declaration of Human Rights (UDHR)<sup>48</sup> and the European Convention on Human Rights (ECHR)<sup>49</sup> are seminal documents that establish foundational principles regarding human rights, including cultural rights.<sup>50</sup> Both instruments recognise the importance of culture in the lives of individuals and communities and serve to protect cultural rights as integral to the overall enjoyment of human rights. The UDHR emphasises cultural rights primarily in article 27, which states that

everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

---

<sup>47</sup> C. Bowling, E. Pierson, S. Ratte, *The Common Concern of Humankind: A Potential Framework for a New International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas*, United Nations files, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.un.org/depts/los/biodiversity/prepcom\_files/BowlingPiersonandRatte\_Common\_Concern.pdf [available on: 14.01.2025].

<sup>48</sup> Universal Declaration of Human Rights (adopted on 10 December 1948), General Assembly, United Nations, Paris 1948.

<sup>49</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms (adopted on 4 November 1950, entered into force 3 September 1953), ETS no. 5, Council of Europe, 1950, with amending protocols.

<sup>50</sup> See: A. Jakubowski (ed.), *Cultural Rights as Collective Rights: an International Perspective*, Brill, Leiden 2016.

This provision highlights the importance of not only access to cultural expressions but also active participation in the cultural life of one's community. The UDHR's provisions reflect a commitment to fostering diversity and promoting cultural heritage as essential to human dignity and personal development.

Similarly, the ECHR provides a regional legal framework for the protection of human rights in Europe and indirectly addresses cultural rights. While the ECHR does not contain a specific article solely dedicated to cultural rights, several provisions relate to them. For instance, article 8 protects the right to respect private and family life, which is often interpreted to include aspects of culture.<sup>51</sup> article 10 protects freedom of expression, which encompasses artistic and cultural expression, allowing individuals and groups to engage in cultural practices freely. Both the UDHR and the ECHR reflect a growing understanding that cultural rights are critical to realising other human rights and to the full development of individuals and communities. They emphasise the significance of culture as a means of promoting individual dignity, fostering community cohesion, and enhancing social harmony. By protecting cultural rights, these instruments contribute to a more inclusive society where diverse cultural expressions are acknowledged, respected, and preserved. The Universal Declaration of Human Rights and the European Convention on Human Rights collectively advocate for cultural rights as essential components of human rights. By promoting access to and participation in cultural life, they establish a legal and ethical framework that recognises the importance of culture in fostering human dignity and ensuring the well-being of individuals and societies.

Additionally to these articles, the European Court of Human Rights has interpreted cultural rights within the framework of existing rights in the ECHR. The Court recognises that cultural identity and heritage are fundamental components of individual and collective identity. This recognition has led to rulings where the protection of cultural heritage and the rights of minority communities to preserve their cultural practices have been upheld as vital to the enjoyment of human rights.<sup>52</sup> On 6 October 2016, the Human Rights Council unanimously adopted a resolution<sup>53</sup> urging all states to respect, promote, and protect the right of all individuals to participate in cultural life. This includes the right to access and enjoy cultural heritage, as well as to take appropriate actions to facilitate this right. The resolution further

---

<sup>51</sup> Equality and Human Rights Commission, article 8 protects your rights to respect for your private and family life, <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-8-respect-your-private-and-family-life> [available on: 14.01.2025].

<sup>52</sup> See: Judgement by European Court of Human Rights in the case *Beyler v. Italy* of 3rd January 2000, no. 33202/96.

<sup>53</sup> Resolution adopted by the Human Rights Council on 30 September 2016, 33/20 Cultural rights and the protection of cultural heritage, Human Rights Council, 33 session, UN General Assembly, 2016.

determines that the Human Rights Council will maintain ongoing attention to this issue. On 31 March 2022, the Human Rights Council unanimously adopted another resolution, once again titled “Cultural rights and the protection of cultural heritage.”<sup>54</sup> In this resolution, the Council requested that the United Nations High Commissioner for Human Rights, in collaboration with the United Nations Educational, Scientific and Cultural Organization and the Special Rapporteur on cultural rights, organise a one-day workshop aimed at reviewing and promoting the tools for dissemination and potential methods for implementing an approach to the protection, restoration, and preservation of cultural heritage that fosters universal respect for cultural rights.<sup>55</sup>

Although the European Convention on Human Rights and the Universal Declaration on Human Rights were not drafted as an instrument for the protection of cultural heritage, they are fundamental legal instruments without which one cannot deliberate cultural heritage. If cultural heritage embodies the symbolic continuity of a society that transcends its temporary existence, then the duty to honour cultural heritage is intrinsically tied to the duty to uphold human rights.<sup>56</sup>

“[I]n so far as cultural heritage represents the sum of practices, knowledge and representations that a community or group recognise as a part of their history and identity, it is axiomatic that member of the group, individually and collectively, must be entitled to access, perform and enjoy such cultural heritage as a matter of right.”<sup>57</sup>

### **1.3. Concept of archaeology, archaeological monument and archaeological stewardship**

Archaeology plays a vital role in the preservation, protection, and promotion of cultural heritage. As societies become increasingly aware of the significance of their historical and cultural roots, archaeology aids in the preservation of tangible and intangible heritage for future generations. While the term "archaeology" may have first appeared in the sixteenth century,<sup>58</sup> the inherent curiosity and reverence for cultural heritage have deep historical roots,

---

<sup>54</sup> Resolution adopted by the Human Rights Council on 31 March 2022, 49/7 Cultural rights and the protection of cultural heritage, Human Rights Council, 49 session, UN General Assembly, 2022.

<sup>55</sup> United Nations, Cultural rights and the protection of cultural heritage, <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights/cultural-rights-protection-cultural-heritage> [available on: 14.01.2025].

<sup>56</sup> F. Franconi, *Beyond State Sovereignty: The protection of Cultural Heritage as a Shared Interest of Humanity*, Michigan Journal of International Law, vol. 25, University of Michigan, Michigan 2004, p. 1221.

<sup>57</sup> F. Franconi, Culture, Heritage and Human Rights: An introduction [in:] F. Franconi, M. Scheinin (eds.), *Cultural Human Rights*, Martinus Nijhoff Publishers, Leiden-Boston 2008, p. 6.

<sup>58</sup> *Archaeology*, Oxford English Dictionary, Online English Dictionary, [https://www.oed.com/dictionary/archaeology\\_n?tab=factsheet#40093593](https://www.oed.com/dictionary/archaeology_n?tab=factsheet#40093593) [available on: 03.01.2025].

underscoring humanity's enduring relationship with its past. Archaeology in Greek is “knowledge of the origins” or “account of things old”. This awareness and appreciation for cultural heritage ultimately laid the groundwork for the development of modern archaeological methodologies and the legal frameworks that protect cultural property today.<sup>59</sup> Yet, the relationship between archaeology and cultural heritage is complex. Archaeologists must balance the need for scientific inquiry with ethical considerations regarding site preservation and community engagement. This dynamic is especially pronounced in the context of ownership rights and heritage management, where collaboration with local communities is essential.

Reflections on the origins of the science of conservation, its history, and its legalisation begin at the dawn of the Italian Renaissance, through the French Revolution at the end of the eighteenth century, up to the international guidelines established after World War II. However, conservation, restoration, and protection of ancient monuments, together with protection of archaeological sites and artefacts, existed long before, emerging well before the "romantic" approach to monuments that developed only during the Renaissance. A traditional approach to monuments can be observed from the moment we recognise the existence of societies in which historical structures are preserved over extended periods, representing certain values or where there is no reason to destroy them. Changes or new constructions on a large scale take considerable time, and society has realised that demonstrating the desire to continue the efforts of previous generations in a harmonious manner is more beneficial. In the ancient world, objects could simultaneously hold symbolic universal significance while also being recognised as "wonders of the world," such as the Egyptian pyramids. An image or statue of a god or important figure could be considered a representation of that person later on while simultaneously being materially protected, particularly regarding its authenticity and the materials from which it is made. Conversely, due to their symbolic significance, objects can be destroyed or taken by an enemy to eliminate society's values and deprive it of its historical heritage. The importance of a building or the fact that it was erected in someone's honour or to commemorate someone's memory were closely intertwined. Restoration or protection of a building could be related to the building's function, the desire to preserve it intact, or the rebuilding or addition of new features to enhance its image.<sup>60</sup>

The roots for archaeology can also be traced back to antiquity when early scholars began to explore and record ancient sites and artefacts. The Renaissance marked a significant turning

---

<sup>59</sup> P.P.A. Funari, *Arqueologia. São Paulo: Contexto*, vol. 13, Revista do Museu de Arqueologia e Etnologia, Sao Paulo, 2003.

<sup>60</sup> J. Jokilehto, *A History of Architectural Conservation...*, p. 6.

point, with a renewed interest in classical antiquity leading to discoveries that laid the groundwork for modern archaeological methods. The 19th century saw the establishment of archaeology as a formal academic discipline characterised by systematic excavation and the development of stratigraphic techniques. During the 20th century, archaeology underwent a paradigm shift as new theoretical frameworks emerged, such as processualism and post-processualism. Processual archaeology emphasises the scientific method, seeking to establish generalisable patterns of human behaviour. In contrast, post-processual archaeology challenged the notion of objective interpretation, advocating for a more subjective and reflexive approach that recognises the influence of culture, context, and the archaeologist's perspective.<sup>61</sup>

Theories in archaeology provide critical frameworks for interpreting material remains and understanding human behaviour. Each theoretical perspective offers unique insights and emphasises different aspects of human experience, shaping how archaeologists interpret data and construct narratives about the past.<sup>62</sup> Archaeological research employs a diverse array of methodologies, each tailored to address specific research questions. Fieldwork is the cornerstone of archaeological practice, involving careful planning, site survey, excavation, and documentation. Survey techniques, such as pedestrian surveys and geophysical surveying, help identify potential archaeological sites and assess their significance. Excavation follows a systematic approach, often employing stratigraphic excavation to understand the chronological sequence of deposition in a given context. Artefacts are meticulously collected, recorded, and analysed using various techniques, including typological analysis, radiocarbon dating, and chemical provenance studies. In addition to fieldwork, archaeologists increasingly employ advanced technologies such as Geographic Information Systems (GIS), remote sensing, and three-dimensional modelling to enhance their research capabilities. These tools facilitate a more comprehensive understanding of archaeological sites in relation to their geographical and cultural contexts.

Throughout history, humans have pondered their origins, with many cultures crafting foundational myths to elucidate the nature of their societies. Many cultures share this interest about their predecessors. Interest in possessing archaeological monuments arises from various motivations, reflecting cultural, historical, and societal factors. These monuments connect to a civilisation's past, embodying its values, beliefs, and achievements. They foster a sense of identity and continuity for communities, allowing individuals to connect with their historical

---

<sup>61</sup> See: I. Hodder, M. Shanks, A. Alexandri, V. Buchli et alia (eds.), *Interpreting Archaeology: Finding Meaning in the Past*, Routledge, London-New York 1995.

<sup>62</sup> See: C. Renfrew, P. Bahn (eds.) *Archaeology, The Key Concepts*, Routledge, London-New York 2005; B. Fagan, *A Little History of Archaeology*, Yale University Press, CT: New Haven 2018.

roots. Countries often take great pride in their archaeological sites as national heritage symbols, enhancing national identity. This sense of pride is coupled with these monuments' educational value, acting as tangible resources for research and study. They offer essential insights into human history, allowing scholars and the public to explore ancient societies and their developments over time. Moreover, archaeological sites are significant for tourism, potentially contributing to local and national economies. Possession of these sites can generate revenue and create jobs, thereby supporting local communities.<sup>63</sup>

Additionally, many archaeological monuments are valued for their artistic and architectural significance, attracting collectors and institutions interested in their beauty, craftsmanship, and examples of human creativity. From a scientific perspective, archaeological monuments offer critical information for dating techniques and artefact preservation studies. Access to these sites allows researchers to conduct important surveys and excavations, leading to new discoveries about human history. The ethics surrounding possession are also a hot topic of debate. Many argue that these monuments should remain in their countries of origin to maintain cultural context and respect the heritage of local communities.<sup>64</sup> Concurrently, some seek to collect legally or ethically acquired artefacts for preservation and academic purposes. Engaging in the possession and preservation of archaeological monuments can also be viewed as cultural diplomacy, promoting international cooperation in heritage conservation and emphasising mutual respect among different cultures. Overall, the interest in possessing archaeological monuments is multi-faceted, intertwining cultural pride, economic incentives, educational opportunities, and ethical considerations in shaping societies' responses to their historical legacies.

Since the conclusion of the Second World War, the state has assumed a predominant role in the investigation, protection, and presentation of the nation's archaeological heritage. However, the dynamics of the state's involvement and the relationship between citizens and the state are undergoing significant changes across various aspects of social life. These evolving circumstances impact archaeology and heritage protection in numerous ways. Consequently, the operational framework of state archaeological organisations may differ substantially from their previous functions.<sup>65</sup> The contemporary landscape is markedly different from prior conditions. The role of the state has undergone significant changes in recent years and continues

---

<sup>63</sup> See: D.C. Comer (ed.), *Tourism and Archaeological Heritage Management at Petra: Driver to Development or Destruction*, Springer, New York 2012.

<sup>64</sup> S.M. Hart, E.S. Chilton, *Digging and Destruction: Artefacts Collecting as Meaningful Social Practice*, International Journal of Heritage Studies, vol. 21, issue 4, Taylor and Francis, London 2015, pp. 318-335.

<sup>65</sup> R.M. Thomas, *Archaeological Resource Management: The Changing Role of the State* [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014, p. 351.

to evolve. Indications suggest that the pace of this transformation may accelerate in the forthcoming years. Several factors contribute to this phenomenon. Globalisation, the Internet, and the emphasis on "consumer choice" have diminished individuals' willingness to accept a singular, "official" narrative of the nation's history. Furthermore, increased leisure time and mobility, at least for certain segments of the population, have encouraged individuals to explore new avenues for the utilisation of their time.<sup>66</sup>

The humanities, and archaeology specifically, have engaged in an ongoing endeavour to redefine the concept of culture and researchers' objectivity within the field. This reexamination challenges traditional notions of cultural identification based solely on archaeological artefacts, complicating the frameworks established by both cultural-historical and processual methodologies. The terms "archaeological monument" and "archaeological artefact" are often used interchangeably in everyday discourse, both refer to items of historical and cultural significance resulting from past human activity. An archaeological monument typically refers to large-scale structures or sites, such as temples, pyramids, burial mounds, or standing stones, that represent significant achievements of past civilisations. These monuments often serve as key indicators of cultural practices, social organisation, and communal values. They provide context for understanding the historical landscape and are often preserved as part of a nation's cultural heritage. On the other hand, the term "archaeological artefact" might seem broader, encompassing any tangible object created or used by humans, including tools, pottery, jewellery, and other portable items. Artefacts provide insight into the daily lives, economic activities, and technological advancements of past societies. Like monuments, artefacts are essential in piecing together the stories of human history. Additionally, the term "archaeological finding/ finds" can be used with the same meaning as an archaeological monument or archaeological artefact. Archaeological findings are defined as typically situated within an extensive framework that includes methodologies for discovery, analysis, documentation, and interpretation, however, they all have the same connotation and resonance.

In the cultural-historical approach, archaeologists traditionally identified and categorised cultures based on the material remains they left behind, such as tools, pottery, and architectural styles. This perspective emphasised the importance of artefacts as direct representations of the societal and cultural attributes of past populations.<sup>67</sup> However, as scholars began to critique the reductionist nature of this approach, it became clear that such identification often overlooked the complexities of human behaviour, social dynamics, and the influence of

---

<sup>66</sup> R.M. Thomas, *Archaeological Resource Management...*, p. 352.

<sup>67</sup> B.G. Trigger, *A History of Archaeological Thought*, Cambridge University Press, Cambridge 2014, pp. 211-313.

external factors, such as trade and migration. The processual approach emerged in response to these limitations, advocating for a more scientific and systematic analysis of archaeological data. It sought to apply methodologies from the natural sciences to archaeological research, emphasising the importance of understanding the processes that underlie cultural change and continuity over time.<sup>68</sup> Yet, even within this framework, the relationship between archaeological monuments and cultural identity proved to be composite and dynamic, raising questions about the ability of researchers to achieve complete objectivity.

The contemporary understanding of archaeological artefacts recognises that these objects are not merely passive remnants of past societies but rather active agents within complex historical narratives. Each artefact carries with it layers of meaning that can be influenced by a myriad of factors, including the cultural context in which it was created, its subsequent uses, and its reinterpretation through time. This recognition necessitates a broader analytical approach considering the relational dynamics between people and their material culture.<sup>69</sup> Thus, identifying cultures through archaeological artefacts has evolved into a more intricate endeavour. Rather than viewing artefacts as definitive markers of culture, modern archaeological discourse acknowledges the need to consider how artefacts inform our understanding of cultural identities, community interactions, and broader social processes. This shift emphasises the importance of a nuanced interpretation of material culture, considering the perspectives of descendant communities, the socio-political context of the artefact's discovery, and the ongoing dialogue between researchers and the material remains of the past. As a result, the equation of cultural identification through archaeological artefacts has transformed, demanding a more interdisciplinary and reflexive approach to studying humanity's cultural legacy.<sup>70</sup>

Although archaeological heritage is frequently referenced in various legal acts, such as cultural heritage conventions, the term itself is not extensively legally defined. Typically, these conventions provide specific examples of what may constitute archaeological heritage, such as burial sites, moulds, pottery, and jewellery, however, there is often a lack of comprehensive explanation regarding the broader significance of the term within the term of cultural heritage. European Convention on the Protection of the Archaeological Heritage,<sup>71</sup> known as the Valletta

---

<sup>68</sup> I. Hodder, *Reading the Past: Current Approaches to Interpretation in Archaeology*, Cambridge University Press, Cambridge-New York-Melbourne 1999.

<sup>69</sup> A. Carvalho, B. Sanches, R. da Silva, *Material Culture and Education in Archaeology* [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014, pp. 4693-4699.

<sup>70</sup> See more: C. Renfrew, P. Bahn, *Archaeology: Theory, Methods, Practice*, Thames and Hudson, London 2008.

<sup>71</sup> European Convention on the Protection of the Archaeological Heritage (concluded on 16 January 1992, came into force on 25 May 1995) no. 33612, vol. 1966, I- 33612, – further: the Valetta Convention.

Convention, does give a definition of archaeological heritage in article 1, as a source of the European collective memory and as an instrument for historical and scientific study. To this end, shall be considered to be elements of the archaeological heritage,

all remains and objects and any other traces of mankind from past epochs: i) the preservation and study of which help to retrace the history of mankind and its relation with the natural environment; ii) for which excavations or discoveries and other methods of research into mankind and the related environment are the main sources of information; and iii) which are located in any area within the jurisdiction of the Parties. The archaeological heritage shall include structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water.

This definition of archaeological heritage encompasses a diverse array of materials and evidentiary remnants associated with historical human activities, acknowledging their critical role in reconstructing historical narratives and understanding the interplay between humanity and the natural environment. While this definition delineates the significance of archaeological inquiry within cultural and historical frameworks, it presents various challenges. A primary advantage of this definition lies in its comprehensive scope, which encapsulates not only physical artefacts and structures but also the contextual interrelationships among various components of archaeological heritage. By incorporating both movable and immovable heritage, the definition facilitates a holistic examination of past human societies. Furthermore, the emphasis on the interaction between archaeology and environmental contexts encourages an interdisciplinary approach, fostering collaboration across fields such as ecology, anthropology, and geology. This methodological synergy enriches the understanding of human historical trajectories. Furthermore, acknowledging archaeological heritage highlights the importance of safeguarding cultural identity, allowing communities to connect with their historical roots and fostering a sense of belonging and continuity that enhances their cultural narratives and collective memory. The broad parameters of archaeological heritage may present certain disadvantages, particularly concerning resource allocation. Given the constraints of funding and personnel, the prioritisation of specific sites or artefacts can become a contentious issue, potentially leading to the marginalisation of less conspicuous yet equally significant heritage.

Moreover, the analysis and excavation of archaeological sites may neglect the perspectives of descendant communities possessing cultural ties to those sites, resulting in tensions and ethical dilemmas related to ownership and representation. The methodologies

employed in excavation and research may jeopardise the integrity of archaeological sites and their surrounding environments, as invasive techniques could disrupt ecosystems or compromise the contextual integrity of finds, thereby precipitating the loss of crucial information. While the definition purports to encompass all facets of archaeological heritage, the heterogeneity of remains and contexts may lead to fragmentation in preservation efforts. The necessity for varied approaches to different sites complicates the implementation of uniform policy measures. Additionally, the inclusive nature of this definition raises jurisdictional concerns, particularly when archaeological heritage intersects multiple jurisdictions or states, where divergent legal frameworks may impose complexities in governance and the enforcement of preservation obligations.

The increasing commodification of archaeological heritage also poses significant risks, artefacts may be appropriated for private collections or commercial gain, thereby undermining public interest and access to shared cultural heritage. However, this definition of archaeological heritage accentuates the invaluable contributions of past human activities to contemporary society and is the only so comprehensive legal definition concerning archaeological heritage. Addressing the inherent challenges associated with this definition necessitates careful consideration of ethical practices, judicious resource management, and the active engagement of communities in heritage preservation efforts.

However, this comprehensive definition raises significant issues concerning ownership rights, particularly regarding the custody and stewardship of archaeological resources. A primary concern is the lack of clear ownership rights associated with these remains and artefacts. The broad inclusion of various cultural materials within the definition often leads to ambiguities about who holds legal title to archaeological heritage, especially in cases where artefacts are discovered on land that may have competing claims of ownership among private individuals, local governments, or indigenous populations. This lack of clarity can result in disputes over rights to excavate, access, and curate such materials, complicating preservation efforts and potentially leading to the illegal trade of cultural artefacts. The application of this definition within different jurisdictions may lead to further complications. Legal frameworks governing archaeological heritage rights can vary significantly from one jurisdiction to another, which may hinder cooperative preservation measures and complicate international efforts to protect shared cultural heritage.

Any discourse concerning ownership in archaeology must necessarily include considerations of archaeological stewardship. Stewardship is an important term and concept frequently referenced in certain archaeological circles while notably absent in others. Various

stakeholders, including archaeologists, anthropologists, museum curators, collectors, government officials, and members of descendant communities, have all been identified as stewards. An examination of questions such as “for whom?” “of what?” and “to what aims?” highlights that the definitions and applications of archaeological stewardship, while deeply established and bureaucratised in some situations, are not universally applicable nor static. Indeed, perceptions of stewardship appear to be transitioning from conventional interpretations focused on management, preservation, and conservation toward more collaborative and inclusive frameworks that acknowledge the profound connections many individuals have with historical narratives. Such collaborative approaches to stewardship may impose limitations on the activities of archaeologists as they begin to share "the past" under terms that extend beyond their exclusive control.<sup>72</sup> "Stewardship" is defined as the role or responsibilities associated with a steward, a term that originates from the Old English words meaning "house" and "keeper." This definition encompasses a range of duties, including the caretaking, administration, planning, control, and utilisation of property or resources that belong to another party.<sup>73</sup>

In a broader context, stewardship is regarded as an ethical principle that emphasises the responsible planning and management of resources that belong not only to the state obligations but to the broader public. This ethical framework not only underscores the importance of maintaining and protecting assets entrusted to an individual or organisation but also reflects a commitment to sustainability and accountability. Stewardship encompasses both tangible and intangible resources, urging individuals and organisations to engage in practices that respect the environment, advocate for social equity, and ensure that future generations can benefit from the resources currently available. As such, stewardship can extend beyond mere custodianship or ownership to become a guiding philosophy that shapes governance, community engagement, and resource allocation in various fields, including environmental conservation, cultural heritage management, and organisational governance.

In the context of archaeological practice, stewardship involves recognising the responsibilities held by archaeologists, institutions, and communities to protect and manage cultural heritage. This includes fostering meaningful relationships with descendant communities, addressing the implications of archaeological findings, and promoting the preservation of sites and artefacts for educational and cultural purposes. In essence, stewardship is a duty and a commitment to ethical considerations that influence how resources are perceived,

---

<sup>72</sup> J. Hollowell, D. McGill, Archaeological Stewardship [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014, p. 365.

<sup>73</sup> *Stewardship*, Oxford English Dictionary, Online English Dictionary, [https://www.oed.com/dictionary/stewardship\\_n?tl=true](https://www.oed.com/dictionary/stewardship_n?tl=true) [available on: 03.01.2025].

utilised, and sustained over time. There are different types of stewardship, such as, shared stewardship, collaborative stewardship, and community-based stewardship. Most of them have emerged as a significant concept in international negotiations concerning the ownership of antiquities and cultural property, particularly in contexts where establishing valid titles remains challenging.<sup>74</sup> Moreover, those types of stewardship are increasingly manifesting at smaller, local levels, involving the distribution of control, authority, management, and decision-making. Examples of this practice include the repatriation of artefacts to source communities, the co-management of heritage sites, the formulation of memoranda of understanding between museums and cultural descendants, and the adoption of culturally appropriate curation practices.<sup>75</sup>

### **Minor conclusions 1**

Attempting to provide a summary, the intersection of cultural heritage, monuments, and cultural goods illustrates their interrelatedness. Cultural heritage encompasses broader practices and beliefs. Monuments serve as meaningful physical representations within that framework, and cultural goods emerge from and contribute to the ongoing cultural dialogue. Collectively, these concepts shape our comprehension of identity, history, and community within a multifaceted societal spectrum. Recognising diverse interpretations of these concepts necessitates an inclusive approach to cultural engagement.

The differing interpretations of those notions illuminate the rich diversity of human experiences and highlight the complex ways societies understand their past. Engaging with these concepts enhances our appreciation for culture as a living entity, one that is fundamentally shaped by historical contexts and contemporary realities. The responsibility of safeguarding this cultural heritage lies with all members of society, as we collectively navigate the interplay of identity, memory, and history.

Heritage is often articulated as a celebration of cultural accomplishments, historical landmarks, and shared values, which collectively foster a sense of pride and identity among communities. However, this narrative frequently omits the more troubling, painful, or contentious aspects of history, thus presenting an incomplete picture of a culture's identity. The

---

<sup>74</sup> C.L. Lyons, Objects and Identities: Claiming and Reclaiming the Past [in:] E. Barkan, R. Bush (ed) *Claiming the Stones; Naming the bones - Cultural Property and the Negotiations of National and Ethnic identity*, Getty Research Institute, Los Angeles 2002, pp. 116-137.

<sup>75</sup> J. Hollowell, D. McGill, Archaeological Stewardship [in:] C. Smith (ed.), *Encyclopedia of Global Archaeology*, Springer, New York 2014, pp. 370-373.

inclination to emphasise predominantly positive elements of heritage can lead to a sanitised representation of history. Monuments and commemorative sites may honour national figures or significant milestones while neglecting the injustices, conflicts, or marginalised perspectives accompanying these events. This selective remembrance risks perpetuating a glorified version of the past, obscuring issues such as colonialism, oppression, discrimination, and violence that have fundamentally influenced societies. The exclusion of these darker facets from the heritage discourse distorts historical understanding and may impede social healing and reconciliation. It fosters an imbalance in cultural memory, whereby only favourable aspects are celebrated, potentially alienating individuals and communities whose histories are omitted from the public narrative. To comprehensively honour cultural heritage, adopting an inclusive approach that acknowledges both commendable and reprehensible elements of history is essential. Such methodology entails embracing narratives that facilitate dialogue concerning past wrongs, thereby allowing for a confrontation with uncomfortable truths. This inclusive perspective not only enriches the understanding of cultural identity but also promotes a deeper respect for diversity and a commitment to safeguarding against the perpetuation of historical injustices. Recognising the complexities intrinsic to heritage is crucial in addressing historical grievances and fostering a more equitable and just society.

While the European Convention on Human Rights and the Universal Declaration of Human Rights were not specifically created to protect cultural heritage, they are essential legal instruments for discussing this topic. If cultural heritage serves as the symbolic continuity of a society beyond its transient existence, the obligation to respect cultural heritage is inherently linked to the responsibility to uphold human rights. Cultural heritage comprises the practices, knowledge, and representations that a community or group recognises as integral to its history and identity. Therefore, it is self-evident that members of such a group, both individually and collectively, have the right to access, engage with, and enjoy their cultural heritage.

Archaeological heritage constitutes a specific subset of cultural heritage, referring to the physical remnants of past human activities that are primarily derived from archaeological excavations and sites. This encompasses artefacts, structures, and landscapes that provide insights into the historical, social, economic, and technological dimensions of ancient civilisations. The preservation and management of archaeological heritage are crucial for scholarly inquiry as well as for public education, as they enable future generations to learn from such resources and foster respect for cultural diversity and human history. Thus, archaeological heritage not only contributes to a nation's historical narrative but also to its cultural identity. Archaeological heritage encompasses not only the tangible remains of past civilisations but also

the associated cultural practices, social dynamics, and historical contexts that define those societies. When archaeological findings are presented, they often highlight the achievements and artistic expressions of a culture, fostering a sense of pride among contemporary communities. Many archaeological sites are linked to colonial histories, the displacement of Indigenous populations, or other forms of exploitation. The focus on celebrating the aesthetic and historical value of these sites can lead to a failure to acknowledge and address the legacies of violence and oppression that may have accompanied their creation. To ensure a comprehensive understanding of archaeological heritage, adopting an inclusive framework that acknowledges both the commendable and the troubling aspects of history is imperative.

The terms of archaeological monument, finding, or artefact relate all to the field of archaeology, which seeks to understand and interpret human behaviour through the study of material remains. While a monument is often seen as a singular, immovable testament to a culture's architectural prowess, and artefact might shed light on the everyday interactions and practices of individuals within that culture, their meaning is interchangeable and all-time evolving. The significance of archaeological monuments lies not only in their architectural and aesthetic qualities but also in the broader narratives they embody. They offer key information about social organisation, technological advancements, religious practices, and economic systems of past societies. Through archaeological studies, researchers can uncover artefacts, inscriptions, and other material remains associated with these monuments, allowing for a deeper understanding of historical contexts and human experiences.

Stewardship, in the context of cultural heritage, denotes the responsible management, preservation, and care for cultural resources, including archaeological sites. This concept encapsulates the ethical obligation to protect and maintain cultural heritage for the benefit of both present and future generations. Stewardship emphasises a collaborative approach, engaging various stakeholders, such as government entities, local communities, indigenous groups, scholars, and the general public, in the conservation and interpretation of heritage, it also creates the space for the discussion about the ownership right to the archaeological heritage.<sup>76</sup> Applying the definition of stewardship to cultural heritage reveals several key principles. First, stewardship entails a commitment to safeguarding cultural heritage from degradation, illicit trafficking, and neglect, extending responsibilities to the management of both physical sites and artefacts while respecting the cultural significance and traditional

---

<sup>76</sup> See: M. Monteiro de Matos, Cultural Identity and Self- Determination as Key Concepts in Concurring Legal Frameworks for the International Protection of the Rights of Indigenous Peoples [in:] E. Lagrange, S. Oeter, R. Uerpmann-Witzack (eds.), *Cultural Heritage and International Law, Objects, Means and Ends of International Protection*, Springer, Switzerland 2018, pp. 273-292.

practices of connected communities. Second, effective stewardship promotes sustainability, balancing the needs of cultural heritage preservation with contemporary community requirements, thus enabling policies that facilitate economic benefits through cultural tourism while ensuring the long-term protection of heritage resources.

Collaboration is also a central tenet, advocating for the involvement of diverse stakeholders in decision-making processes and acknowledging community ties to heritage resources. This inclusive participation can lead to more culturally sensitive and effective stewardship strategies. Furthermore, stewardship encompasses the education of the public regarding the significance of cultural heritage and actively advocating for its protection, fostering a sense of ownership and pride within communities. Finally, stewardship necessitates an examination of the narratives that are represented in cultural heritage interpretation, emphasising inclusivity by ensuring that diverse voices, particularly those of marginalised or descendant communities, are acknowledged in the presentation and management of heritage.

Concluding, cultural heritage refers to a comprehensive framework incorporating various elements reflecting the history and identity of a community or society. Even though the concept is well-known and researched, there is still no exhaustive definition. Archaeological heritage is a significant component of this broader classification, even though its definition always limits its understating. By integrating the principles of stewardship into the management of cultural heritage, resources can be preserved in a responsible, sustainable, and inclusive manner, honouring both historical legacies and their contemporary relevance.



## Chapter 2

### The law of protection of archaeological monuments

#### Introduction

Archaeological heritage is distinct from other forms of cultural heritage due to several specific characteristics, preservation requirements, and contextual considerations. Primarily, archaeological heritage encompasses the physical remnants of past human activities, including artefacts, structures, and sites that have been excavated or remain buried and invisible to the untrained eye. While cultural heritage includes a broader array of expressions, such as intangible elements like traditions, languages, and rituals, archaeological heritage fundamentally pertains to tangible evidence of historical human existence. This chapter explores the mechanisms by which archaeological heritage is safeguarded, specifically considering whether it is afforded protection as a distinct category within the broader spectrum of cultural heritage or solely as an integral component of cultural heritage as a whole. Archaeological heritage offers direct insights into past societies through the analysis of material culture, thereby enhancing comprehension of social structures, economic systems, and everyday life, dimensions of human activity that may not be fully captured by written documentation. The complexities inherent in protecting archaeological heritage stem from the necessity to establish clear legal frameworks and practices that adequately recognise its unique value.

Unlike other forms of cultural heritage, archaeological heritage requires a diverse approach to preservation, as it often resides *in situ* and is embedded within specific contextual settings that are critical for understanding its significance. Furthermore, the protection of archaeological heritage poses distinct challenges, including the need for rigorous documentation and contextual analysis to inform management practices. Such context is essential not only for the conservation of physical artefacts but also for the interpretation of the cultural narratives they embody. It is imperative to recognise that archaeological records may be ephemeral, and once disturbed or destroyed, the opportunity to access historical insights is irretrievably lost. Consequently, this chapter will assess the effectiveness of current legal frameworks in ensuring the protection of archaeological heritage, evaluating whether existing laws appropriately recognise its significance, establishing protective measures, and facilitating a thorough understanding of the contextual and cultural information inscribed within the archaeological record. By critically analysing these dimensions, this chapter aims to contribute

to the discourse on the necessity of prioritising archaeological heritage within the broader context of cultural heritage protection.

Although other aspects of cultural heritage can also mirror societal values, archaeological heritage offers a unique perspective into civilisations that may lack documented histories. The preservation of archaeological heritage presents unique challenges, as it is often subject to threats from excavation, environmental degradation, and human activity. Unlike living cultural practices that can evolve or persist, archaeological sites are finite resources that can be irreversibly altered or destroyed through development or neglect. Hence, they are often preserved ahead, based on the assumption. Consequently, specialised conservation techniques are required to safeguard the physical integrity of these resources. Legal frameworks governing archaeological heritage frequently emphasise the necessity of protective measures, acknowledging the fragile nature of these sites. Regulations often mandate protocols regarding excavation, the reporting of finds, and the ethical treatment of artefacts. Such laws are designed to prevent looting and illegal trafficking, recognising archaeological heritage as a non-renewable resource essential to understanding our collective past. Furthermore, archaeological heritage holds significant scientific importance, enriching disciplines such as anthropology, history, and environmental science. The study of artefacts and sites enhances comprehension of human evolution, migration, and adaptation over time. Although other forms of cultural heritage possess inherent value, they may not yield the same clarity regarding historical processes. Lastly, the study of archaeological heritage frequently involves interdisciplinary approaches that include geology, palaeontology, and environmental studies, fostering a comprehensive understanding of past human-environment interactions. This interdisciplinary nature sets archaeological heritage apart from other cultural heritage forms that may not necessitate such diverse investigative frameworks for their interpretation and preservation.

The legal framework governing the protection of archaeological monuments establishes regulations and guidelines for preserving, managing, and conserving sites and artefacts of historical significance. This framework seeks to safeguard cultural heritage, ensuring that archaeological monuments are not subject to loss or damage resulting from urban development, natural disasters, looting, or neglect. Numerous jurisdictions have enacted specific legislation recognising the intrinsic value of their archaeological heritage and outlining measures to protect it. Such laws typically define archaeological monuments expansively to encompass not only physical structures, including temples, pyramids, or ruins, but also artefacts such as tools, pottery, and inscriptions. The legislation often includes provisions for conducting

archaeological surveys, obtaining excavation permits, and adhering to site management protocols.

Legal protections frequently extend to the ownership and stewardship of archaeological monuments. In many legal systems, state ownership of archaeological sites is asserted, precluding the conveyance or sale of these sites as private property. This approach underscores the premise that cultural heritage is a public asset and must be preserved for future generations. Additionally, these laws may impose stringent regulations on the exportation of artefacts, requiring proper documentation and governmental approval prior to the removal of items from the country, thereby preventing illicit trafficking in cultural property. Enforcement of these legal protections can involve various governmental entities, including cultural heritage departments, archaeological institutions, and local authorities. These entities are charged with the responsibility of monitoring sites, conducting inspections, and taking appropriate action against violations, such as unauthorised excavations or the destruction of monuments. In serious cases, penalties may include fines, restitution, or criminal charges against individuals or entities that transgress heritage protection laws.

International cooperation is also paramount in the safeguarding of archaeological monuments. Treaties and agreements encourage collaboration among nations to protect cultural heritage. These treaties often facilitate the exchange of information and best practices, contributing to the establishment of a global framework for the protection of archaeological sites and artefacts. The legal framework for the protection of archaeological monuments serves as a critical mechanism for cultural preservation, reflecting society's recognition of the importance of historical heritage and the collective duty to safeguard it for future generations. This legal structure aims not only to mitigate the loss of invaluable heritage but also to promote public awareness and appreciation of the cultural significance of archaeological resources.

Therefore, this chapter begins by examining international law to determine how archaeological heritage is protected and the associated procedures are recognised. Within this context, three primary areas of focus include UNESCO, the Council of Europe, and UNIDROIT, along with their respective conventions and initiatives. Subsequently, the discussion shifts to European Union law, which, while still within the realm of international law, operates with a more specific, narrow scope. Finally, this sets the stage for an exploration of domestic legal regulations regarding archaeological monuments and ownership rights, using Poland as an example of the regulatory framework for further discussion on ownership rights while understanding the shaping up of the state-centric model of heritage protection.

## 2.1. International law

The United Nations (UN) and the Council of Europe (CoE) are two distinct entities that significantly promote international cooperation, human rights, and cultural heritage protection, among other global and regional objectives. Established in 1945, the United Nations is an international organisation comprising 193 member states.<sup>77</sup> Its primary purposes include maintaining international peace and security, promoting sustainable development, advancing human rights, and facilitating international cooperation on various global issues. Within the UN framework, several specialised agencies, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), focus on protecting cultural heritage, including archaeological sites. UNESCO implements conventions and programs to safeguard world heritage and foster cultural cooperation among nations.<sup>78</sup>

The Council of Europe, founded in 1949, is a regional organisation composed of 46 member states,<sup>79</sup> primarily from Europe. Its mission is to promote democracy, the rule of law, and human rights across the continent. The Council of Europe develops treaties and conventions that address various issues, including cultural heritage protection. Both organisations emphasise the importance of cultural heritage as a means of fostering understanding among nations and preserving the shared history of humanity.<sup>80</sup> They encourage collaboration, and since 2000, every second year, they adopt the resolution on co-operation between the United Nations and the Council of Europe.<sup>81</sup>

Alongside UNESCO and the Council of Europe, UNIDROIT, the International Institute for the Unification of Private Law, re-established in 1940,<sup>82</sup> and with 65 member states,<sup>83</sup> plays a crucial complementary role in the field of cultural heritage law. While UNESCO primarily focuses on the protection of cultural heritage through international treaties and global initiatives, and the Council of Europe emphasises regional legal frameworks for cultural heritage protection, UNIDROIT contributes by providing guidelines on private law matters related to cultural property.<sup>84</sup>

---

<sup>77</sup> For the year 2025.

<sup>78</sup> United Nations, About us, <https://www.un.org/en/about-us> [available on: 31.12.2024].

<sup>79</sup> For the year 2025.

<sup>80</sup> Council of Europe, The Council of Europe at a glance, <https://www.coe.int/en/web/portal/the-council-of-europe-at-a-glance> [available on: 31.12.2024].

<sup>81</sup> The Council of Europe's Relations with the United Nations, External relations, Council of Europe Portal, <https://www.coe.int/en/web/der/united-nations> [available on: 31.12.2024].

<sup>82</sup> UNIDROIT, About UNIDROIT, Overview, <https://www.unidroit.org/about-unidroit/members-states-2/> [available on: 09.01.2025].

<sup>83</sup> For the year 2025.

<sup>84</sup> See: T. Kono, *The Impact of uniform laws on the protection of cultural heritage and the preservation of cultural heritage in the 21st century*, Martinus Nijhoff, Leiden-Boston 2010.

### **2.1.1. UNESCO conventions**

The primary convention established by UNESCO concerning archaeological heritage was the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict. Archaeological heritage is mentioned already at the beginning of the Convention. In article 1, cultural property is considered as:

a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.

The 1954 Hague Convention represents a significant legal framework addressing archaeological heritage by establishing essential guidelines for the safeguarding of cultural property during armed conflicts. The convention explicitly acknowledges that cultural property, which includes archaeological sites and artefacts, must be protected from destruction and appropriation in times of armed conflict. It highlights the necessity of preserving not only monumental buildings and works of art but also archaeological sites that bear historical and cultural significance. To this end, the convention imposes obligations on states to implement appropriate measures aimed at preventing damage to cultural property within their jurisdictions. Such measures must also be directed toward archaeological sites, ensuring that they are shielded from military operations and any activities that could result in their destruction, including bombardment or the establishment of military installations.

Contracting states are further required to enact domestic legislation protecting cultural property, which encompasses archaeological artefacts and sites, particularly during periods of conflict. The 1954 Hague Convention mandates the identification and designation of cultural property necessitating protection with the Blue Shield, which assists in clarifying the significance of specific sites and elevates their status under international law, as articulated in art. 6. Additionally, the Convention explicitly prohibits the military use of cultural property, mandating that states refrain from targeting cultural properties, as well as archaeological sites, during conflicts. Collectively, the provisions of the 1954 Hague Convention serve as a foundational instrument for protecting archaeological heritage during armed conflicts,

delineating the responsibilities of states to protect cultural property and establishing a basis for international collaboration in preserving these invaluable resources.

The core provisions of the Convention mandate the safeguarding and respect for cultural property, as articulated in article 2. The safeguarding requirement encompasses affirmative measures that state parties are obligated to undertake during peacetime to protect their cultural property in the event of armed conflict, as outlined in article 3. This duty necessitates prompt action to mitigate potential disasters affecting cultural property.<sup>85</sup> Notably, the determination of specific actions to be taken is left entirely to the discretion of the state party. While the provision implies a commitment to the protection and preservation of cultural property, it does not prescribe specific legal mechanisms to be implemented. It may reasonably be inferred that this provision is not limited to physical preservation efforts surrounding monuments but may also encompass the establishment of legal frameworks, including the formation of entities responsible for the protection of cultural heritage, as well as sanctions and obligations applicable to the owners of such properties in the context of armed conflict. However, it appears that the majority of protective measures are primarily oriented toward architectural monuments. There is a noticeable scarcity of guidelines, handbooks, or informational materials on the protection of archaeological sites during armed conflicts.<sup>86</sup>

Also, the application of the Blue Shield emblem presents several challenges concerning archaeological heritage. One significant obstacle is the widespread lack of awareness among military personnel, governmental officials, and local communities regarding the significance of the Blue Shield emblem and the protections it is intended to afford. This deficiency in understanding may lead to unintentional harm to archaeological sites during armed conflict. Furthermore, ambiguity surrounding the criteria for designating archaeological sites as eligible for protection under the Blue Shield can complicate its application. Variations in interpreting what constitutes archaeological heritage may result in inconsistent implementation of protective measures. Resource constraints represent another critical challenge, many nations may lack the requisite financial and logistical support to adequately fulfil the protective obligations mandated by the Convention. This situation includes insufficient training for personnel tasked with safeguarding cultural property and inadequate funding for necessary conservation efforts.<sup>87</sup>

---

<sup>85</sup> J. Zajadło, K. Zeidler, *Prawna Ochrona Zabytków na Wypadek Wojny* [Legal Protection of Monuments in the Event of War], *Ochrona Zabytków*, no. 1-2, Narodowy Instytut Dziedzictwa, Warszawa 2003, pp. 116-121.

<sup>86</sup> One important manual worth to mention here is R. O'Keefe, C. Péron, T. Musayev, G. Ferrari, *Protection of Cultural Property. Military Manual*, UNESCO – International Institute of Humanitarian Law, Paris-Sanremo 2016; “archaeologia” is mentioned there – in many different places – 64 times, however, this Manual is not focused on this subject in any specific way.

<sup>87</sup> J. Radcliffe, The UK's Training and Awareness Programme [in:] L. Rush (ed.) *Archaeology, Cultural Property, and the Military*, Boydell & Brewer, Woodbridge 2012, pp. 28-33.

Military forces are often trained *ad hoc*.<sup>88</sup> Geographical and operational difficulties within conflict zones also impede the effective monitoring and protection of archaeological sites. Many of these sites may be situated in areas that are hard to access or where ongoing hostilities pose substantial safety risks, complicating preservation efforts.

Additionally, during armed conflicts, military priorities often outweigh considerations related to cultural heritage protection. The imperative for operational success or security may overshadow the importance of preserving archaeological sites, leading to their neglect or destruction (military necessity).<sup>89</sup> The absence of comprehensive national legislation further exacerbates these issues, as some countries lack robust legal frameworks to implement the obligations prescribed by the Hague Convention. This shortcoming can hinder the enforcement of protective measures associated with the Blue Shield.<sup>90</sup> Effective utilisation of the Blue Shield also relies on cooperation among states, particularly in terms of information sharing and joint efforts to protect cultural heritage. Political tensions or conflicts between nations can obstruct such collaborative initiatives.

Finally, cultural relativism may influence attitudes toward archaeological heritage, with differing national perspectives based on cultural, historical, or ideological beliefs potentially affecting the willingness to implement protective measures as outlined by the Hague Convention. Despite the valuable symbolic importance of the Blue Shield emblem in the protection of cultural heritage, including archaeological sites, its practical implementation faces numerous legal and operational challenges.<sup>91</sup>

---

<sup>88</sup> R. O’Keefe., C. Péron., T. Musayev , G. Ferrari, *Protection of Cultural Property. Military Manual*, UNESCO – International Institute of Humanitarian Law, Paris-Sanremo 2016, p. 18.

<sup>89</sup> Waiver of military necessity does not apply to cases covered by paragraphs 3 and 4 of article 4 of Hague Convention.

<sup>90</sup> Despite the 1954 Hague Convention not envisioning Blue Shield protection being dependable on “significance” of the monument. At the same time, the Blue Shield was implemented to Polish law, where *Starosta* (a public regional official), after consultation with provincial conservator of monuments, should place on an immovable monument a sign informing that this monument is subject to protection (Blue Shield), however, such a monument has to be first listed in an official register of monuments, that gives it a “higher” form of protection than other monuments. Hence, not every monument in Polish legislation is eligible for Blue Shield protection.

<sup>91</sup> Out of 60 national reports from 2021 on the implementation of the 1954 Hague Convention and its two (1954 and 1999) protocols, only 16 mention archaeology. But some only briefly, like Australia, just underlying cooperation with archaeologists and some slightly wider, like Germany, stating which lands are using the Blue Shield emblem and applying it to archaeological sites, with no reassurance that the emblem is still there. What is, however repeated in most of the reports is no interest in using the Blue Shield. Greece, the cradle of Western civilisation and democracy, stated no to using any emblem. Also, Ukraine answered negatively about marking its cultural property (which will probably change in the next report). Estonia uses its mark (runic symbol) and is not planning to discuss the Hague Convention emblem, while the UK is not envision any armed conflict shortly; hence no point in marking their cultural property. The Netherlands marks only the immovable property and buildings in which collections are kept. In contrast, Lithuania marks only objects (buildings) from the List of Outstanding Immoveable Cultural Heritage Objects and Buildings and Premises of Outstanding Cultural Significance designed to Protect and Exhibit Movable Cultural Property. Italy, known for its important ancient archaeological sites in Europe, didn’t mention archaeology even once in the 2021 report and also didn’t answer the question on marking its cultural heritage, leaving the space for an answer empty.

The First Protocol to the Convention, adopted at the same time as the Convention, served as a response to the systematic pillaging of cultural heritage that occurred during periods of occupation, particularly during the Second World War. The Second Protocol, adopted in 1999, established a necessary category of protection for cultural property in light of the conflicts that took place during the 1980s and 1990s, underscoring the need to update and reinforce certain provisions of the Convention, which had existed for several decades. The process of drafting the new agreement commenced in 1991 and culminated in its adoption several years later, during a diplomatic conference held in The Hague in 1999. The Second Protocol introduced a new category of "enhanced protection," as outlined in articles 10 and 11, designed to safeguard cultural properties of exceptional importance to humanity, among other considerations. It is important to note that the Second Protocol was not intended to supplant the 1954 Hague Convention but to complement and augment its foundational role. Accordingly, the Second Protocol incorporated provisions aimed at increasing the responsiveness of the Convention by introducing sanctions for serious violations against cultural property. Furthermore, it established the conditions under which individual criminal responsibility would be applicable. A notable omission from the original Convention was rectified in the Second Protocol with the establishment of an Intergovernmental Committee consisting of twelve members tasked with overseeing both the implementation of the Protocol and the Convention itself.

Article 9(1)(b) of the 1999 Second Protocol introduces additional protections for archaeological sites. It mandates the prohibition of any excavations in occupied territory for the duration of the occupation, except when such excavations are necessary to safeguard, document, or preserve cultural property. This provision serves as a limited safeguard against illicit archaeological excavations. Moreover, the article encourages states that are not parties to the 1999 Second Protocol to adopt the guidelines outlined in article 9(1)(b) as best practices. It also emphasises the necessity for close cooperation between the competent national authorities of the occupied territory and the occupying power, including the obligation to transfer all artefacts and documents back to the appropriate authorities after the cessation of the occupation.

Chronologically, in 1970, the next UNESCO Convention, connected to the just mentioned illicit excavations and archaeological heritage protection, is the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Heritage. Archaeological heritage is repeatedly mentioned in the definition of the term cultural property in article 1, with the meaning of cultural property

which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science, later creating catalogue list that they should fall within one [out of eleven] categories of objects.

The Convention addresses several critical aspects related to the protection of archaeological heritage. Primarily, the Convention seeks to combat the illicit trafficking of cultural property, which also encompasses archaeological artefacts. By prohibiting the illegal import, export, and transfer of ownership of such items, the Convention endeavours to protect archaeological heritage from unlawful removal from its context, thus preserving its historical and cultural significance. Additionally, the Convention establishes a legal framework for repatriating stolen or unlawfully exported cultural property, including archaeological items. States that are parties to the Convention are encouraged to implement measures that facilitate the return of looted artefacts to their countries of origin, thereby reinforcing the protection of archaeological sites. The Convention further requires participating states to adopt appropriate legislative and administrative measures to prevent illicit trafficking, including implementing national laws regulating the excavation, sale, and export of archaeological items. Moreover, the Convention, in article 9, promotes international cooperation and the exchange of information among countries to address the challenges presented by illicit trade and to enhance the protection of archaeological heritage. A key provision of the Convention emphasises the importance of maintaining proper documentation and establishing the provenance of cultural property, which is vital for identifying and recovering stolen archaeological artefacts. By encouraging accurate record-keeping, the Convention assists in verifying the legitimacy of ownership and helps prevent the illicit market from profiting from unprovenanced artefacts. The Convention advocates for promoting public awareness and education concerning the significance of protecting cultural heritage, including archaeological sites and artefacts.

Additionally, the Convention, in article 5(d), calls for coordinating the oversight of archaeological excavations, ensuring the *in situ* preservation of specific cultural properties, and safeguarding designated areas for prospective archaeological research. Preservation *in situ* of archaeological sites refers to the practice of maintaining and protecting cultural heritage resources within their original context rather than extracting them for analysis or display. This method is designed to conserve archaeological remains undisturbed, allowing for future research and preserving the site's integrity. A fundamental aspect of preservation *in situ* is the retention of archaeological context. By leaving artefacts and structures in their original locations, this approach ensures the preservation of the relationships between objects, stratigraphic layers, and the overall significance of the site. Furthermore, this practice

minimises physical disruption to archaeological resources, thereby reducing the risk of damage that can result from excavation processes. Alongside, preservation *in situ* supports long-term conservation efforts, as artefacts and structures can benefit from environmental conditions that may be more stable than those in museum or storage settings. This approach also facilitates public access and education, promoting awareness of cultural heritage while encouraging responsible tourism and interpretation. However, preserving archaeological heritage *in situ*, also leaves room for possibilities of looting and illicit trafficking due to a lack of proper management and security.

In relation to archaeological and paleontological artefacts excavated clandestinely, states often face challenges in producing specific inventories of such objects. To mitigate the issue associated with identifying items of archaeological or paleontological significance, it has been demonstrated that a beneficial approach involves the explicit declaration of state ownership over undiscovered artefacts. This assertion enables the state party to seek their return in accordance with the provisions of the 1970 Convention and/or through other applicable legal means. This approach is especially pertinent when considering an undisturbed archaeological site that has not yet been subject to looting. Each object within such a site, pending discovery, holds significant value for preserving cultural heritage and elucidating the archaeological site's complete meaning and context. Therefore, state parties are encouraged to adopt best practices in designating cultural property protected under their national legislation in alignment with these considerations. Furthermore, all state parties are urged to acknowledge this assertion of sovereignty for the purposes of the Convention, reinforcing the collective commitment to safeguarding archaeological and paleontological heritage.<sup>92</sup>

However, articles 4(a) through 4(e) delineate the categories of cultural property that may constitute a part of a state's cultural heritage, whether owned by the state itself or by private individuals. States Parties to the Convention are obligated to acknowledge the connection between these categories and the state where the object in question was created by an individual or by the “collective genius” of nationals, foreign nationals, or stateless persons residing within its territory, discovered within its national borders, obtained through archaeological, ethnological, or natural science missions with the consent of the appropriate authorities of that country, involved in a mutually agreed exchange, or received as a gift or acquired legally with the approval of the relevant authorities of that country. This opens the discussion about the state ownership of other artefacts excavated, e.g. scientifically.

---

<sup>92</sup> Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO, Paris 1970, p. 6.

In Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, we also read, "As long as demand remains high there will be an incentive to supply any goods. The trade of archaeological and paleontological objects not only trivialises the invaluable nature of such objects but also may create incentives for looting." Counterarguments to the assertion that high demand for archaeological objects incentivises their supply, thereby contributing to looting, may include several key considerations. Numerous ethical frameworks and practices exist among collectors, museums, and institutions that promote responsible acquisition and stewardship of archaeological artefacts.<sup>93</sup> Such practices can effectively mitigate the demand for illicitly obtained objects by emphasising legality and provenance. It also increases awareness and education regarding the significance of preserving cultural heritage can lead to a decline in demand for illegally acquired artefacts. As public understanding of the detrimental consequences of looting and the inherent value of archaeological context increases, interest may shift towards legally procured and ethically sourced items.<sup>94</sup> Stronger legislative and regulatory measures concerning the trade of cultural property, such as the provisions outlined in the UNESCO 1970 Convention, aim to combat illicit trafficking. These regulations may reduce incentives for looting by establishing legal frameworks that effectively limit the market for unlawfully obtained artefacts. Fostering in-situ preservation of archaeological sites and promoting cultural tourism can provide alternative economic opportunities for local communities, thereby decreasing the need for engagement in looting activities. By placing value on cultural heritage in its original location, local populations may benefit from sustainable practices prioritising long-term cultural preservation over immediate profits from illicit trade.

However, the aspiration to diminish the exploitation of the world's archaeological and cultural heritage has diminished as the illicit trade has escalated over the past three decades. The actual supply of legally traded and ethically sourced archaeological and paleontological objects and those coming from illicit sources is also unknown and difficult to obtain.<sup>95</sup> The Convention exclusively applies to states, and individuals do not have the authority to act under this instrument. For instance, an archaeologist aware of objects being clandestinely excavated

---

<sup>93</sup> See: UNESCO International Code of Ethics for Dealers in Cultural Property, adopted in 1999.

<sup>94</sup> B. Pitblado, *An Argument for Ethical, Proactive, Archaeologist- Artifact Collector Collaboration*, American Antiquity vol. 79, Cambridge University Press, Cambridge 2014, pp. 385-400.

<sup>95</sup> N. Brodie, J. Doole, C. Renfrew (eds.), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, McDonald Institute for Archaeological Research, Cambridge 2001, pp. 1-3. See also: N. Brodie, K.W. Tubb, *Illicit Antiquities, The Theft of Culture and the Extinction of Archaeology*, Routledge, London 2002.

and smuggled out of the country cannot directly invoke this Convention to address the situation. Instead, he or she must report the matter to the relevant authorities, who are then responsible for determining the appropriate course of action in accordance with local law, the Convention, and, notably, political considerations. These authorities may ultimately decide that other factors outweigh any potential benefits of pursuing the smugglers.<sup>96</sup>

The United States of America, having not participated in the negotiations regarding this Convention, proposed its own draft. Two articles from its draft were incorporated into the UNESCO draft to incentivise the United States' involvement, now reflected as articles 7 and 9 of the Convention (enacted by the United States through CPIA- Convention on Cultural Property Implementation Act).<sup>97</sup> It is the perspective of the United States and certain other nations that these articles constitute the fundamental essence of the Convention. Article 7 addresses offers made to museums regarding illegally exported cultural property and theft from museums and other public institutions. Article 9 provides for coordinated international efforts, including oversight of exports and imports, when "cultural patrimony is in jeopardy from the pillage of archaeological or ethnological material." The focus on these two articles results in a notably narrow application of the Convention. Those advocating for a broader interpretation reference article 3, which states:

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

Proponents of this view consider article 3 as the overarching governing provision of the Convention, with articles 7 and 9 serving as specific applications thereof.<sup>98</sup> Many states claim that most of the articles in the Convention are just mere rhetoric, unintelligible, and do not impose any actual requirements on the states.<sup>99</sup>

Although these interpretations reflect distinct philosophies concerning the trade in cultural property, the situation is further complicated by differing approaches to the legal system. Conversely, the UNESCO draft of this Convention originates from the Civil Law tradition, where legislation is articulated in terms of general principles that are subsequently

---

<sup>96</sup> P.J. O'Keefe, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970)* [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014, p. 1712.

<sup>97</sup> K.D. Vitale, *The War on Antiquities: United States Law and Foreign Cultural Property*, Notre Dame Law Review, vol. 84, issue 4, University of Notre Dame, Notre Dame 2009, p. 1837.

<sup>98</sup> See: P.J. O'Keefe, *Commentary on the 1970 UNESCO Convention*, 2nd end., Built Wells-Institute of Art and Law, Wales 2007.

<sup>99</sup> P.M. Bator, *An Essay on the International Trade in Art*, Stanford Law Review, vol. 34, no. 2, Stanford Law School, Stanford 1982, p. 110.

applied to specific cases by authorities or the judiciary. These varying approaches are evident in articles 3, 7, and 9.<sup>100</sup> When states become parties to a Convention, they are required to fulfil any obligations imposed by it. However, the method of compliance varies significantly among states. For instance, in some jurisdictions, the Convention may automatically be integrated into domestic law upon ratification, necessitating interpretation by national courts. In other jurisdictions, if the Convention impacts the rights of citizens, specific legislation must be enacted to implement its provisions. These differing interpretations of the Convention influence how states regulate the importation of cultural property allegedly illegally exported. Some States do not implement the provisions of this Convention through direct foreign export controls but rather enact restrictions on imports of specified archaeological and ethnological materials via bilateral agreements with individual states.

In 1972, the Convention concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) was drafted, and archaeological heritage was once again referenced as only an integral component of cultural heritage and not a separate or particular part of it, being mentioned only once in entire Convention in article 1.

Cultural heritage shall be considered as monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

As the previous two Conventions do mention archaeology more frequently, the World Heritage Convention, also serves a pivotal role in protecting archaeological heritage through many means. It creates a framework that emphasises the significance of cultural sites, promotes international collaboration, and establishes guidelines for preservation and management.<sup>101</sup> One key aspect of the Convention (articles 5 and 6) is its provision for identifying and listing sites that possess outstanding universal value (World Heritage List), also including significant

---

<sup>100</sup> P.J. O’Keefe, *Convention on the Means of Prohibiting...*, p. 1712.

<sup>101</sup> See more: F. Francioni (ed.), *The 1972 World Heritage Convention: a commentary*, Oxford University Press, Oxford 2008.

archaeological sites. By recognising these sites as World Heritage, they receive international validation and support, thereby enhancing efforts to ensure their protection and preservation.

“World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located.”<sup>102</sup> The establishment of the World Heritage concept has expanded the idealistic notions of global unity and world governance, emphasising its universal applicability. This framework posits that these sites possess a significance that transcends national boundaries and fosters a sense of shared stewardship among humanity. Conversely, the List of World Heritage Sites highlights the extraordinary diversity of cultural achievements and natural wonders that are specific to and deeply rooted in individual nation-states and their sovereign territories. It is important to note, however, that properties can only be nominated for inclusion on the World Heritage List by the relevant state party, which maintains the legal prerogative to submit nominations that reflect its unique cultural and historical heritage.<sup>103</sup> This duality creates a dynamic tension between the universal ideals of the World Heritage framework and the particularistic nature of its application.

While the principles of the World Heritage Convention advocate for the conservation of sites for the benefit of all humankind, the nomination process remains firmly rooted in the sovereignty of nations. Each state party is entrusted with the responsibility of identifying, protecting, and promoting its cultural and natural heritage, thereby reinforcing national ownership while contributing to the global narrative of heritage conservation. In this context, including a site on the World Heritage List could serve multifaceted purposes: it recognises the site’s outstanding universal value, enhances its visibility, and fosters international cooperation for its protection. Consequently, while World Heritage sites symbolise a collective heritage that belongs to humanity at large, their identification and protection mechanisms are inexorably linked to the sovereign rights and responsibilities of individual states. This relationship highlights the necessity for collaboration between international frameworks and national interests in the effective stewardship of cultural and natural heritage. The Convention encourages state parties to enact national legislation that would safeguard World Heritage sites. This legal framework mandates that countries undertake measures to protect these sites from environmental, social, and economic threats that may lead to their degradation or destruction. However, by doing so, they are only implementing necessary national measures without much international cooperation in enforcing and fulfilling all those requirements.

---

<sup>102</sup> *World Heritage Convention, About World Heritage*, UNESCO, <https://whc.unesco.org/en/about/> [available on: 06.01.2025].

<sup>103</sup> L. Meskell, *A Future in Ruins, UNESCO, World Heritage, and the Dream of Peace*, Oxford University Press, Oxford 2018, p. 68.

The Convention additionally facilitates international cooperation among member states to share best practices, technical expertise, and resources for the conservation of archaeological sites. Such collaboration can manifest through joint initiatives, training programs, and financial assistance for preservation activities. State Parties are required to submit periodic reports concerning the condition of listed sites. This monitoring process serves to identify potential risks to archaeological sites, allowing for proactive interventions to mitigate such threats. Furthermore, UNESCO provides technical assistance and training to empower countries to develop the necessary skills and knowledge to effectively manage and preserve archaeological heritage. This capacity-building initiative is essential for equipping local authorities and communities to protect their cultural resources. Currently, the existing financial shortfall adversely affects the conservation and management of World Heritage properties, as well as the evaluation and monitoring missions, assistance with nominations, capacity-building initiatives, educational materials, information systems, and annual meetings. In light of this crisis, the Director-General has made a formal appeal for the allocation of additional emergency funds to support the essential functions of the Convention.<sup>104</sup>

The Convention also encompasses provisions for emergency measures aimed at protecting sites during periods of conflict or natural disasters. In such instances, UNESCO can extend support and resources to aid in the safeguarding of archaeological heritage. Additionally, the Convention promotes public awareness regarding the significance of also archaeological heritage, encouraging community engagement and fostering respect for cultural resources. Educational initiatives associated with the Convention aim to instil an appreciation for heritage and promote responsible tourism practices that benefit local communities. The Convention indirectly acknowledges that archaeological sites are often interconnected with living cultures. This understanding ensures that traditional knowledge and practices related to these sites are respected and incorporated into preservation efforts, supporting heritage conservation and community development.

Following the World Heritage Convention mandate, the International Committee on Archaeological Heritage Management (ICAHM) was established in response to the growing recognition of the need for effective protection and management of archaeological sites and their related cultural heritage. In 1985, the Nordic countries convened an organisational meeting in Stockholm to draft a charter for archaeological heritage management. The initial draft was presented to the members of ICOMOS at the 8th General Assembly held in Washington, D.C.,

---

<sup>104</sup> I. Bokova, Address by Ms Irina Bokova, Director-General of UNESCO, on the occasion of the Information Meeting with the Executive Board, Paris, 29 January 2013; see more: Report by the Director-General on the Execution of the Programme Adopted by the General Conference, UNESCO, Paris 15 March 2013, e.g. p. 32.

in 1987. Subsequently, during the 9th General Assembly in Lausanne in 1990, ICOMOS officially adopted the ICAHM's 1990 ICOMOS Charter for the Protection and Management of the Archaeological Heritage. This charter not only established the aims and functions of archaeological heritage management on an international scale for the first time but also designated ICAHM as one of the scientific committees of ICOMOS. The charter underscored the necessity of integrating archaeological programs with urban planning, the establishment of comprehensive inventories, the significance of *in situ* preservation, and the responsibility of developers to conduct appropriate archaeological investigations in instances where preservation is not feasible.

Its influence is evident in the 1997 Code of Practice of the European Association of Archaeologists and the 1992 European Convention on the Protection of the Archaeological Heritage, commonly known as the Malta Convention. Among the nearly 1,000 sites inscribed on the World Heritage List, approximately 80% are recognised for their cultural values. Many of these sites, such as Petra, Machu Picchu, Pompeii, and Angkor, are explicitly categorised as archaeological sites, although all feature valuable archaeological components. Every historic city has an "underlying city," which serves as an archaeological repository. Additionally, numerous sites inscribed on the World Heritage List for their exceptional natural resources also encompass significant archaeological sites. Consequently, ICAHM has emerged as one of the most active scientific committees within the ICOMOS framework.<sup>105</sup>

The establishment of ICAHM aimed to create a platform for professionals, scholars, and practitioners in the field of archaeology to collaborate, share best practices, and develop effective strategies for the conservation and management of archaeological resources. Since its formation, ICAHM has played a pivotal role in promoting the importance of sound archaeological heritage management practices and advocating for the integration of these practices into national and international policy frameworks. The Committee provides guidance on issues related to the preservation of archaeological sites, public accessibility, and the involvement of local communities and stakeholders in management processes. In addition, ICAHM frequently collaborates with other international organisations, such as UNESCO, to align its efforts with global initiatives focused on cultural heritage preservation. Through conferences, working groups, and the publication of policy documents and guidelines, ICAHM

---

<sup>105</sup> D.C. Comer, W.J.H. Willems, International Committee on Archaeological Heritage Management (ICAHM) (Conservation and Preservation) [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014, p. 3942.

continues to advance archaeological heritage discourse and ensure that it remains a priority in cultural resource management.<sup>106</sup>

The increasing trend of heritage destruction indicates a correlation between the recognised status of a site as a World Heritage Site and its emergence as a significant target for attacks. The enhanced legal standing conferred by international treaties, along with the allocation of financial resources and the strong symbolic value attached to these sites, has resulted in heightened visibility and publicity, which in turn has attracted the ire of international communities during armed conflicts. World Heritage Sites have found themselves embroiled in armed conflicts since the enactment of the 1972 UNESCO Convention. Notable historical cities with archaeological sites, also recognised by ICAHM, such as Damascus, Aleppo, and Palmyra, have suffered intentional destruction. The prominence of World Heritage Sites in both the context of intervention and as targets for attacks has been evident in various regions, including Afghanistan, Syria, Mali, Iraq, Libya, and Tunisia.<sup>107</sup> The phenomenon of targeting archaeological sites during conflicts highlights both the violation of international humanitarian law and the moral responsibility of the global community to protect cultural heritage. International efforts to address this issue have included advocacy for stronger legal frameworks, increased funding for preservation initiatives, and heightened political will to prioritise cultural heritage protection. Organisations such as UNESCO and ICAHM work to raise awareness about the importance of safeguarding archaeological sites during armed conflict and to promote the integration of cultural heritage protection into military planning and post-conflict recovery strategies. Nonetheless, the realm of World Heritage has increasingly become more politicised and contentious. Simultaneously, an extensive framework of documentation is necessary to evaluate, monitor, and provide guidance to state parties, the Committee, and the global community regarding the status of the Convention and the List.<sup>108</sup>

The Operational Guidelines for the Implementation of the World Heritage Convention<sup>109</sup> do not focus much on archaeological heritage. It mentions, however, issues concerning authenticity. The reconstruction of archaeological remains, historic buildings, or entire districts is justifiable exclusively under exceptional circumstances. Such reconstruction is permissible only when predicated upon comprehensive and rigorous documentation that

---

<sup>106</sup> Charter for the Protection and Management of the Archaeological Heritage (1990), prepared by the International Committee for the Management of Archaeological Heritage (ICAHM) and approved by the 9th General Assembly in Lausanne in 1990, ICOMOS.

<sup>107</sup> L. Meskell, *A Future in Ruins...*, pp. 225-238.

<sup>108</sup> L. Meskell, *A Future in Ruins...*, p. 81.

<sup>109</sup> Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, World Heritage Centre, WHC.13/01, 2013.

thoroughly details the original structure and context. Furthermore, reconstruction must not be based on conjecture or assumptions about the original elements or appearance of the site. This requirement underscores the importance of adhering to a standard of verifiable evidence to ensure that the integrity and authenticity of the historical narrative are maintained.<sup>110</sup>

The principle of authenticity demands that any reconstruction efforts should reflect a faithful representation of the original materials, construction techniques, and proportions derived from reliable data rather than speculative interpretations. The use of modern techniques and materials may be acceptable, provided that they do not obscure or misrepresent the authentic character of the original site. This stringent approach is crucial to preserving the cultural significance and historical value of archaeological sites and structures, safeguarding them against the pitfalls of inauthentic restorations that may undermine their legacy. By adhering to these guidelines, stakeholders, including archaeologists, architects, and heritage managers, can ensure that reconstruction efforts contribute positively to the comprehension and appreciation of cultural heritage while respecting the original fabric of the past. However, the loss of archaeological heritage results in irreversible, permanent damage to our understanding of human history, cultures, and identities. Each archaeological site offers a distinct context that provides essential information regarding past populations' social, economic, and cultural practices. When an archaeological site is excavated without proper documentation or is destroyed due to development, armed conflict or neglect, the insights contained within that site are permanently lost. It might seem that the principle of authenticity is not applicable in most cases of archaeological heritage when there is a discussion about rebuilding or restoring.

The World Heritage Convention's mission transcends being merely a commemorative registry of sites that hold global significance. It emphasises heritage as opposed to property, prioritises immovable sites over movable ones, and incorporates cultural and natural heritage sites, including cultural landscapes. This approach underscores the profound and often intangible relationships between humans and their environments, marking a significant evolution in the conceptualisation of heritage. While it is fundamentally grounded in a pragmatic dependence on national frameworks for the identification, nomination, and safeguarding of sites, the World Heritage Convention also advocates for international collaboration in the protection of heritage, serving the collective interests of humanity. Even though archaeological heritage is not the main focus of the World Heritage Convention, it

---

<sup>110</sup> Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, World Heritage Centre, WHC.13/01, 2013, point 86, p. 22.

enjoys the widest participation of all the cultural heritage conventions, with 196 states parties,<sup>111</sup> which allows for the wide protection of archaeological heritage.

The period between the 1972 World Heritage Convention and the 2001 Convention on the Protection of the Underwater Cultural Heritage reflects an evolution in the international discourse surrounding cultural heritage preservation, particularly regarding the recognition of different forms of cultural resources and the need for comprehensive legal frameworks to safeguard them. With advancements in diving technology and underwater exploration in the 20th century, with the invention of the aqualung in 1942-1943 by Jacques-Yves Cousteau and Emile Gangan,<sup>112</sup> there was a burgeoning interest in the study of submerged cultural heritage. The discoveries of shipwrecks, ancient port cities, and other underwater sites highlighted the importance of preserving these cultural resources, which had previously received limited attention under existing heritage frameworks. As interest in underwater archaeology increased, so did debates concerning the ethical management and protection of submerged cultural heritage. This included discussions on ownership, salvage rights, and the preservation of significant archaeological materials found underwater. The need for a specific legal framework to govern underwater cultural heritage became apparent.<sup>113</sup>

The 2001 Convention on the Protection of the Underwater Cultural Heritage is an international treaty adopted by UNESCO that addresses the preservation and management of underwater cultural heritage, encompassing shipwrecks, submerged cities, and other significant archaeological finds located beneath the surface of seas, rivers, and lakes. Archaeological heritage is certainly mentioned more times than in previous conventions. In article 1 of the Convention, archaeological heritage is once more part of cultural heritage, this time of an underwater cultural heritage, as:

(a) "Underwater cultural heritage" which means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character. (b) Pipelines and cables placed on the seabed shall not be

---

<sup>111</sup> As for 22 October 2024, <https://whc.unesco.org/en/statesparties/>.

<sup>112</sup> J.Y. Cousteau, E. Gangan, Diving Unit, U.S. Patent US2485039A, 18 October 1949, <https://patents.google.com/patent/US2485039A/en> [available on: 07.01.2025].

<sup>113</sup> See: S. Dromgoole, *Underwater Cultural Heritage and International Law*, Cambridge University Press, Cambridge 2013.

considered as underwater cultural heritage. (c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.

The definition of underwater cultural heritage, as articulated within the framework of the 2001 Convention, imposes an age criterion, stipulating that objects must have been submerged for a minimum duration of 100 years to be classified as underwater cultural heritage. This temporal limitation serves to distinguish between artefacts of historical significance and items that may pertain to contemporary archaeology, thereby excluding more modern findings from the provisions of the Convention. Notably, while artefacts associated with World War I are acknowledged under this Convention due to their age, objects associated with World War II remain excluded from this designation. This restriction raises important legal considerations regarding the treatment of such artefacts, as the age criterion effectively delineates the scope of protected underwater cultural heritage and reinforces the Convention's focus on preserving resources that are perceived to be of significant cultural and historical relevance.<sup>114</sup> The rationale for imposing this age limitation may stem from a desire to protect and preserve the integrity of resources deemed to contribute to our understanding of past societies while avoiding the complications associated with the excavation and management of more recent artefacts, which may still be subject to contemporary ownership and legal claims. Consequently, the application of this criterion emphasises the need for a clear legal framework that balances the preservation of cultural heritage with the practical considerations of archaeological practice. The 100-year age restriction imposed by the underwater cultural heritage definition might underscore the distinction between historical and modern archaeological artefacts, impacting the legal status and protections afforded under the Convention. This delineation reflects an ongoing effort to manage underwater cultural resources within a comprehensive legal context, ensuring that artefacts with significant historical value are preserved while modern materials are addressed through separate legal considerations. It does, however, artificially divide archaeology into “past archaeology” and “modern archaeology”, devaluing their worth and overall meaning for the science.

Underwater Heritage Convention does represents a significant advancement in the legal framework governing archaeological heritage, recognising the unique challenges and opportunities posed by underwater sites. The Convention establishes the principle that

---

<sup>114</sup> See: A. Gerecka-Żołyńska, Pojęcie Podwodnego Dziedzictwa Kulturalnego z Perspektywy Ochrony Karnoprawnej [The Notion of Underwater Cultural Heritage from the Penal Law Perspective] [in:] M. Jankowska, P. Gwoździewicz-Matan, P. Stec (eds.), *Własność intelektualna a dziedzictwo kulturowe* [Intellectual property and cultural heritage] Wydawnictwo Ius Publicum-Narodowy Instytut Dziedzictwa, Warszawa 2020, pp. 392-402.

underwater cultural heritage is a non-renewable resource that must be protected for the benefit of present and future generations. It emphasises the need for responsible stewardship and management practices to ensure the preservation of such heritage *in situ*, advocating for its study and conservation to be conducted in a manner that minimises damage to the resource. Protecting underwater heritage *in situ* refers to preserving archaeological sites, artefacts, and other cultural heritage elements in their original submerged contexts rather than removing them for excavation or study. *In situ* preservation is also beneficial for mitigating the risks associated with underwater excavation, which can lead to erosion, disturbance, and damage to delicate materials. The underwater environment often provides a natural protective barrier against some forms of decay, preserving artefacts for future generations. Conservation efforts focused on *in situ* protection can be more sustainable, allowing for careful monitoring and management of sites without the immediate need for physical intervention.

A key provision of the Convention is its focus on collaboration among states and the importance of international cooperation in the protection of underwater cultural heritage using Law of the Sea principles.<sup>115</sup> This includes the establishment of safeguards against commercial exploitation and the illicit trade of artefacts, which have historically posed threats to these resources. The Convention aims to enhance the collective understanding of underwater cultural heritage and its significance by promoting joint research, preservation, and public awareness efforts. Furthermore, the Convention specifies that the exploration and excavation of underwater sites should adhere to strict standards of documentation and reporting, ensuring that archaeological practices are conducted meticulously. This requirement is essential for preserving the integrity of underwater cultural heritage and for advancing knowledge in the field of archaeology. The implications of the Convention for archaeology are profound. It provides a recognised framework for the legal protection of underwater cultural heritage, encouraging scholars and practitioners to study these sites systematically.

Furthermore, the provisions delineated in the Annex to the Convention establish, for the first time, international legal standards formulated by states to regulate the activities of archaeologists and other individuals engaged in the exploration and management of underwater cultural heritage. Historically, such regulations have typically been developed by private organisations for the benefit of their members. There are 36 rules in total.

The perception that all submerged objects and sites belong solely to the domain of underwater archaeology is a common misconception. While underwater archaeology indeed encompasses the study and preservation of various historical assets located beneath the surface

---

<sup>115</sup> United Nations Convention on the Law of the Sea, 1982, 1833 U.N.T.S. 397.

of oceans, lakes, and rivers, not every item found underwater qualifies as an archaeological artefact or site. First and foremost, archaeology specifically focuses on all remains, artefacts, and any other evidence of human activity from previous epochs whose preservation and study assist in reconstructing the history of humanity and its relationship with the natural environment and for which excavations, discoveries, and other research methods pertaining to humanity and its associated environment serve as the principal sources of information. This can include shipwrecks, submerged settlements, and other culturally important materials that provide insights into past human behaviour and societal development. However, not all items found underwater possess this cultural or historical relevance. Items such as modern detritus and certain objects, including intentionally submerged art and monuments, might be questionable as to the scope of archaeological study as defined by prevailing legal and academic standards. While the methodologies employed to discover, restore, or research these items underwater may utilise techniques akin to those employed in archaeological practices, their classification and overall objectives must be distinctly separate from those associated with underwater archaeological heritage. It is important to note that while trained archaeologists may engage in the examination of these items, particularly when employing archaeological methodologies, the overarching intent of such work should not pertain to the preservation or interpretation of underwater archaeological heritage. Instead, the focus should be on the specific context and nature of the items in question, recognising that the principles governing archaeological heritage management prioritise the protection and study of artefacts that hold historical, cultural, or scientific significance.

Furthermore, the significance of underwater cultural heritage must be evaluated within a broader cultural context. For an object to be deemed archaeological, it should be associated with specific historical narratives, cultural practices, or societal contributions that are meaningful to understanding human history. Many objects that may be located underwater, despite their presence in a submerged environment, might lack the necessary context or historical significance to warrant classification as archaeological artefacts. The legal frameworks governing underwater cultural heritage also emphasise the need for a coherent definition of what constitutes underwater cultural heritage. The Convention underscores the importance of historical significance and the non-renewable nature of underwater archaeological resources, distinguishing them from non-cultural or contemporary items that lack such significance. Moreover, this misconception can lead to detrimental practices regarding the management and conservation of underwater resources.

When all submerged objects are broadly categorised as archaeological, it can misallocate resources and attention, diverting focus from the preservation of genuinely significant heritage sites. Furthermore, it can lead to conflicts with other stakeholders who may have interests in marine resources, such as fisheries or commercial shipping, necessitating a more nuanced understanding of the relationship between underwater archaeology and other activities occurring in aquatic environments. While underwater archaeology is a critical field focused on the preservation and study of culturally significant submerged sites and artefacts, it is essential to recognise that not everything located underwater should be classified as archaeological. It might later create unnecessary disputes over the ownership rights to and safeguarding of the heritage.

It has long been recognised that the coastal state possesses the authority to manage underwater cultural heritage and conduct searches for such heritage within its internal waters and territorial sea.<sup>116</sup> However, the situation markedly differs beyond the limits of the territorial sea. As the Convention does encourage international cooperation, it does not specify the jurisdiction itself but refers to the Law of the Sea. Article 149 of the Convention on the Law of the Sea addresses the protection of maritime cultural property located within "the Area," defined as "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction." The article states that:

all objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

However, this provision is questionable in a few matters, whether an object has to be both archaeological and historical nature at once, whether preservation is the same thing as disposal of an object, and finally, why there is a country mentioned next to the state.

The issue of safeguarding maritime cultural property outside the designated special zone of the Area is addressed in article 303 of the Convention on the Law of the Sea, which asserts the following:

1. States are obligated to protect objects of an archaeological and historical nature that are discovered at sea and must collaborate to fulfil this duty. 2. To regulate the removal of such objects, the coastal State may, in accordance with Article 33, presume that their extraction from the seabed within the zone

---

<sup>116</sup> J. Cuno, *Who Owns Antiquity? Museums and the Battle over our Ancient Heritage*, Princeton University Press, Princeton-Oxford 2008, p. 46.

specified in that article, without the State's consent, constitutes an infringement of the laws and regulations that govern its territory or territorial sea. 3. Nothing in this article shall adversely affect the rights of identifiable owners, the legal principles of salvage, or other maritime law, as well as existing laws and practices related to cultural exchanges. 4. This article shall not compromise other international agreements or rules of international law concerning the protection of objects of archaeological and historical significance.

The provision in question presents certain complexities. While it is evident that the second paragraph, which has been appropriately recognised in legal literature as the primary innovation of the Convention,<sup>117</sup> confers specific rights to coastal states aimed at the protection of underwater cultural heritage within their contiguous zones, there remains contention regarding the extent of coastal states' authority concerning archaeological objects as delineated in paragraph 2.<sup>118</sup>

Lastly, underwater cultural heritage shall not be subject to commercial exploitation, however, it may be subject to regulatory intervention in the trade of artefacts. The principles established by the Convention affirm the imperative to protect such heritage as a non-renewable resource of significant cultural value. Accordingly, any activities involving underwater cultural heritage artefacts' extraction, commercialisation, or trade must adhere to stringent legal frameworks that prioritise preservation and responsible management *in situ*. States Parties to the Convention are obligated to implement measures that prohibit unauthorised commercial activities related to underwater cultural heritage and to ensure that the exploitation of such resources is conducted with a view to their protection. The prohibition of commercial exploitation reflects a broader commitment to safeguarding archaeological integrity and preserving the contextual relationships that are critical to understanding the heritage.

The Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage<sup>119</sup> clearly state that states parties shall cooperate and provide mutual assistance in the protection and management of underwater cultural heritage. This collaboration may extend to the investigation, excavation, documentation, conservation, study, and presentation of such heritage whenever feasible. Such protection includes the implementation

---

<sup>117</sup> A. Strati, *The Protection of the Underwater Cultural Heritage in International Legal Perspective* [in:] *Archaeological Heritage: Current Trends in its Legal Protection (International Conference Athens, 26-27 November 1992)*, Martinus Nijhoff Publishers, Hague-London-Boston 1995, p. 159; M. Ray, *The UNESCO Convention on Underwater Cultural Heritage and the International Law of the Sea* [in:] J.A. Frowein, R. Wolfrum (eds.), *Max Planck Yearbook of the United Nations Law*, vol. 6, Brill, Leiden 2002, p. 399.

<sup>118</sup> P.J. O'Keefe, *Underwater Cultural Heritage* [in:] F. Franconi, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 299.

<sup>119</sup> The Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage, adopted by Resolution 6/ MSP 4 and Resolution 8/ MSP 5, UNESCO.

of all necessary measures to prevent the commercial exploitation of underwater cultural heritage, particularly through trade, speculation, or barter. Underwater cultural heritage shall not be classified or treated as commercial goods.<sup>120</sup>

However, upon the extraction of an object from its underwater context, whether for purposes of preservation, archaeological research, or any academic endeavour, the subsequent transfer of the object to a museum or similar institution entails specific legal implications. Once the object is designated as a cultural asset owned by the state, the museum, or a relevant organisational unit, it may be later eligible for inclusion on the museum's inventory list. The process of entering the object into the inventory signifies formal recognition of its status as a cultural object, which can subsequently facilitate potential trade or transfer of ownership in the future. Such inventorying procedures are typically governed by both national and institutional regulations pertaining to the management and disposition of cultural heritage assets. In the absence of legal recognition of underwater cultural objects as “underwater archaeological objects,” it cannot be presumed that the extraction of any item from its underwater context necessitates immediate exclusion from trade, a practice typically applied to archaeological artefacts.

This lack of classification indicates that objects recovered from underwater environments may not inherently carry the same legal protections afforded to archaeological artefacts, which are often subject to stringent controls regarding their sale, distribution, and management. Once such underwater cultural objects are removed from their original aquatic environment, they might transition into the category of general cultural objects losing their special protection because of lack of domestic legal provisions and lack of a specific legal underwater heritage category. Consequently, upon recovery, these items may no longer be protected under the provisions established by the Convention, allowing for the possibility of trade or transfer of ownership without the constraints typically governing archaeological material. This delineation raises important legal considerations regarding the status and treatment of underwater cultural heritage post-recovery. The transition from underwater cultural heritage to casual cultural objects suggests that, unless explicitly regulated by national laws or international agreements, these items may be regarded in the same manner as other cultural objects that are not subject to archaeological oversight, and there is possible trade with them.

---

<sup>120</sup> The Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage, adopted by Resolution 6/ MSP 4 and Resolution 8/ MSP 5, UNESCO, p. 9.

Notwithstanding its best efforts, the Convention has not succeeded in providing as extensive protection for archaeological heritage as its predecessors. This limitation primarily arises from the lack of ratification by significant actors on the international stage, particularly those who are also influential in the global market, such as the United States and China. Furthermore, Greece, a nation intrinsically connected to archaeological heritage due to its rich historical significance and extensive coastline, is not a signatory to this Convention. As of now, the Convention has been ratified by 78 states, which indicates a limited scope of implementation among countries that play critical roles in the conservation and management of underwater resources. The absence of participation by major states diminishes the Convention's effectiveness and its potential to establish a comprehensive international framework for the protection of underwater heritage. In light of these issues, it is evident that achieving widespread protection for underwater archaeological heritage will require renewed efforts to engage non-signatory states.

Collectively, all conventions (1954 Hague Convention, 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1972 World Heritage Convention and 2001 Underwater Cultural Heritage) create a comprehensive legal framework for the protection of archaeological heritage, addressing various aspects such as armed conflict, illicit trafficking, recognition of significant sites, and underwater heritage management. They underscore the importance of international cooperation, legal standards, and ethical stewardship in the preservation of cultural heritage for future generations while at the same time exposing those benefits as the biggest problems of the conventions.<sup>121</sup>

### **2.1.2. Council of Europe conventions**

The European Convention on the Protection of the Archaeological Heritage<sup>122</sup> from 1992, commonly referred to as the Malta Convention or Valetta Treaty, is not the first legal document drafted by the Council of Europe concerning archaeological heritage. However, it is the main and only legal act that solely focuses on this matter (globally, not solely within Europe.), and it will be described as the first. It supersedes the original Convention on the Protection of the

---

<sup>121</sup> See: T. Kono, Progressive Development of International Law through UNESCO - focusing on the Field of Cultural Heritage, *Soochow Law Journal*, vol. 6, no. 1, Taipei 2009, pp. 1-63.

<sup>122</sup> European Convention on the Protection of the Archaeological Heritage (Revised) (adopted on 16 January 1992, entered into force 25 May 1995), European Treaty Series no. 143, Council of Europe, 1992.

Archaeological Heritage<sup>123</sup> from 1969, integrating concepts and principles that have since become standard practice. The revised Convention is informed by insights gained from twenty-two years of experience with the initial Convention. The revised version represents a significant legal instrument aimed at safeguarding the archaeological heritage of Europe, emphasising the importance of archaeological sites and artefacts in understanding the cultural history of nations. The Convention emerged in response to the growing awareness of the threats facing archaeological heritage, including urban development, looting, and neglect. It includes provisions intended to address deficiencies while enhancing cooperation among European states. The 1969 Convention primarily addresses archaeological excavations and the recovery of information derived from such excavations.<sup>124</sup>

The objective of the Convention, in article 1, is to safeguard archaeological heritage as a repository of collective memory for Europe and as a tool for historical and scientific research. All remnants, objects, and other evidence of human activity from previous eras are regarded as constituents of archaeological heritage. This concept encompasses structures, constructions, groups of buildings, developed sites, movable artefacts, and other types of monuments, along with their contextual settings, whether located on land or underwater. For some, the definition might seem too wide.<sup>125</sup> The Convention acknowledges archaeological heritage as an irreplaceable resource that is essential to the preservation of cultural identity and the advancement of historical research. Nevertheless, it delineates European collective memory from that of the broader global context, despite the prevailing trend advocating for the recognition of a shared human heritage that transcends national and cultural boundaries. This distinction raises significant legal and ethical implications regarding the treatment and interpretation of archaeological heritage. By focusing primarily on European archaeological resources, the Convention may inadvertently reinforce a perception that cultural identity is circumscribed within geopolitical limits. This perspective contrasts sharply with the contemporary movement toward recognising the interconnectedness of cultural narratives and the importance of a collective human heritage that includes contributions from diverse societies and civilisations across the globe. The prescriptive nature of the Convention could lead to a

---

<sup>123</sup> European Convention on the Protection of the Archaeological Heritage, (adopted on 6 May 1969, entered into force 20 November 1970) European Treaty Series no. 66, Council of Europe, 1969.

<sup>124</sup> P.J. O’Keefe, *The European Convention on the Protection of the Archaeological Heritage*, *Antiquity*, vol. 67, issue 255, Cambridge University Press, Cambridge 1993, online 2015, p. 406.

<sup>125</sup> W.J.H. Willems, *The Work of Making Malta: The Council of Europe’s Archaeology and Planning Committee 1988-1996*, *European Journal of Archaeology*, vol. 10, issue 1, Cambridge University Press, Cambridge 2007, p. 62.

potential undervaluation of archaeological resources outside of Europe, which may have equally significant historical and cultural importance.

This could result in insufficient recognition, protection, and conservation efforts for archaeological sites that are integral to the identity and heritage of non-European cultures. In a legal context, this raises questions about the universality of protections afforded to cultural heritage. A broader interpretation of archaeological heritage, one that emphasises its global significance, would advocate for international cooperation and facilitate strategies that promote the conservation of archaeological sites worldwide. Such an approach recognises the necessity of inclusive frameworks that honour diverse cultural identities while fostering the preservation of archaeological heritage as a fundamental aspect of shared human history. Therefore, while the Convention plays a vital role in emphasising the importance of archaeological heritage to European cultural identity and historical inquiry, it is imperative to reconsider its scope to reflect the interconnected nature of human heritage, thereby promoting a more comprehensive and equitable framework for the protection and appreciation of archaeological resources globally, specifically in the era of globalisation, internationalisation and constant movement of people and cultures.

The Treaty aims to foster a unified approach among European states to preserve this important aspect of their cultural heritage. A key feature of the Malta Convention is its emphasis on preventive measures. The Convention outlines the obligations of state parties to ensure that their national policies prioritise the preservation of archaeological heritage. It calls for the integration of archaeological considerations into urban planning and development projects to minimise the impact on archaeological sites. The Convention also encourages states to promote public awareness and education about the importance of archaeological heritage in fostering cultural identity. In addition to preventive measures, the Malta Convention emphasises the responsibilities of state parties regarding the excavation and investigation of archaeological sites. It encourages the adoption of best practices for archaeological research and underscores the necessity of thorough documentation and reporting.

The Convention also advocates for the establishment of inventories of archaeological sites and finds, facilitating better management and protection of these resources (articles 4 and 5). Each state also commits (in article 6) to facilitating public financial support for archaeological research through national, regional, and local authorities in accordance with their respective competencies. Additionally, Parties shall endeavour to enhance material resources allocated for rescue archaeology by implementing appropriate measures. This includes ensuring that adequate funding is allocated within major public or private development

projects to cover the full costs associated with necessary archaeological operations and has to be part of the planning schedule for the future.<sup>126</sup> Such funding may come from both public and private sector resources, as appropriate. Further, Parties are to incorporate provisions within the relevant budgets of these development schemes to account for activities related to archaeological impact assessments, similar to the financial considerations made for environmental and regional planning studies. These provisions should encompass preliminary archaeological investigations, site surveys, the creation of scientific summary records, and the comprehensive publication and documentation of archaeological findings. By committing to these measures, states will strengthen archaeological heritage protection, ensuring that essential research and documentation are conducted alongside development initiatives. This approach fosters a more sustainable and ethically responsible method of managing cultural heritage, highlighting the importance of integrating archaeological considerations into broader planning processes and recognising the cultural significance of archaeological resources in the collective historical narrative.

Public and private funding plays a crucial role in supporting archaeological research and fostering the preservation and understanding of cultural heritage. Each funding source has its unique characteristics, benefits, and challenges, contributing to the overall landscape of archaeological practice. Public funding often comes with specific mandates aimed at ensuring that archaeological studies benefit the wider community, such as contributing to public knowledge, educational programs, or cultural activities. Publicly funded archaeological projects often require adherence to rigorous ethical standards and transparency in reporting findings, which enhances the credibility of the research. Furthermore, public funding may stimulate collaborative efforts amongst different institutions, including universities, museums, and heritage organisations, leading to enriched interdisciplinary approaches. Conversely, private funding comes from individual donors, philanthropic foundations, corporations, and cultural institutions. This type of funding can be more flexible and faster to secure, enabling innovative projects to be launched without the often lengthy approval processes associated with public funding. Private funding can also enhance the capacity for specialised research, such as high-tech archaeological methods (e.g., aerial photography, remote sensing, or advanced scientific analysis) that might otherwise be beyond the financial reach of a traditional public budget. Moreover, the reliance on private funding can create disparities in access to resources, leading to a situation where well-connected projects receive more attention and funding while

---

<sup>126</sup> W.J.H. Willems, *The Work of Making Malta: The Council of Europe's Archaeology and Planning Committee 1988-1996*, European Journal of Archaeology, vol. 10, issue 1, Cambridge University Press, Cambridge 2007, p. 63.

smaller, community-based archaeological initiatives may struggle to obtain adequate support. However, the public or state ownership of archaeological heritage is inherently linked to the funding and management of archaeological research and preservation efforts. The model of public ownership entails legal obligations for stewardship. It is incumbent upon the state to uphold its responsibility to protect and manage archaeological sites in a manner that preserves their integrity for future generations. Public ownership underscores the principles of transparency and accountability in decision-making processes regarding archaeological resources, ensuring that the public good is prioritised over private interests. It also is connected with the trade of such goods and, later, potential illicit trade.

The market value of numerous objects discovered within the European context is sufficiently high that the associated temptations may outweigh existing sanctions, leading to the circumvention of established safeguards. The most effective means of guarding against such activities is to educate the public regarding the underlying issues, particularly the understanding that removing an object from its original context not only undermines the scientific value of that object but also inflicts harm on the sites of provenance. Furthermore, the illicit circulation of objects can be mitigated through enhanced cooperation among states, which should involve notifying one another about ongoing illicit activities and promptly alerting relevant authorities when a suspicious object appears on the market. Such collaboration is essential for the effective enforcement of legal protections and the safeguarding of cultural heritage.<sup>127</sup> The Revised Convention contains only one provision (article 10) addressing what is referred to as the 'illicit circulation' of elements of archaeological heritage. This issue has persisted for a considerable duration and presents a multitude of complex challenges. Such complexities are not adequately suited for resolution within a Convention whose primary objective is establishing standardised archaeological activity regulations. The 'illicit circulation' of archaeological elements constitutes only a segment of the broader issue regarding the unlawful trade in cultural heritage items. Moreover, the inclusion of provisions that may impose substantial obligations to address this illicit circulation could potentially serve as a justification for certain governments to decline the ratification of the Convention.<sup>128</sup>

The Malta Convention has played a pivotal role in shaping archaeological heritage policies across Europe. However, its scope of activity is narrower than the previous conventions. Its provisions serve to reinforce the notion that archaeological heritage is not merely a national concern but a collective responsibility that transcends borders (within

---

<sup>127</sup> Explanatory Report to the European Convention on the Protection of the Archaeological Heritage (Revised), European Treaty Series no. 143, Council of Europe, 1992.

<sup>128</sup> P.J. O'Keefe, *The European Convention...*, p. 411.

Europe), contributing to the understanding and appreciation of the rich tapestry of European history. As for now there are 46 signatory parties to the Convention.

It is noteworthy to mention a few other conventions without delving into specifics. First is the Convention for the Protection of the Architectural Heritage of Europe.<sup>129</sup> It provides a framework for the safeguarding of architectural heritage across Europe. While its primary focus is on architecture and urban environments, the Convention also has significant implications for archaeology, recognising the interconnectedness of built heritage and archaeological sites. One of the fundamental principles of the Granada Convention is the acknowledgement that architectural heritage encompasses not only individual buildings but also the cultural landscape in which these structures exist. This broader perspective inherently includes archaeological sites, as many archaeological remnants contribute to the historical narrative of architectural development and cultural evolution within a given region. By protecting the architectural landscape, the Convention indirectly supports the preservation of archaeological contexts that provide insight into past human activities. The Convention emphasises the importance of sustainable management practices and integrated approaches to heritage preservation. It encourages member states to develop policies that facilitate the conservation of architectural heritage while also considering the archaeological significance of sites. For instance, archaeological findings can inform restoration efforts, allowing for a historically accurate representation of the architectural heritage while maintaining the integrity of the archaeological record.

A distinction must be made between the Convention for the Protection of the Architectural Heritage of Europe and the European Convention on the Protection of the Archaeological Heritage. Article 1 of the latter Convention stipulates that "... all remains and objects, or any other traces of human existence that provide evidence of past epochs and civilisations, for which excavations or discoveries constitute the primary or one of the primary sources of scientific information, shall be regarded as archaeological objects." Certain components of archaeological heritage, as defined by the (archaeological) Convention, may include both movable and immovable elements. Consequently, in some cases, the distinction between architectural heritage and archaeological heritage may become ambiguous. To mitigate potential difficulties arising from this overlap, article 21 explicitly states that the provisions of this Convention shall not prejudice the application of any specific and, in some instances, more

---

<sup>129</sup> Convention for the Protection of the Architectural Heritage of Europe (adopted on 3 October 1985, entered into force 1 December 1987), European Treaty Series no. 121, Council of Europe, 1985.

advantageous provisions concerning the protection of properties as outlined in the aforementioned conventions.<sup>130</sup>

Additionally, the Convention promotes public awareness and education about the importance of heritage conservation. This aspect is vital for archaeology, as raising awareness fosters community involvement in the preservation of both architectural and archaeological heritage. Local communities often have valuable knowledge about archaeological sites, and their participation can enhance preservation efforts and promote a deeper appreciation of the cultural legacy. The recognition of the symbiotic relationship between built heritage and archaeological resources underscores the importance of a comprehensive strategy that protects both aspects of cultural heritage for future generations. The Convention was the same success as the previous one, as it has 42 signatories.<sup>131</sup>

Second, the Council of Europe Convention on Offences relating to Cultural Property,<sup>132</sup> which superseded the European Convention on Offences relating to Cultural Property<sup>133</sup> (that never came into force), explicitly mentions in article 2 archaeological artefacts (and not archaeological heritage, meaning that some parts, like archaeological sites are excluded) as part of the definition of cultural property. The Convention establishes a comprehensive legal framework aimed at preventing and combating offences against cultural property, including archaeological heritage. The Convention does not, in and of itself, criminalise the act of illicit trafficking in cultural property. Instead, articles 3 through 9 address various related offences, including theft and other forms of unlawful appropriation, unlawful excavation and removal, illegal importation and exportation, acquisition, market placement, falsification, and damage to cultural property. As clarified in the Explanatory Report, these articles are designed to function in a complementary manner, thereby ensuring the criminalisation of the multiple dimensions of the phenomenon of cultural property trafficking while considering its transnational and intricate character.<sup>134</sup> Furthermore, article 10 addresses the unlawful destruction or damage of both movable and immovable property. Under the provisions of the Convention, states parties are obligated to ensure that each act outlined in the aforementioned provisions "constitutes a criminal offence under its domestic law." As noted in the Explanatory Report, the term "ensure"

---

<sup>130</sup> Explanatory Report to the Convention for the Protection of the Architectural Heritage of Europe, European Treaty Series no. 121, Council of Europe, 1985, p. 11.

<sup>131</sup> Status as of 09.01.2025.

<sup>132</sup> Council of Europe Convention on Offences relating to Cultural Property (adopted on 3 May 2017, entered into force 1 April 2022), Council of Europe Treaty Series no. 221, Council of Europe, 2017.

<sup>133</sup> European Convention on Offences relating to Cultural Property (opened for signature on 23 June 1985, never entered into force), European Treaty Series no. 119, Council of Europe, 1985.

<sup>134</sup> Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property, Council of Europe Treaty Series no. 221, Council of Europe, 2017, pp. 7-11.

implies that Parties may need to undertake legislative and/or other measures to fulfil this obligation, however, they are not required to do so if their existing domestic legislation is already fully compliant with the Convention's requirements.

Additionally, since the Convention establishes only a minimum standard, states parties are entitled to expand upon the definition of the offences described and may choose to criminalise other forms of conduct as well. By defining these offences, the Convention seeks to enhance accountability and deter violations that threaten the integrity of archaeological heritage. The Convention further mandates that state parties foster enhanced cooperation and coordination in investigating and prosecuting offences relating to cultural property. This includes establishing mechanisms for mutual legal assistance, information sharing, and collaborative law enforcement initiatives designed to address the illicit trade of cultural artefacts. Through these measures, the Convention aims to strengthen the capacity of States to combat crimes affecting archaeological heritage effectively.<sup>135</sup>

The Convention outlines the importance of raising public awareness regarding the significance of cultural property protection and the legal ramifications associated with offences against it. State parties are encouraged to implement educational programs aimed at informing the public, including individuals in the archaeological and cultural sectors, about the importance of safeguarding archaeological heritage. Through its provisions, the Convention aims to promote a collective commitment among state parties to prevent and address offences against cultural property, ensuring that archaeological resources are preserved for the benefit of present and future generations. The Convention has been crafted as an open and globally-oriented instrument to safeguard humanity's shared cultural heritage. Consequently, in accordance with article 28, it allows for accession by third states that are not members of the Council of Europe, contingent upon fulfilling the conditions specified in that provision. However, at the moment,<sup>136</sup> there are only 6 signatories to this Convention.

Collectively, all conventions (1992 Malta Convention, 1985 Convention on Architectural Heritage of Europe and 2017 Council of Europe Convention on Offences relating to Cultural Property) form a firm legal framework for the protection of archaeological heritage in Europe. They highlight the interconnectedness of archaeological, architectural, and cultural

---

<sup>135</sup> A. Chanaki, A. Papathanassiou, *The Council of Europe Convention on Offences relating to Cultural Property eventually Enters into Force: A New Tool to the Arsenal of International Criminal Law Responses to the Trafficking of Cultural Property*, Blog of the European Journal of International Law, 2022, <https://www.ejiltalk.org/the-council-of-europe-convention-on-offences-relating-to-cultural-property-eventually-enters-into-force-a-new-tool-to-the-arsenal-of-international-criminal-law-responses-to-the-trafficking-of-c/> [available on: 09.01.2025].

<sup>136</sup> Status as of 09.01.20205.

heritage, advocating for cooperative approaches to preservation and management for future generations.

### 2.1.3. UNIDROIT convention

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects<sup>137</sup> provides an effective solution to the problem of trade in undocumented archaeological objects that have been unlawfully removed from their rightful context. The Convention delineates principles that facilitate legal claims made by rightful owners, thereby promoting the recovery of important archaeological resources that may have been lost due to theft or illicit trafficking after illegal export. The Convention encompasses, in article 2, a broad definition of cultural objects, which includes archaeological items. This inclusive definition ensures that a wide array of artefacts, regardless of their form or historical significance, is protected under its provisions. It also emphasises the significance of rightful ownership and mandates that member states recognise the claims of legitimate owners of cultural objects, facilitating the resolution of disputes involving archaeological heritage. This legal acknowledgement enhances the capacity of countries to reclaim significant archaeological finds that may have been unlawfully removed.

The definition of "stolen" extends beyond the mere illegal removal of objects in violation of state ownership. It also encompasses the unauthorised extraction of items in contravention of local laws that regulate archaeological excavations or mandate the surrender of objects to the state, even in instances where the state does not assert initial ownership (*ab initio*).<sup>138</sup> This broader interpretation ensures that local statutes and regulations designed to protect cultural heritage are upheld. Many jurisdictions have enacted specific laws that govern the excavation of archaeological sites, stipulating that certain procedures must be followed and that items uncovered during such excavations are required to be reported to and retained by the state. Therefore, even if a state has not claimed ownership of an object from its inception, the violation of local regulations can still constitute theft. This definition also recognises the significance of preserving the integrity of archaeological sites and the importance of documenting finds for future research and conservation efforts. Unauthorised excavations often lead to the loss of contextual information vital for understanding the historical and cultural significance of archaeological artefacts. As a result, categorising such unauthorised removals

---

<sup>137</sup> UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (adopted on 24 June 1995, entered into force 1 July 1998), UNIDROIT 1995.

<sup>138</sup> P. Gerstenblith, Theft and Illegal Excavations, Legal Principles for Protection of the Archaeological Heritage [in:] F. Franconi, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 218.

as "stolen" underscores the legal and ethical imperatives surrounding the stewardship of cultural heritage.

The fundamental principle governing limitation periods for bringing up the claims, dictates in article 3 that

a claim for restitution must be filed within three years from the date when the claimant became aware of the location of the cultural object and the identity of the possessor.

In any event, the claim must be initiated within 50 years from the date of the theft. This provision presents both substantive and practical challenges. A three-year timeframe may be insufficient for many claimants to decide whether to seek legal remedies, especially when the theft occurred many years prior. The 50-year limitation period can present practical challenges for all parties involved. Given the length of time, the preservation and continuity of evidence may be significantly impacted and exclude many objects.<sup>139</sup> However, under article 3(4) a claim for the restitution of a cultural object that is an integral component of a recognised monument or archaeological site or that is part of a public collection, shall not be subject to any time limitations other than a period of three years from the date when the claimant became aware of the location of the cultural object and the identity of its possessor unless the state party declares (under article 3(5)) that an overall period of 75 years applies to stolen objects that fit within the previous categories or such longer period as is provided in its law. Nevertheless, not all circumstances of this kind can be easily addressed. Numerous monuments remain unregistered, and illicit excavation of archaeological sites is prevalent<sup>140</sup> and there is no knowledge on the artefact's integrality to either the monument or archaeological site.

The 1995 UNIDROIT Convention aims to establish a mechanism for international cooperation involving both exporting and importing countries, thereby promoting extended international collaboration. This framework is based on the understanding that once cultural property has been transferred to the territories of these nations, the effectiveness of any system designed to facilitate the return of such property will ultimately depend on the willingness of those countries to take action, regardless of underlying principles. In adopting this perspective, the UNIDROIT Convention deliberately refrains from addressing the fundamental conflicts of interest that may exist between the involved parties, nor does it claim to resolve these conflicts.

---

<sup>139</sup> P.J. O' Keefe, *Using Unidroit to Avoid Cultural Heritage Disputes: Limitation Periods*, Willamette Journal of International Law and Dispute Resolution, vol.14, no. 2, Willamette University College of Law, Salem 2006, p. 234.

<sup>140</sup> P.J. O' Keefe, *Using Unidroit...*, p. 235.

Instead, its approach is pragmatic, asserting that despite genuine conflicts, there remains substantial potential for cooperation, including establishing legal mechanisms to facilitate such collaboration. The Convention does not aspire to resolve all issues associated with the illegal art trade, rather, it acknowledges in its Preamble that it does not provide a comprehensive solution to all the challenges posed by this issue, but rather serves as a foundation for an international cooperative process.<sup>141</sup> At the moment<sup>142</sup> there are 55 contracting states to the Convention,<sup>143</sup> which makes it a powerful legal tool.

#### **2.1.4. Other international agreements and soft law**

The 1954 Hague Convention was subsequently followed by the Recommendation on International Principles Applicable to Archaeological Excavations in 1956,<sup>144</sup> and the Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites in 1962.<sup>145</sup> These initiatives were introduced in the aftermath of the devastation caused by conflicts and destruction during previous wars, particularly the two World Wars, with an emphasis predominantly on preservation. Isabelle Anatole-Gabriele identified three significant developments that redefined international heritage protection and state sovereignty between 1940 and 1960: the regulation of archaeological excavation, the compilation and comparison of national laws, and the recovery of illegally acquired cultural property. These developments culminated in the delineation of the rights and obligations of contracting state parties within a multilateral framework, fostering a collective commitment to uphold shared objectives regarding the protection and preservation of cultural heritage.

The First Recommendation directly addresses archaeological practices by establishing ethical guidelines and best practices for conducting excavations. It gives a direct definition of archaeological excavations and emphasises the need for thorough documentation and proper methodologies to ensure that archaeological findings are preserved and accurately represented

---

<sup>141</sup> M. Schneider, *The Unidroit Convention on Cultural Property: State of Play and Prospects for the Future*, Uniform Law Review, vol. 2, issue 3, UNIDROIT, Oxford University Press, Oxford 1997, p. 496.

<sup>142</sup> As for 09.01.2025.

<sup>143</sup> <https://www.unidroit.org/instruments/cultural-property/1995-convention/status/>.

<sup>144</sup> Recommendation on International Principles Applicable to Archaeological Excavations, UNESCO, New Delhi 1956. Even though many principles of the 1956 Recommendation remain protruding, it found very little interest in the discipline and was quickly forgotten by archaeologists e.g. because of the problems of main definition of archaeological excavation) The recommendation is still a soft law instrument, however, it was not transferred into any convention; see: N.P.S. Price, Conservation on excavations and the 1956 UNESCO Recommendations [in:] N.P.S. Price (ed.) *Conservation on archaeological excavations, With particular reference to the Mediterranean area*, ICCROM, Rome 1984, pp. 135-142.

<sup>145</sup> Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites, Paris 1962.

in the historical narrative. It encourages collaboration among archaeologists, local communities, and other stakeholders to respect cultural significance and minimise damage to archaeological sites during excavations. The principles outlined in this recommendation aim to protect archaeological heritage from degradation and promote responsible stewardship within the context of archaeological research. Even though the second recommendation, on Landscapes and Sites, does not mention archaeology explicitly, it still has implications for it, particularly in the realm of cultural landscape preservation. It advocates for protecting landscapes that contribute to a region's overall cultural identity, aesthetic value, and historical narrative. By proposing measures to safeguard both the natural and cultivated landscapes, this recommendation supports the conservation of archaeological sites as integral components of these larger cultural contexts. Both recommendations underscore the importance of ethical conduct, thorough documentation, and the integration of archaeological sites within their cultural and environmental contexts.

Chronologically, next is a Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works<sup>146</sup> addressing the protection of cultural property, including archaeological sites, that may be threatened by development projects and other forms of construction or alteration of the land. While the Recommendation primarily focuses on general cultural property, its implications for archaeology are also significant. First, as part of general principles, the Recommendation emphasises the necessity for prior assessment and evaluation of the potential impacts of public or private works on cultural heritage. This e.g. includes conducting archaeological assessments before initiating any construction activities to identify and mitigate potential harm to archaeological sites and artefacts. By advocating for thorough evaluation processes, the Recommendation aims to prevent the destruction of sites that hold historical, scientific, and cultural importance. The Recommendation encourages the integration of archaeological considerations into urban planning and development projects. It suggests that authorities responsible for managing public and private works should collaborate with archaeological experts to ensure that the significance of archaeological resources is recognised and adequately preserved during the planning process. This promotes a holistic approach to development where the preservation of cultural heritage is given equitable consideration alongside construction and development needs. In cases where archaeological sites are at risk due to necessary public or private works, the Recommendation advocates for the implementation of appropriate mitigation measures. These measures may

---

<sup>146</sup> Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (adopted on 19m November 1968), UNESCO, 1968.

include documentation, excavation, or, where feasible, the preservation of sites *in situ*, ensuring that archaeological heritage is safeguarded even in the face of development pressures.

UNESCO recommendations, as any other recommendations, are generally not legally binding on member states. They all serve as guidelines or normative frameworks intended to promote best practices and principles related to culture, education, science, and communications, among other areas. While these recommendations carry moral and political weight and can influence national policies and practices, they do not have the force of law like treaties or conventions that states formally ratify. Pursuant to the UNESCO Constitution, member states commit to presenting recommendations to their relevant authorities within one year of adoption. This process involves determining any necessary actions, whether legislative or otherwise, in accordance with their constitutional practices and the specific nature of the matter at hand. Furthermore, UNESCO member states agree to provide the Organisation with periodic reports detailing the actions taken in response to these recommendations. The efficacy of these recommendations often depends on the willingness of states to align their practices with the suggested norms and their commitment to fostering international cooperation in the areas addressed by UNESCO.<sup>147</sup>

In 2003 UNESCO created a Declaration concerning the Intentional Destruction of Cultural Heritage.<sup>148</sup> Like recommendations, declarations seek to establish standards in the areas of education, science, and culture, however, they are not binding under international law. This instrument articulates universal principles that the community of states aspires to uphold with the utmost authority and support. 2003 Declaration concerns the intentional destruction of cultural heritage, emphasising the importance of protecting cultural heritage as a vital component of human identity and social cohesion. It calls on states to cooperate in establishing jurisdiction and imposing sanctions against individuals responsible for such destruction, regardless of their nationality. The Declaration highlights the need for public awareness campaigns to disseminate information about the importance of cultural heritage and its protection under international law. It recalls historical conventions and legal principles related to the safeguarding of cultural heritage during armed conflict and affirms the commitment of the international community to combat its intentional destruction for the benefit of future generations. States are encouraged to adopt appropriate legislative, administrative, educational,

---

<sup>147</sup> UNESCO, Legal Affairs, UNESCO's standard- setting. An Overview, <https://www.unesco.org/en/legal-affairs/standard-setting/overview#:~:text=Contrary%20to%20conventions%2C%20recommendations%20are%20not%20binding%20under%20international%20law> [ available on: 12.01.2025].

<sup>148</sup> UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, adopted on 32. General Conference, UNESCO, 2003.

and technical measures to protect cultural heritage, which includes archaeological heritage, particularly during peacetime activities and in the event of armed conflict. The principles outlined emphasise the importance of safeguarding cultural heritage in accordance with international agreements and recommendations.

Last chronologically, in 2012, but of the greatest significance for the topic of ownership rights to archaeological artefacts comes the UNESCO-UNIDROIT Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects,<sup>149</sup> which directly pertain to archaeological heritage by establishing legal frameworks that govern the ownership, protection, and management of cultural objects that have not yet been uncovered. The provisions affirm the principle of state ownership regarding cultural objects, stipulating that such objects shall automatically be deemed the state's property upon discovery, contingent upon a determination of their cultural significance. This principle reflects the understanding that cultural heritage represents a collective asset of humanity, meriting preservation and protection. In the model provisions, the characterisation of state property is notably susceptible to varying interpretations, which raises significant legal concerns. The explanatory report accompanying the provisions advocates for explicit stipulations regarding undiscovered archaeological property within the legislative text. This emphasis on clarity is essential to mitigate ambiguity and ensure consistent application of the law across different jurisdictions. Another contentious aspect involves the determination of whether an object qualifies as ownerless property. For instance, the provisions, according to the Model Provisions, should not apply to scenarios in which an individual interred their own property for safekeeping e.g. in the event of armed conflict. Such actions illustrate the complexities of ownership rights in relation to archaeological objects, individuals possess the legal capacity to manage and protect their own assets. Therefore, the provisions must be carefully crafted to avoid inadvertently classifying such property as abandoned or ownerless. However, the provisions do not clarify whether an object classified as "buried" must already be recognised as an archaeological object at the time it is hidden, or if it can acquire archaeological value later on. There is also a lack of specification regarding the timeframe for this process. From an archaeological standpoint, the most significant discoveries are typically associated with the intentional and deliberate interment of objects, often referred to as "treasures." In these cases, determining ownership rights can be exceedingly complex, if not impossible, due to the ambiguity surrounding the historical context of the burial and the current legal frameworks governing ownership. Nonetheless, it appears

---

<sup>149</sup> UNESCO-UNIDROIT, Expert Committee on States Ownership of Cultural Heritage, Model Provisions on State Ownership of Undiscovered Cultural Objects, Explanatory Report with model provisions and explanatory guidelines, 2011.

that such scenarios may not automatically fall under the immediate exclusion of state ownership, as this situation is not explicitly addressed in the explanatory report. This lack of clarity can present challenges for both legal practitioners and archaeologists. A more precise definition of what constitutes an "archaeological object" at the time of burial, along with guidelines on how to assess these objects' historical significance over time, would be beneficial. Additionally, establishing criteria for ownership rights related to intentionally buried items would aid in resolving potential disputes over ownership, thus ensuring that both legal and cultural interests are adequately considered. Such considerations are vital for fostering respectful and responsible engagement with cultural heritage while preserving the rights of communities and individuals connected to these artefacts.

The authors of the legal model advise the inclusion of specific exclusions in domestic legislation tailored to reflect the unique legal culture and traditions of each country.<sup>150</sup> This approach necessitates a nuanced understanding of the local legal landscape, allowing for an informed determination of circumstances under which an object may not be deemed abandoned. By considering cultural and legal nuances, states can create regulations that respect property rights while simultaneously advancing the objectives of archaeological preservation and responsible stewardship of cultural heritage. However, there are no suggestions to any other exclusions, that might create difficulties for the state in applying these provisions.

The reasoning presented in Provision 5 contains a significant flaw in asserting that an undiscovered cultural object cannot be the subject of private rights and retains that status even once it has been discovered.<sup>151</sup> This absolute position fails to consider the complexities of property rights and cultural heritage laws, which can vary significantly across different jurisdictions. The assertion that undiscovered cultural objects cannot be associated with private rights overlooks the possibility that such rights may exist based on the specific laws of the jurisdiction. In some cases, individuals or entities may have legitimate claims to ownership of artefacts based on property law, even if those objects have yet to be discovered. This contradicts the rigid interpretation that such objects are inherently non-transferable. Furthermore, the idea that once a cultural object is discovered, it continues to be non-transferable contradicts many legal frameworks. For example, treasure trove laws in various jurisdictions allow finders to

---

<sup>150</sup> M. Stępień, Exploring New Avenues for Studying the Legal Culture: Drawing on Homi Bhabha's Theorization of "Culture" [in:] M. Stępień, J.B. Klakla. (eds.) *Law and Culture, Reconceptualisation and Case Studies*, Springer, Chaim 2022.

<sup>151</sup> UNESCO-UNIDROIT, Expert Committee on States Ownership of Cultural Heritage, Model Provisions on State Ownership of Undiscovered Cultural Objects, Explanatory Report with model provisions and explanatory guidelines, 2011.

claim ownership under certain conditions, indicating the necessity for a nuanced interpretation of ownership rights following discovery.

While it is acknowledged that a state archaeological museum or a private individual who validly acquired an object before the model provision's enactment could retain ownership, this introduces ambiguity regarding the status of objects sold or transferred prior to the new framework. The justification that these entities would act as actual owners raises questions about the fairness and legality of transactions involving undocumented or potentially acquired artefacts, which may have been claimed as cultural heritage. Additionally, the provision concerning the transfer of objects to foreign jurisdictions complicates matters further. The assumption that the nullity of ownership transfer will only be effective if the foreign state has adopted similar provisions fails to recognise the complexities of international law. It does not adequately consider cases where cultural objects are taken to countries with less stringent protection, often leading to irreversible losses of cultural heritage. The reasoning of this provision overlooks various nuances related to ownership principles, discovery, the implications of state and private claims, and the complexities of international law on cultural heritage transfer. Addressing these considerations is essential for a comprehensive understanding of the status of cultural objects and their ownership rights.

To prevent illicit excavation and trafficking of cultural objects, the provisions recommend the implementation of protective legal frameworks that empower states to regulate archaeological activities effectively. The provision follows the wording “are deemed to be stolen” and not “are stolen” to answer a problem which some states could have because as long as it is not in possession of the object, such object cannot be stolen. Retention for the purposes of this provision would not then be a theft. This is why a broader formula has been chosen. The licit or illicit nature of an excavation (“object excavated contrary to the law”) will be determined by additional national legislation which very often already exists. For example, many national legislations require excavations to be authorised with an administrative process being followed. The other effect concerns criminal law as the provision deals with theft. This criminal activity involves the setting into force of the criminal law procedures at the national level, but also international cooperation in criminal law matters when international aspects are concerned (see Provision 6). In case an object is lawfully excavated and lawfully exported on a temporary basis but not returned after the expiry of the term and thus illicitly retained, it should be deemed stolen.

The UNESCO-UNIDROIT Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects should not be regarded as a binding legal document or

normative instrument, as they have not been presented to states for formal endorsement or ratification. Instead, these provisions serve as a framework or guideline that states may utilise as they see fit, complementing other legislative tools available to them. The model provisions are designed to assist countries in developing their own legal frameworks regarding the ownership and protection of undiscovered cultural objects. They are aimed to reflect best practices and established principles that aim to promote responsible stewardship of cultural heritage. The UNESCO and UNIDROIT Secretariats are tasked with encouraging the implementation of these provisions, providing technical assistance, resources, and expertise to facilitate their adoption by member states.

However, by offering a not-so-clear set of recommendations, the model encourages states to engage with the important issues surrounding the ownership and management of undiscovered cultural objects in a manner that might be too difficult for the states to implement. While well-intentioned, those provisions exhibit several shortcomings that may undermine their effectiveness in protecting archaeological artefacts. The provisions do not adequately address the complexities involved in defining what constitutes an "undiscovered" cultural object, allowing for such objects to be in the ground, buildings, water and above. The ambiguity around this definition can lead to inconsistencies in application and enforcement among different jurisdictions, potentially allowing valuable artefacts to slip through the cracks of national protections. Without clear guidelines, there is a risk that items crucial to cultural heritage may not be effectively safeguarded.

The provisions focus primarily on state ownership, which may overlook the rights of local communities, indigenous groups, and individuals who have historical and cultural ties to specific artefacts. This state-centric approach can render the voices of these communities marginalised, potentially resulting in disputes over ownership and hindering collaborative efforts to preserve cultural heritage. Cultural heritage should be a shared legacy that should involve the participation of all stakeholders, and an exclusive focus on state ownership may stifle this collaborative spirit. Additionally, the provisions place significant reliance on national legal frameworks for their implementation. While this may seem prudent, it assumes that all states have sufficient legal infrastructure to adequately manage and protect cultural heritage. Unfortunately, many countries lack the necessary resources, enforcement mechanisms, or political will to uphold these legal structures effectively. In regions plagued by instability, corruption, or inadequate governance, the implementation of these provisions may be ineffective. Moreover, the provisions do not sufficiently address the realities of illicit trade and the often-covert nature of illegal excavations. Although the provisions may outline the

intentions of protection, there are limited punitive measures or mechanisms for enforcement. This lack of robust enforcement can render the provisions ineffectual in deterring the looting and trafficking of cultural artefacts, especially in areas where law enforcement is weak.

While the UNESCO-UNIDROIT Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects aim to establish a framework for managing cultural heritage, their effectiveness is hampered by ambiguities, insufficient consideration of community rights, reliance on national legal structures, lack of enforcement mechanisms, and potential bureaucratic delays. For these provisions to meaningfully protect archaeological artefacts, it would be essential to address these shortcomings by fostering collaboration among stakeholders, enhancing enforcement mechanisms, and clarifying definitions and responsibilities within the framework. While the objective of safeguarding specific categories of cultural objects is a shared goal among the domestic legislation, it is important to note that international judicial practice has demonstrated the considerable challenges involved in securing enforcement and even basic acknowledgement of these provisions in foreign courts when disputes arise regarding the ownership of illicitly excavated and exported items.<sup>152</sup>

## **2.2. European law**

While archaeology may not occupy a central position in European Union legislation, numerous legal frameworks and directives interact with archaeological matters, particularly through their focus on the protection and preservation of cultural heritage sites and artefacts. European Union legislation is also influenced by previously mentioned international frameworks, such as the UNESCO conventions. These international commitments obligate EU member states to integrate relevant principles into their national legislation, ensuring that archaeological heritage is respected and safeguarded in accordance with global standards.

Chronologically, Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a member state<sup>153</sup> addressed the restitution of cultural objects that have been unlawfully removed from a member state's territory till 2015 when it was replaced by Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a

---

<sup>152</sup> M. Frigo, *Model Provisions on State Ownership of Undiscovered Cultural Objects - Introduction*, Uniform Law Review, vol. 16, issue 4, UNIDROIT, Oxford University Press, Oxford 2011, p. 1028.

<sup>153</sup> Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 77 of 27.03.1993.

member state and amending Regulation (EU) no. 1024/2012 (Recast).<sup>154</sup> The directives hold considerable significance for the safeguarding and recovery of also archaeological heritage, as they establish a legal framework designed to facilitate the repatriation of cultural artefacts, including those of archaeological importance, that have been illicitly extracted from their country of origin. They emphasise that cultural objects hold intrinsic cultural and historical value for the nations from which they originate. This recognition underscores that such items are not simply commodities that can be traded freely in the market, they are vital elements of national heritage and identity. Consequently, the need for their protection and rightful restitution is paramount.<sup>155</sup>

By establishing a clear legal pathway for the return of cultural objects, they provide member states with the necessary tools to pursue the repatriation of archaeological items that have been unlawfully exported. This structure facilitates collaboration among countries within the European Union, allowing for the effective identification, tracking, and eventual return of stolen or illegally traded cultural materials, thereby reinforcing the commitment to preserve archaeological heritage at both the national and European levels. Moreover, they specify that the burden of proof regarding the unlawful removal of a cultural object rests with the claimant, prompting member states to maintain comprehensive and accurate records of their cultural heritage. This requirement is essential for accurately identifying and recovering archaeological artefacts and facilitates a more organised approach to dealing with restitution claims.

The definition of a "cultural object" in article 1 of the 1993 directive, as one that is classified as a 'national treasure possessing artistic, historic, or archaeological value' under national legislation or administrative procedures, raises several potential problems and challenges. The reliance on national legislation for classification can lead to inconsistencies between member states. What one country considers a 'national treasure' might not hold the same status in another country's legal framework. This divergence could complicate international cooperation and enforcement efforts regarding the restitution of cultural objects. Consequently, items that should be protected might be overlooked or improperly classified. If an object is classified as a cultural object only after its unlawful removal, issues may arise regarding the burden of proof. The state asserting that an object is a cultural artefact must provide evidence that supports its classification. In the absence of robust documentation before

---

<sup>154</sup> Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) no. 1024/2012 (Recast), OJ L 159/1 of 28.05.2014.

<sup>155</sup> See: W. Paczuski, *Handel Dzielami Sztuki w Unii Europejskiej* [Art Trade in European Union], Kantor Wydawniczy, Zakamycze 2005; M. Niedźwiedz, *Obrót Dobrami Kultury w Unii Europejskiej* [Trade with Cultural Goods in European Union], Uniwersytet Jagielloński, Zakamycze 2000.

the object was removed, this could pose difficulties in claiming restitution. Unfortunately, replacing directive is not untangling those challenges.

The stipulation (article 13 in the 1993 version and article 14 in the 2014 version) that the Directive shall apply solely to cultural objects unlawfully removed from the territory of a member state on or after 1 January 1993 establishes a clear temporal boundary for its legal applicability. This date is significant for several reasons, both practical and legal, and it has important implications for the protection and restitution of cultural heritage. By focusing on removals occurring after this specified date, the Directive seeks to create a regulatory framework for addressing only contemporary issues related to the illicit trade of cultural objects. This approach allows member states to respond to evolving challenges in the protection of cultural heritage against increasingly sophisticated methods of illicit excavation, trafficking, and exportation that have become more prevalent in recent decades. The inclusion of a cut-off date helps to avoid complicating legal disputes arising from actions taken before 1993. Cultural objects that were removed prior to this date may have become integrated into various legal systems, private collections, and public institutions over a long period. Addressing these earlier cases could involve complex historical claims, competing ownership rights, and differing national laws regarding cultural property, which could create significant legal challenges the so-called hard cases.<sup>156</sup>

While both directives have the shared goal of addressing the return of unlawfully removed cultural objects, Directive 2014/60/EU builds upon the foundation established by Council Directive 93/7/EEC by introducing refined procedures, enhancing cooperation, emphasising proper documentation, and aligning with contemporary cultural heritage management practices.<sup>157</sup> These improvements reflect a growing recognition of the significance of cultural heritage in Europe and the need for effective legal frameworks to protect it. By promoting the return of illegally removed cultural objects, the directive significantly contributes to combatting the illicit trade in archaeological heritage, a pressing issue on the global stage. This aligns with broader objectives of preserving cultural heritage, protecting archaeological sites, and respecting cultural diversity. The recast Directive (2014/60/EU) outlines the categories of cultural objects covered by its provisions, extends the time frame for initiating return proceedings, and harmonises the relevant laws of other member states regarding the criteria that must be fulfilled. This harmonisation is specifically achieved by promoting a more

---

<sup>156</sup> See: K. Zeidler, *Restitution of Cultural Property: A Hard Case - Theory of Argumentation - Philosophy of Law*, Gdańsk University Press-Wolters Kluwer, Gdańsk-Warsaw 2016.

<sup>157</sup> See: M. Górká, *Directive 2014/60/EU: a New Legal Framework for Ensuring the Return of Cultural Objects Within European Union*, Santander Art and Culture Law Review, issue 2, Opole 2016, pp. 27-34.

consistent interpretation of the concept of "due diligence," which the possessor must demonstrate in order to receive fair compensation for the return of a cultural object.<sup>158</sup>

Regulations and directives represent two distinct forms of legislative acts within the European Union, each with its own characteristics, objectives, and methods of implementation. A regulation is a binding legislative act that must be applied in its entirety across all EU member states. This means that once a regulation is adopted, it becomes directly enforceable law in every member state without the need for national governments to enact additional legislation. In contrast, a directive is a legislative act that sets out specific goals that member states are required to achieve, but it grants them the flexibility to determine how to implement these objectives through their own national laws. This means that while the end goal is established at the EU level, the methods of achieving that goal can vary from one country to another, allowing for adaptation to national contexts.<sup>159</sup> While the previous legal act was just a mere goal, the Council Regulation (EC) 116/2009 of 18 December 2008 on the export of cultural goods<sup>160</sup> is a binding legal act.

Council Regulation (EC) 116/2009 plays a significant role in protecting archaeological heritage by establishing a framework that regulates the export of cultural objects, including archaeological artefacts, from the European Union (EU). The regulation mandates that an export license must be obtained before a cultural good, including archaeological artefacts, can be exported outside the EU. This requirement creates a formal process through which authorities can assess the cultural significance of the object and its legal status, thus preventing the unlawful export of significant archaeological heritage.

It mandates that uniform inspections occur at the EU's external borders for these exports, with specific categories of cultural objects detailed in Annex I. An export license is required when a cultural good is exported outside the EU's customs territory. The exporter must apply for this license, issued by the EU country's relevant authority, and this license is valid across the entire EU. There are three categories of licenses:

1. The standard license, which is utilised under normal circumstances for each export subject to Regulation (EC) No 116/2009 and is valid for one year
2. The specific open license, which permits the repeated temporary export of a specific cultural good by its owner for use and/or exhibition in a third country, valid for up to five years.

---

<sup>158</sup> M. Frigo, *The Implementation of of Directive 2014/60/EU and the problems of the compliance of Italian Legislation*, Santander Art and Culture Law Review, issue 2, Opole 2016, pp. 72-73.

<sup>159</sup> Types of legislation, Law, European Union, [https://european-union.europa.eu/institutions-law-budget/law/types-legislation\\_en](https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en) [available on: 15.01.2025].

<sup>160</sup> Council Regulation (EC) 116/2009 of 18 December 2008 on the export of cultural goods, OJ L39 of 10.02.2009.

3. The general open license, issued to museums and other institutions for the temporary export of any items from their permanent collection that are likely to be temporarily exported from the EU for exhibitions in non-EU countries. This type is valid for up to five years.

The primary challenge lies in interpreting the enumeration of cultural objects defined in article 1 and detailed in the Annex. According to this article, archaeological objects must meet specific criteria to be considered under the regulation. Notably, these objects must be at least 100 years old and must originate from one of the following categories: excavations or discoveries on land or underwater, archaeological sites, or archaeological collections. The stipulation of a minimum age of 100 years raises several complexities. There may be discrepancies in determining the exact date of an object's creation or discovery, particularly if the object lacks sufficient documentation. Additionally, the definition raises questions about objects that may have been created slightly less than 100 years ago, which could still hold significant cultural and historical importance and may be considered valuable within specific contexts. Moreover, the requirement that archaeological objects must be products of excavations or finds introduces challenges related to the provenance and context of these items. Objects obtained through unregulated or illicit excavations may not qualify under this provision, yet they can hold substantial archaeological value. The regulation's reference to archaeological sites and collections implies a need for proper documentation and ownership verifications. This requirement can be problematic when objects have shifted between various collections over time or provenance is obscured. Such complexities could hinder the effective implementation of the regulation by creating legal ambiguities and potential challenges in restitution claims. To mitigate these challenges, it may be necessary to establish clearer guidelines and protocols regarding the classification of objects, taking into account the complexities surrounding age, provenance, and legal acquisition practices.

Additionally, article 2 presents certain legal challenges:

without prejudice to paragraph 4, the Member State which is competent in accordance with points (a) or (b) of the first subparagraph is authorised not to require export licences for the cultural goods specified in the first and second indents of category A.1 of Annex I where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds or archaeological sites within a Member State, and that their presence on the market is lawful.

The provision stating that a member state is authorised not to require export licenses for certain cultural goods raises several potential flaws and concerns regarding its application and implications.

The phrase "limited archaeological or scientific interest" is vague and lacks clear criteria for assessment. What constitutes "limited" interest can vary significantly among different stakeholders, such as collectors, archaeologists, and policymakers. This ambiguity may lead to inconsistent interpretations and applications across member states, creating confusion and potential loopholes that could be exploited. Additionally, allowing exemptions for goods deemed to have limited archaeological interest presents the risk that valuable artefacts may be inappropriately classified as having limited value. This situation could lead to the unlawful export of important cultural heritage items that should otherwise undergo scrutiny and protective measures.

Furthermore, the provision relies on the assumption that the presence of these goods on the market is lawful. However, this does not account for the reality that many cultural goods may have been unlawfully acquired or traded before entering the market. Without robust verification mechanisms, this provision could inadvertently legitimise the trade of unlawfully acquired artefacts. The lack of a requirement for export licenses for exempted items could diminish the accountability of those engaged in the trade of cultural goods. This reduction might limit the flow of important information regarding the provenance and history of such artefacts, complicating efforts to track and recover stolen or illicitly obtained cultural items. This provision may inadvertently create conflicts with existing national laws that are more stringent in handling the export of cultural goods.

Member states committed to protecting their archaeological heritage may find themselves constrained by this directive, potentially undermining their ability to enact laws that align with their cultural policies and priorities. Over time, the ability to bypass export licenses for items judged to have limited interest could lead to a gradual erosion of protections for cultural heritage. Such a situation might encourage the market to prioritise economic gain over cultural preservation, resulting in the loss of significant archaeological context and heritage. Lastly, since the authorisation to waive export licenses is at the discretion of individual member states, this could result in a patchwork of enforcement throughout the EU. Some countries may choose to apply stricter controls, while others may adopt a more lenient stance, leading to disparities in how cultural heritage is protected and managed across the region. While European law provides a vital overarching framework, the real impact on archaeological heritage protection is fundamentally shaped by the specific domestic laws enacted and enforced by each member state. This interplay highlights the necessity for harmonisation and cooperation at both the European and national levels to ensure the effective safeguarding of archaeological heritage across the continent.

### 2.3. Domestic law in Poland as an example of regulatory framework

The search for an ideal model of protection and ownership rights concerning archaeological heritage is an ongoing endeavour influenced by the delicate balance between private interests and public welfare.<sup>161</sup> As archaeological sites and artefacts often embody significant cultural, historical, and scientific value, debates arise over their ownership, management, and preservation. A functional regulatory framework needs to address these concerns while fostering collaboration between the public sector, which seeks to protect cultural heritage for the benefit of society, and private entities, such as collectors, landowners, and researchers, who may have interests in the same cultural objects. In many jurisdictions, tensions emerge between private law, which governs individual ownership rights, and public law, which establishes the state's authority to protect archaeological heritage. While private collectors can claim ownership over artefacts they acquire, public law often asserts that such artefacts are part of the nation's cultural heritage, thus requiring certain safeguards that must be upheld irrespective of private ownership. This dynamic complicates the legal landscape surrounding archaeological heritage, where private rights can conflict with public interests aimed at ensuring the responsible stewardship of culturally significant resources. An effective regulatory model must consider these competing interests and seek to reconcile them.

The protection of cultural heritage and archaeological heritage can be understood through various approaches, two of which are commonly represented as liberal and conservative models. Each model embodies distinct philosophical underpinnings, priorities, and methodologies for safeguarding cultural assets. Liberal models of cultural heritage protection are characterised by their emphasis on individual rights, private ownership, and the market economy. Advocates of this approach argue that the preservation of cultural heritage should involve public participation and the empowerment of community stakeholders, fostering an environment where cultural heritage can be appreciated and protected through a marketplace of ideas and values. Liberal models often promote the idea that cultural resources are best managed through private initiatives, which can drive innovation and enhance community engagement. In this framework, legislation may focus on the deregulation of certain aspects of cultural resource management, encouraging partnerships between public agencies and private entities. For instance, private collectors, businesses, and non-profit organisations may be incentivised to invest in conserving and promoting cultural and archaeological sites. The liberal

---

<sup>161</sup> See: A. Jagielska-Burduk, *Cultural Heritage as a Legal Hybrid, Between Public and Private Law*, Springer, Chaim 2022.

perspective values heritage as a living entity, one that grows and evolves through contemporary use and reinterpretation. This approach can lead to inclusive practices that allow for a variety of interpretations and engagements with heritage, potentially enriching the cultural tapestry of a society.

On the other hand, conservative models of cultural heritage protection prioritise collective ownership, state intervention, and the need to preserve heritage for future generations. This perspective is grounded in the belief that cultural heritage represents shared values, national identity, and historical continuity, which must be safeguarded by governmental entities. Advocates of conservative models often argue for strong legal protections that restrict private ownership and control over archaeological sites and artefacts, emphasising the intrinsic public nature of cultural heritage. Conservative models typically involve stringent regulations that govern the excavation, ownership, and export of cultural objects. They may emphasise the importance of archaeological integrity, ensuring that sites remain undisturbed and that artefacts are preserved in their original context. The state often plays a significant role in funding preservation efforts and enforcing laws aimed at protecting cultural heritage from development, neglect, or illicit trafficking. This approach tends to focus on restoring and maintaining sites according to historical standards, often involving expert-driven consultation processes to ensure fidelity to historical authenticity. The debate between those models and approaches is called liberalism vs communitarianism.<sup>162</sup>

The tension between liberal and conservative models is evident in ongoing debates concerning ownership rights, the role of private individuals and organisations in heritage management, and the mechanisms for enforcing protective measures. The protection of cultural and archaeological heritage in Poland is deeply intertwined with the country's complex history, marked by periods of prosperity, conflict, and resilience. As a nation that has experienced the impacts of wars, partitions, and changing borders, Poland does recognise the intrinsic value of its rich historical and cultural legacy, underscoring the necessity for effective protective measures for its archaeological resources.

Despite the robust legal framework and public engagement efforts, there are always challenges remaining in the protection of archaeological heritage. Urban development, illegal excavations, and a lack of resources for conservation often threaten archaeological sites. The interplay between private ownership and public heritage objectives leading to conflicts over land use and archaeological rights. To confront these challenges effectively, ongoing efforts are

---

<sup>162</sup> K. Zeidler, M. Łągiewska, *Liberalism Versus Communitarianism in Cultural Heritage Law*, International Journal for the Semiotics of Law, vol. 34, issue 3, Springer, Chaim 2021, pp. 657-668.

essential to enhance the enforcement of existing laws, promote ethical archaeological practices, and foster cooperation among various stakeholders, including governmental bodies, researchers, local communities, and private entities. Poland here can serve as a noteworthy example of a regulatory framework for the protection of cultural and archaeological heritage, reflecting a comprehensive approach that integrates constitutional principles, legislative acts and regulations, EU regulations, and ratified international conventions.

The endeavour to establish an ideal model for the protection and ownership rights associated with archaeological heritage necessitates a comprehensive examination of various legal instruments alongside a balanced consideration of both private and public interests. Ensuring the effective preservation and management of archaeological resources is inherently complex, as it must reconcile the rights of individuals or private entities to own and manage cultural artefacts with the overarching public interest in safeguarding cultural heritage for future generations. The existing regulatory framework may present gaps or challenges that could hinder the protection of significant cultural assets. A thorough examination of Poland's legal provisions and their implementation could provide valuable insights into the adequacy of the current system and identify areas for improvement in cultural heritage preservation.<sup>163</sup>

### 2.3.1. Constitution

On April 2, 1997, the National Assembly adopted the Constitution of the Republic of Poland,<sup>164</sup> which Polish citizens subsequently approved in a referendum held on May 25 of the same year. The Constitution came into effect on October 17, 1997. As a supreme law, it serves as the foundation and establishes the fundamental principles of the legal protection of cultural heritage, simultaneously indicating a binding direction for public authorities in their actions.<sup>165</sup> The Constitution starts with a preamble,<sup>166</sup> which contains several elements that signify a commitment to protecting cultural and archaeological heritage. First, the reference to being:

---

<sup>163</sup> See: A. Gerecka-Żołyńska, *Ochrona zabytków w Polsce. Zbiór podstawowych aktów prawnych z krótkim komentarzem* [Monument Protection in Poland. A Collection of Basic Legal Acts with a Brief Commentary], Ośrodek Badania Rynku Sztuki Współczesnej, Poznań 2016.

<sup>164</sup> The Constitution of the Republic of Poland of 2nd April 1997, Journal of Laws No 78, item 483.

<sup>165</sup> L. Garlicki, M. Zubik (eds.), *Konstytucja Rzeczypospolitej Polskiej, Komentarz, Tom II, wyd. II*, [Constitution of the Republic of Poland, Commentary, vol. II, 2nd edition], Wydawnictwo Sejmowe, Warszawa 2016.

<sup>166</sup> The preamble raises uncertainties regarding its normative nature, similar to those associated with so-called programmatic norms. The question of whether the preambles to constitutions have a normative character is a matter for which there is no clear answer in constitutional law doctrine; see: J. Trzeciński (ed.), *Charakter i Struktura Norm Konstytucji* [The Nature and Structure of Constitutional norms], Wydawnictwo Sejmowe, Warszawa 1997.

beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values

underscores an acknowledgement of the importance of historical legacies and cultural achievements. This recognition reflects a responsibility to honour and protect the cultural heritage that has been passed down through generations. Additionally, the phrase:

obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage

explicitly indicates a commitment to ensuring the preservation and transmission of cultural and also archaeological assets to future generations. This sentiment emphasises the necessity of safeguarding the nation's heritage as a fundamental duty of the Polish people, reinforcing the idea that cultural heritage is to be preserved not only as a reflection of national identity but also as a resource for future societal development. The mention of:

equal in rights and obligations towards the common good - Poland and cooperation with all countries for the good of the Human Family

suggests citizens' collective duty to protect and promote national cultural heritage. This collective responsibility implies that all members of society have a role in preserving the cultural legacy, which includes archaeological sites and artefacts. The emphasis further highlights awareness of global heritage issues, suggesting an openness to collaborative efforts in the protection of cultural heritage on an international scale. This sentiment encourages engagement with other nations in preserving and promoting cultural and archaeological heritage, recognising its significance beyond national borders. The preamble reflects a strong commitment to protecting cultural and archaeological heritage through the acknowledgement of historical legacies, the obligation to preserve valuable heritage for future generations, collective responsibility among citizens, and a willingness to cooperate internationally. These elements present a foundational perspective that underscores the importance of safeguarding Poland's cultural identity and heritage.

According to article 5, The Republic of Poland shall:

safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

The emphasis on guaranteeing the freedoms and rights of persons and citizens reflects a commitment to upholding human rights and democratic principles. The identification of national heritage as a paramount value reflects a broader understanding of cultural identity and historical continuity. This goes beyond maintaining physical artefacts and monuments, it involves actively fostering public awareness and engagement with cultural heritage. Protecting national heritage ensures that future generations can access and appreciate their cultural roots, fostering a sense of pride and belonging among citizens. In the context of Polish law, this designation underscores the responsibility of the state to protect and preserve the cultural assets that define the nation's identity and contribute to its historical narrative. As the fifth of six highest values, national heritage joins a hierarchy of principles that prioritises the well-being of society and reinforces the cultural foundations upon which the nation stands. The comparison of the principle of sustainable development to the protection of cultural heritage further expands upon the importance of an integrative approach to heritage management.<sup>167</sup> Sustainable development emphasises the need to balance current societal needs with the preservation of resources for future generations, a principle that directly applies to cultural heritage. Just as environmental protection focuses on maintaining ecological integrity while allowing for the responsible use of natural resources, the protection of cultural heritage must similarly ensure that the tangible and intangible aspects of heritage are preserved and respected. This perspective encourages a holistic approach, emphasising that cultural and natural heritage are interconnected and must be considered together in conservation efforts.

In article 6 the Republic of Poland shall:

provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development.

The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage.

The provision mandates that the state must ensure equitable access to cultural products for all citizens. This implies the establishment of inclusive policies that eliminate barriers to access, ensuring that all individuals, regardless of their socio-economic status, geographic location, or

---

<sup>167</sup> See: K. Zalasńska, T. Bąkowski, *Paradygmat Zrównoważonego Rozwoju w Prawnej Ochronie Nieruchomości Zabytkowych- Próba Adaptacji* [The Paradigm of Sustainable Development in the Legal Protection of Historic Properties - an Attempt at Adaptation] [in:] W. Szafrński, K. Zalasńska (eds.), *Wokół Problematyki Prawnej Zabytków i Dziel sztuki* [Around the Legal Issues of Monuments and Works of Art], vol. 3, Poznań 2009, pp. 259-271.

background, can engage with and benefit from cultural resources such as literature, art, also archaeological sites, and educational programs. The state is responsible for creating infrastructures, such as libraries, museums, cultural institutions, and community centres, that facilitate this access. The obligation to provide conditions for access also encompasses the responsibility to promote cultural education and awareness. By recognising cultural products as sources of national identity and continuity, the state has an obligation to actively preserve and protect these heritages. This includes implementing legal frameworks that safeguard historic sites, artefacts, and traditions from degradation, neglect, and illegal trade. The state must ensure that the necessary resources are allocated for conservation efforts and restoration projects.

The commitment to assist Poles living abroad to maintain their cultural links entails creating supportive mechanisms that foster connections with the national cultural heritage. This could involve financial assistance for cultural organisations, the establishment of cultural centres, and the facilitation of cultural exchanges or programs that encourage the participation of the Polish diaspora in national cultural activities. Furthermore, it implies a responsibility for the state to keep Polish culture accessible to its citizens living outside the country, ensuring that they have opportunities to engage with and appreciate their heritage. The obligation also suggests that the Republic of Poland should encourage civic engagement in cultural matters, motivating citizens to participate in cultural discourse, community events, and heritage preservation initiatives. This engagement can help foster a sense of ownership and pride in national culture among the populace.

Thus, in light of articles 5 and 6 of the Constitution, the fundamental responsibilities of the state, acting through its bodies, particularly those specialised in this area, include the protection of cultural heritage, especially its essential material components, such as historical monuments. This legal framework emphasises that the preservation of cultural heritage is not only about maintaining physical structures for future generations but also about ensuring their relevance and accessibility in contemporary society. Monuments should be utilised in modern contexts, serving educational, cultural, and tourism purposes while fostering a deeper appreciation for the past.<sup>168</sup> However, this contemporary use must be approached with care to ensure that it poses minimal risk to the monuments' integrity and historical value. Careful planning and management strategies should be employed to balance the necessity of public engagement with the preservation of these vital cultural assets. Ultimately, this dual

---

<sup>168</sup> K. Zalańska, K. Zeidler, *Wykład Prawa Ochrony Zabytków* [Lecture on the Law of Monument Protection], Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Warszawa-Gdańsk 2015, p. 21.

responsibility reinforces the idea that cultural heritage is a living part of society, contributing to national identity and quality of life while demanding ongoing stewardship and respect for its historical significance.

The constitutional provisions regarding the protection of cultural heritage and national identity emphasise the importance of preserving Poland's historical and cultural legacy. By integrating these values into the legal framework, the Constitution supports the enactment of laws that protect monuments and cultural expressions, thereby establishing a legal basis for the safeguarding of cultural heritage. This commitment ensures that these assets are preserved for future generations, highlighting the Constitution's role as a vital protector of Poland's cultural identity. Even if archaeology is not explicitly mentioned in the Polish Constitution, it is reasonable to conclude that archaeological heritage is inherently included within the broader framework of cultural heritage. International definitions of cultural heritage, historical significance, legal interpretations, alignment with international norms, public interest, and complementary legislation all contribute to the understanding that archaeological heritage is an essential component of Poland's cultural heritage and merits protection under the existing legal framework.

### **2.3.2. Earlier regulations concerning archaeological monuments**

The system for the protection of monuments is in a constant state of evolution. Its roots in Polish territories date back to the time of partitions, reflecting the differing approaches to "monumentality" in the Austrian, Prussian, and Russian partitions. In the Austrian partition, a collegial method predominated for resolving conservation matters, along with the incorporation of public opinions. This model largely served as the foundation for establishing the protection system in 1918 in Poland.<sup>169</sup> Over the course of over 100 years, its organisation and functioning have undergone numerous changes. Continuous improvement and reflection are still required in the face of the dynamically changing social, political, scientific, and technical conditions. These factors do not only indicate the directions for seeking change, they also highlight the social aspect, evident in the need to protect monuments and the growing demand for broadly interpreted care for both contemporary cultural assets and cultural and landscape heritage. Equally important has been, and continues to be, the legal factor related to the codification of

---

<sup>169</sup> B. Rymaszewski, *Polska Ochrona Zabytków* [Polish Protection of Monuments], Wydawnictwo Naukowe Scholar, Warszawa 2005, pp. 12-59.

issues concerning monument protection, building law, and the conditions relating to the use of archaeological monuments.

The Decree of the Regency Council, dated October 31, 1918, concerning the protection of art and cultural monuments,<sup>170</sup> stands as a seminal legal instrument in the annals of the Polish state. This decree is recognised as the first legal act to systematically regulate and establish a comprehensive framework for the protection of cultural heritage within the context of the newly reborn Poland. By initiating a structured approach to the preservation of art and cultural monuments, the Decree serves to underscore the importance of safeguarding Poland's historical and cultural legacy, which is integral to the national identity and continuity of the state. It lays the groundwork for subsequent legislative measures, ensuring that the protection of cultural heritage is enshrined within the legal system.

The decree in question, which addresses the protection of cultural heritage, notably does not provide a specific definition of what constitutes a "monument." Instead, it establishes in article 1 a procedural requirement that an object must be formally listed in an official registry to gain recognition as a monument deserving of legal protection.

All cultural and artistic monuments located within the borders of the Republic of Poland, listed in the inventory of art and cultural monuments, are subject to legal protection.

This implies that the process of registration itself was a critical step in the preservation and designation of cultural and artistic monuments. By necessitating registration, the decree emphasises also the importance of documentation and validation in the preservation of cultural heritage. This process not only serves to formally recognise the significance of cultural artefacts and sites but also ensures that they are included in a governance structure that provides oversight and protective measures.

Moreover, article 1 of the decree stresses that all cultural and artistic monuments located within the borders of the Republic of Poland and duly listed in the inventory of art and cultural monuments are entitled to legal protection. This legal framework is vital for several reasons. It establishes a clear mechanism for the preservation of Poland's cultural identity and heritage while also providing a foundation for enforcement actions against unauthorised alterations, destructions, or removals of these significant sites and artefacts. The inclusion of monuments in a formal registry serves both as a method of inventory management and as a means of

---

<sup>170</sup> Dekret Rady Regencyjnej z dnia 31 października 1918 r. O opiece nad zabytkami sztuki i kultury [The Decree of the Regency Council dated October 31, 1918, concerning the protection on art and cultural monuments], *Dziennik Ustaw* 1918, no. 16, pos. 36.

ensuring that cultural heritage is recognised in the context of governance. While the decree may not explicitly define a monument, what leaved room for discretionary decisions of conservatory offices, its requirement for registration established a robust procedural avenue for recognising and safeguarding cultural and artistic heritage in Poland.

In the subsequent articles, there is the aggregate definition of monuments, which refers specifically to a non-exhaustive enumeration of movable and immovable items that can be recognised as movable or immovable monuments, respectively. This definition is notable for being non-exhaustive, meaning it provides examples rather than an all-encompassing list of what may qualify as cultural heritage under the law. The intent behind this approach is to allow for flexibility in recognising and categorising various items that hold historical, artistic, or cultural value. However, the Decree does not mention those values yet. The archaeological heritage is protected in a completely separate article (from 23 to 27) in a section named excavations and findings. In article 23 the following items are considered to be cultural heritage within this category:

- a) Excavations that evidence former cultures, including graves, urn fields and urns, stone tools, metal and glass artefacts, textiles, ceramics, coins, weapons, and similar items.
- b) Accidental finds on the surface of the earth or at the bottoms of bodies of water, possessing characteristics of ancient culture, similar to those mentioned above. This includes treasures and archival materials hidden in walls, containers, caches, and so forth.

It establishes a clear framework for identifying and categorising archaeological artefacts that are essential to understanding. The inclusion of items such as graves and burial urns emphasises the importance of understanding historical burial practices and the cultural contexts they represent. The reference to accidental finds underscores the dynamic nature of archaeological discovery. Many significant artefacts are uncovered inadvertently, often during construction, farming, or other land-use activities. This reality highlights the necessity for public awareness and legal mechanisms aimed at protecting such discoveries, as they can provide invaluable insight into past societies and cultures. The mention of treasures and archival materials suggests a recognition of the varied ways in which cultural heritage can be preserved and discovered. Hidden items, whether in urban settings or rural landscapes, contribute to the complexity of cultural narratives and emphasise the need for comprehensive archaeological policies that address both planned excavations and chance finds.

While the Decree does not explicitly address state ownership of archaeological heritage, it does impose significant restrictions regarding the management and export of archaeological

monuments. Specifically, article 26 clearly prohibits the export of cultural monuments categorised under this legislation from the borders of the Republic of Poland. This prohibition underscores the state's commitment to protecting and preserving its cultural heritage, ensuring that valuable archaeological assets remain within the country for both legal and cultural reasons. Furthermore, article 27 affords the government the authority to utilise or expropriate land where archaeological discoveries occur, primarily for scientific research purposes. This provision empowers the state to facilitate and support archaeological investigations, thereby fostering a deeper understanding of the nation's historical and cultural legacy. By permitting expropriation, the government could ensure that significant sites are adequately studied and preserved in accordance with national interests. Additionally, the government possesses the right of first refusal concerning excavations and finds discovered within its territory. This right must be exercised within three months of being notified of the discovery, allowing the state to acquire newly uncovered artefacts or sites before they can be sold or exported. This mechanism probably reinforces the notion that such heritage should be appreciated as part of the nation's cultural identity rather than as mere private property.

The Decree also delineates the roles and responsibilities of governmental authorities in the identification, preservation, and management of cultural heritage assets. It reflects a commitment to fostering an environment in which cultural monuments are recognised not only as relics of the past but as vital components of Poland's cultural narrative. Furthermore, it marks a pivotal moment in the legal history of the nation, establishing first principles and practices that would inform future heritage protection laws in Poland. The decree is a foundational document that signifies the Polish state's recognition of its duty to preserve and protect its cultural heritage, thereby reinforcing the legal framework necessary for the stewardship of its artistic and cultural assets.

After a decade the Decree was replaced by the Regulation of the President of the Republic of Poland of March 6, 1928, on the protection of monuments.<sup>171</sup> Unlike previous provisions, the regulation introduced a legal definition of a monument. This legal definition played a crucial role in establishing clear criteria for what constituted a protected cultural asset. According to article 1:

A monument, as defined in this regulation, is any item, whether immovable or movable, that is characteristic of a particular era and possesses artistic, cultural, historical, archaeological, or

---

<sup>171</sup> Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 6 marca 1928 r. o opiece nad zabytkami [Regulation of the President of the Republic of Poland of March 6, 1928, on the protection of monuments], *Dziennik Ustaw* 1928, no. 29, pos. 265 with changes – further: the 1928 Regulation.

paleontological value, as determined by a ruling from the state authority, and is therefore deserving of preservation.

Article 1 of the regulation provides a comprehensive definition of what constitutes a "monument," encompassing both immovable and movable items. This dual classification recognises that cultural heritage can take many forms, whether it be architectural structures like buildings and monuments or movable artefacts such as sculptures, paintings, and archaeological finds. The reference to items being "characteristic of a particular era" emphasises the temporal dimension of cultural heritage, suggesting that the value of a monument is often contextual and tied to the historical and cultural characteristics of the time period from which it originates. This aspect is crucial in understanding the significance of various artefacts and structures within the broader narrative of a nation's history. The stipulation that a monument must possess "artistic, cultural, historical, archaeological, or paleontological value" adds depth to the definition, acknowledging the wide nature of cultural heritage. Artistic value pertains to the aesthetic qualities and craftsmanship of the item, while cultural value underscores its role in reflecting societal beliefs, practices, and identities. Historical value involves the significance of the item in terms of its contribution to understanding the past, while archaeological and paleontological values relate to their importance in revealing information about human history and prehistory, respectively. Importantly, the regulation states that such value must be "determined by a ruling from the state authority." This requirement introduces an element of legal authority into the process of designation (remnants of the previous Decree), ensuring that the recognition and protection of monuments are grounded in official determinations. Finally, the concluding phrase, "and is therefore deserving of preservation," highlights the moral and ethical obligations of the state and society to safeguard these cultural assets, but also creates the biggest problem in establishing what would satisfy this provision. Article 2 presents a list of examples of monuments, taking a more generalised approach by not categorising them into separate classes of movable and immovable heritage.

Consistent with the preceding legal framework, this legal act similarly lacks explicit references to ownership rights related to archaeological heritage. However, it does impose comparable restrictions regarding the export and expropriation of such heritage. The absence of explicit guidance on ownership rights raises significant questions about the legal status of archaeological artefacts and sites, particularly in a context where private collectors and institutions may assert ownership. The legislative focus appears to prioritise state interests in protecting cultural heritage over individual ownership claims, which could lead to potential

conflicts in practice. Without clear definitions of ownership, disputes may arise regarding the rightful possession of discovered or unearthed items, especially when they possess significant historical or cultural value.

Chronologically next, and last, before the currently valid legal act is the Act of February 15, 1962, on the Protection of Cultural Goods and Museums.<sup>172</sup> In the primary version of the act, in article 2, the cultural good referred to

any movable or immovable object, whether ancient or contemporary, that holds significance for cultural heritage and development due to its historical, scientific, or artistic value.

This definition marks a notable evolution compared to previous legal definitions of monuments expanding its scope to encompass a broader range of items. Previous definitions may have primarily focused on specific categories, such as monuments or artworks, without adequately including contemporary objects or those of varying cultural significance. By embracing both movable and immovable items, the current definition recognises that valuable cultural contributions can arise from multiple sources, including modern creativity, everyday objects, and archaeological findings.

The inclusion of objects categorised as "ancient or contemporary" is particularly significant, as it broadens the understanding of what constitutes cultural heritage. This shift acknowledges that cultural heritage is dynamic and ever-evolving, requiring protections for both the past and present. Furthermore, the emphasis on "historical, scientific, or artistic value" establishes clear criteria for assessing the significance of cultural goods, providing a framework through which items can be evaluated for their contribution to cultural heritage. However lack of archaeological value might be shifting the attention towards the historical value of artefacts. Archaeological value refers to the significance of an object, site, or feature in relation to understanding past human behaviours, cultures, and societies. It encompasses the insights that can be gained from artefacts, structures, and other material remains that provide evidence of historical contexts, technological advancements, social structures, and cultural practices.<sup>173</sup>

In contrary to the previous legal acts, the Act from 1962 does have legal provisions concerning ownership right in article 24:

---

<sup>172</sup> Ustawa z dnia 15 lutego 1962 r. o ochronie dóbr kultury i o muzeach [Act of February 15, 1962, on the Protection of Cultural Goods and Museums], *Dziennik Ustaw* 1962, uniform text, no. 10, pos. 48 – further: the 1962 Act.

<sup>173</sup> See: M. Carver, *On Archaeological Value*, *Antiquity*, vol. 70, issue 267, Cambridge University Press, Cambridge 1996, pp. 45-56.

Archaeological excavations and finds are owned by the State.

The provision stating that archaeological excavations and finds are owned by the state is a crucial element in the legislative framework governing cultural heritage in Poland. This stipulation marks a significant development, as it is the first time such a clear declaration of state ownership has been explicitly articulated within the context of archaeological heritage law. It established the principle that archaeological objects and sites are considered public assets, which could reflect the understanding that cultural heritage belongs not to individuals or private entities but rather to the collective society that is represented by the state. By designating state ownership, the provision also facilitates the development of a comprehensive legal framework for the management and preservation of archaeological resources. It empowers state authorities to implement protective measures, enforce regulations regarding excavations and finds, and ensure that significant artefacts are preserved in a manner that respects their historical and cultural contexts.

Prior to the enactment of this provision, the status of archaeological finds and the rights of individuals who discovered them were characterised by a different legal framework, which allowed individuals to claim ownership of archaeological heritage. This legal environment allowed for the trading of valuable archaeological artefacts, although it was still governed by the provisions of existing legal acts. The Act of 1962 on the Protection of Cultural Goods significantly changed this landscape by establishing a clear precedent for the protection of archaeological heritage and by asserting that all archaeological finds would henceforth belong to the state. This shift in ownership created a distinct division of rights, suggesting a fundamental change in how archaeological heritage would be managed and conserved. However, despite this legal transformation, the reality remained that many significant archaeological findings from prior to 1962 continued to circulate in the market, raising concerns about the effectiveness and purpose of the Act in practice.

The provision also raises questions regarding the nature of state ownership over archaeological excavations themselves. While it is clear that artefacts uncovered during excavations are classified as property of the state, the ownership of the land where these excavations take place is not as straightforward. The ambiguity here poses challenges, particularly when considering land rights, private ownership, and the obligations associated with archaeological research. These individuals are only entitled to a reward from the state for finding such artefact if they have fulfilled all of the obligations (like securing the artefact and notifying the appropriate authority). This dichotomy creates complications in the management

of archaeological sites, as landowners may have legitimate claims to the land while the state asserts ownership over the archaeological heritage found within it. Furthermore, the perception of an “illusion” of protection indicates a disconnect between legal stipulations and practical enforcement. Although the 1962 Act signified a progressive legal development, the failure to regulate the ongoing trade of archaeological artefacts undermines the intended protective measures. As a result, the promise of enhanced heritage preservation may not have been fully realised, highlighting the need for ongoing reform and more robust regulations to effectively address the complexities of archaeological ownership and trade in Poland.

### **2.3.3. Key regulations in the Act of 2003 on the protection of monuments and the preservation of monuments regarding archaeological monuments**

The Act on the Protection of Monuments and the Preservation of Monuments<sup>174</sup> has been subject to multiple amendments since its implementation in 2003. This legislative framework serves as the cornerstone of heritage protection in Poland, establishing principles and procedures for safeguarding historical and cultural assets. The Act defines the subject matter, scope, and forms of protection for monuments and the care of such heritage, as well as the principles for establishing a national program for the protection and care of monuments (article 1). It also outlines the funding mechanisms for conservation, restoration, and construction work associated with heritage sites, in addition to the organisation of bodies responsible for heritage protection. This comprehensive framework establishes a structured approach to cultural heritage management in Poland. By specifying the subject matter and scope of protection, the Act delineates both the types of monuments that will be covered and the various levels of intervention that are permissible. This includes provisions for diverse categories of cultural assets, encompassing both immovable (such as buildings and archaeological sites) and movable (such as artefacts) heritage, thus ensuring a holistic approach to preservation.

Over the years, various implementing regulations have been issued based on the delegations contained within the Act, aimed at enhancing its efficacy and relevance in response to evolving societal needs and circumstances. However, despite these amendments and updates, the evolution of heritage protection regulations has not fully realised its intended objectives. The dynamic nature of cultural heritage preservation requires a legal framework that is not only

---

<sup>174</sup> Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and the Preservation of Monuments], Dziennik Ustaw 2024, uniform text, pos. 1292 with changes – further: the 2003 Act.

adaptable but also capable of effectively addressing the complexities inherent in contemporary heritage management, and complex matters of archaeological heritage. Attempts to enforce certain legislative provisions have highlighted significant practical challenges, leading to situations where the effective protection of monuments has proven difficult to implement. Such challenges may stem from a variety of factors, including insufficient resources allocated for enforcement, a lack of public awareness regarding heritage protection laws, and the pressures of urban development that may prioritise economic gain over cultural preservation. Moreover, the complexities of coordinating between various governmental agencies and stakeholders can further hinder the practical application of the laws designed to protect cultural heritage.

In light of these issues, there is a pressing need for continued refinement of the legal framework governing the protection of monuments. This includes not only legislative amendments but also the development of comprehensive strategies that engage local communities, enhance public understanding, and foster collaboration among heritage professionals, policymakers, and the public in the field of archaeological heritage. By addressing these gaps and challenges, Poland can better ensure that the protection of its cultural heritage is both effective and meaningful, thus fulfilling the objectives initially set forth in the Act.

#### **2.3.3.1. Definition of archaeological monuments**

The term "archaeological monument" plays a vital role in the protection and understanding of cultural heritage, particularly within the context of law and preservation strategies. These monuments are typically composed of cultural layers that encompass artefacts, features, and other material evidence, illustrating the practices, customs, and technologies of various societies throughout history. The significance of archaeological monuments extends beyond their physical presence, they serve as tangible connections to humanity's past. From a legal perspective, archaeological monuments often fall under specific protective legislation. In previous Polish legislation, the treatment of archaeological matters often involved distinct sections that addressed excavations and archaeological artefacts separately. This segmentation meant that the legal framework did not provide an integrated approach to the protection and management of archaeological heritage. While there were regulations in place governing excavation practices and guidelines for the treatment of artefacts, these were not explicitly

consolidated under a unified definition or category that recognised the interconnectedness of these elements.<sup>175</sup>

Currently binding Act on the Protection of Monuments and the Preservation of Monuments represents a significant advancement in the legal framework regarding cultural heritage. In this Act, archaeological monuments are encompassed within a broader category of monuments, effectively integrating them into the overarching regulatory system for heritage protection. This inclusion reflects a holistic understanding of cultural preservation, recognising that archaeological monuments, comprising both immovable sites and movable artefacts, are vital components of the nation's cultural legacy. By categorising archaeological monuments alongside other types of cultural heritage, the Act emphasises the importance of a comprehensive strategy for safeguarding these invaluable resources. It allows for consistent legal provisions that apply to all forms of cultural heritage, thereby simplifying the regulatory landscape and facilitating better enforcement. Moreover, this integrated approach helps to underscore the significance of archaeological findings as part of a larger narrative concerning national identity and historical continuity. As archaeological monuments are recognised within the same legal framework as other monuments, there is a stronger emphasis on the need for their preservation and management, reflecting their value not just as isolated artefacts but as part of the cultural fabric of the Polish nation. This change highlights the importance of understanding archaeological heritage in a broader context, ultimately enhancing the prospects for its preservation and appreciation within society. The definition of monuments has evolved from being merely an open catalogue of examples to a clearly articulated description in article 3:

- 1) "monument" – either an immovable property or a movable object, along with their parts or collections, that is a work of human creation or related to human activity, serving as a testimony of a past era or event. The preservation of such monuments is in the public interest due to their historical, artistic, or scientific value;
- 2) "immovable monument" – a property, part of a property, or a collection of properties as referred to in point 1;
- 3) "movable monument" – a movable object, part of a movable object, or a collection of movable objects as referred to in point 1;

---

<sup>175</sup> For the proces of creating definitions see: M. Zajęcki, Definiowanie Pojęć Podstawowych Prawa Kultury w Kontekście Zasad Wykładni Prawa Polskiego [Defining the Basic Concepts of Cultural Law in the Context of the Principles of Interpretation of Polish Law] [in:] A. Jagielska-Burduk, W. Szafranski (eds.) *Kultura w Praktyce. Zagadnienia Prawne* [Culture in Practice. Legal Issues], Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauki, Poznań 2012, pp. 23-41.

- 4) "archaeological monument" – an immovable monument that is a surface, underground, or underwater remnant of human existence and activity, composed of cultural layers and their associated artefacts or traces, or a movable monument that is such an artefact.

The third category of monuments in the 2003 Act on the Protection of Monuments and the Preservation of Monuments pertains strictly to archaeological monuments. The legislator chose to distinguish these monuments due to their unique characteristics and the specific methods required for their protection, care, and overall management. Archaeological monuments are considered alongside other movable and immovable monuments, thus falling under the same general principles of protection. However, it is important to note that the division into immovable, movable, and archaeological monuments can be seen as inseparable, thus creating a logically flawed classification. Every object is either classified as immovable or movable, meaning that this categorisation is inherently distinct. While the definitions of "movable object" and "immovable object" may vary across different branches of law, such as administrative and civil law, each item can still be categorised into either group.

Consequently, despite the seemingly distinct classification of archaeological monuments, it is essential to recognise that archaeological artefacts can indeed be either immovable archaeological monuments (such as archaeological sites, remnants of e.g. walls, or archaeological traces) or movable archaeological monuments (such as artefacts retrieved from an archaeological site or loose archaeological items found outside designated sites). Thus, an archaeological monument is fundamentally a specific type of monument that has received particular regulatory attention under Polish law. It is also important to emphasise that for an object to meet the criteria of an archaeological monument, it must first satisfy the general definition of a monument. Only thereafter can it be evaluated to determine whether it qualifies as an archaeological monument.<sup>176</sup> This layered approach to classification underscores the interconnectedness of different categories of heritage and highlights the complexity of legal definitions in the context of cultural preservation. By recognising these nuances, stakeholders can better engage in the effective protection and management of Poland's valuable archaeological heritage.

This provision also indicates that there are no specific age restrictions or material distinctions regarding what can be classified as an archaeological monument. This broad inclusivity is significant, as it allows for a wide array of objects and sites to be recognised as archaeological heritage, regardless of when they were created or what materials they are made

---

<sup>176</sup> K. Zalasńska, K. Zeidler, *Wykład Prawa Ochrony...*, pp. 141-142.

from. The only restriction is of a past era or event that could have happened recently. The absence of an age restriction means that both ancient artefacts and contemporary discoveries can qualify as archaeological monuments. This is particularly important in an era where modern urban developments often unearth significant cultural remnants that reflect recent historical narratives. By acknowledging that archaeological value does not diminish over time and can extend to newer findings, the legal framework recognises the dynamic nature of heritage, which evolves with society and reflects ongoing cultural practices. Furthermore, the lack of material distinctions allows for the inclusion of diverse types of artefacts, whether they are made of stone, metal, glass, ceramics, or even organic materials. This inclusion of various materials enriches the understanding of different historical contexts, technologies, and lifestyles, providing a fuller picture of human existence throughout history.

Traditionally categorised objects are based on specific criteria, including historical, artistic, or scientific significance. However, should the classification become overly inclusive, the distinction between what qualifies as a monument and what constitutes a less significant artefact may become blurred. This could result in institutions like museums being tasked with the stewardship of numerous items that do not meet the rigorous standards typically associated with recognised monuments. The recognition that all archaeological items meet the criteria for monuments also necessitates a reevaluation of conservation practices and legal protections. Archaeologists frequently use the term "archaeological monument" to describe a wide array of findings during excavations and research, sometimes extending the classification to include objects or sites that may not meet the stringent criteria typically associated with this designation. This tendency can obscure the distinction between what could be considered a monument in the colloquial sense and what qualifies as a monument under legal definitions. In everyday language, a monument is often regarded as something significant, worthy of preservation, typically an old structure or artefact imbued with cultural or historical importance.<sup>177</sup>

However, these colloquial interpretations do not necessarily align with the legal definition of a monument, which is grounded in specific criteria established by laws and regulations. Legal definitions are designed to ensure that only items with demonstrable historical, cultural, and artistic significance are afforded legal protection. By lumping a range of findings together under the label of "archaeological monument," there is a risk of diminishing the perceived importance of truly significant sites and objects. This broad categorisation may lead to the misallocation of resources and attention, as it potentially places emphasis on items

---

<sup>177</sup> Zabytek [monument], Słownik Języka Polskiego PWN, <https://sjp.pwn.pl/sjp/zabytek;2541821.html> [available on: 28.02.2025].

that do not warrant the same level of legal protection as those that fulfil the legal definition of a monument. As a result, objects that may simply be old but lack substantial contextual or cultural value, or there is a lack of public interest in preserving it, could be treated similarly to artefacts of considerable importance, leading to confusion in both public perception and legal framework.

Furthermore, this blending of definitions can complicate conservation efforts and the enforcement of protective measures. Recognising the differences between monuments as defined legally and those referred to colloquially is essential for effective heritage management. It allows for a more nuanced approach that prioritises resources for the preservation of items that contribute meaningfully to understanding cultural history while not overextending legal protections to artefacts that do not meet established criteria. To ensure that archaeological practice remains rigorous and accountable, it is vital for archaeologists to maintain a clear distinction between these two types of monuments. This can be achieved through careful documentation and adherence to legal definitions when classifying findings. By doing so, the archaeological community can enhance public understanding of cultural heritage and the importance of legal protections, ultimately fostering a more informed and respectful approach to the preservation of our shared history.

Additionally, article 6 of the Act provides an open catalogue of subjects to protection and care, regardless of their state of preservation, such as:

archaeological monuments that are, in particular: a) remains of prehistoric and historical settlements, b) cemeteries, c) barrows, d) relics of economic, religious, and artistic activities.

The inclusion of relics associated with economic, religious, and artistic activities in the scope of cultural heritage protection significantly expands the understanding of what constitutes a monument, thereby enriching our appreciation of the compound nature of ancient and historic life. This broadened definition acknowledges that cultural heritage is not solely comprised of monumental architecture or artistic masterpieces but also encompasses various artefacts that illustrate the everyday practices and belief systems of past societies.

Notably, the definition of a monument concurrently references three specific values: historical, artistic, and scientific. The introduction of religious and economic values in this context is particularly significant, as it is the first time these aspects have been explicitly highlighted as integral to the definition of cultural heritage in this open catalogue of examples of monuments. This shift raises important questions about whether these economic and religious dimensions should be considered as distinct values, thereby potentially expanding our

understanding of what qualifies as a monument. Considering the traditional values associated with cultural monuments, historical value typically emphasises the significance of an object or site in contributing to our understanding of past events, societies, and transformations. Artistic value reflects the aesthetic and creative expressions embodied within a cultural artefact. Scientific value pertains to the knowledge and insights that can be derived from studying these objects or archaeological sites, often yielding information about technological advancement and sociocultural practices. The explicit mention of religious and economic values introduces complexity into the conversation around monument classification. Religious artefacts provide insights into the beliefs and rituals of communities, often serving as critical indicators of cultural identity and continuity. Economic relics, on the other hand, can illuminate the trade networks, resource management, and daily livelihoods of past societies, providing a contextual understanding of their operational frameworks. The acknowledgement of religious and economic values signals a more complex approach to cultural heritage preservation.

However, the implication that they could reflect separate values necessitates further clarification. If these dimensions can indeed be recognised as distinct elements worthy of protection, it may warrant revisiting the existing definitions of monuments to encompass a more holistic understanding of cultural heritage. Ultimately, such an evolution could lead to enriched legal provisions that better reflect the diversity and complexity of human experience, ensuring that the diverse facets of cultural heritage are preserved and appreciated not only for their individual significance but also for their contributions to the collective narrative of humanity. This deeper understanding could facilitate a more inclusive conservation strategy that honours the interconnectedness of various cultural expressions throughout history.

### **2.3.3.2. Ownership of archaeological monuments**

The ownership rights to archaeological heritage are a complex issue influenced by legal, cultural, and contextual factors. Different models and frameworks exist concerning how ownership is defined, assigned, and protected, resulting in a variety of possibilities for ownership rights. Provisions pertaining to archaeological heritage were indeed addressed in a prior legal act from 1962. However, these regulations were notably brief and lacked in-depth explanations. The 1962 legislation laid the groundwork for the protection of cultural heritage, including archaeological sites and artefacts, but it did not provide a comprehensive framework or clarity regarding the implementation of these protections.

Article 35, point 1 of the 2003 Act specifically enumerates what constitutes ownership of the State Treasury:

Items classified as archaeological monuments:

- 1) discovered,
- 2) accidentally found,
- 3) located or obtained as a result of searches referred to in Article 36b, paragraph 1,<sup>178</sup> or
- 4) acquired through archaeological research—constitute the property of the State Treasury.

The interpretation of this principle, which asserts that all archaeological monuments in Poland are the property of the State Treasury and thus automatically categorised as *res extra commercium* (items outside of commerce), is deemed unwarranted and must be rejected in light of at least several legal methods of acquiring ownership of archaeological artefacts. This assertion suggests a rigid legal framework that fails to consider the nuances of property rights associated with archaeological heritage. By classifying all archaeological monuments as state property and treating them as *res extra commercium*, one effectively removes the possibility for private ownership, which could undermine the legitimate claims of individuals or entities that have acquired archaeological artefacts through lawful means. The problematic interpretation implies a blanket approach that disregards these established legal frameworks and the potential for lawful acquisitions, which could include the transfer of ownership through donations, sales, or the responsible stewardship of collected artefacts. Such interpretations risk creating legal ambiguities and conflicts that confuse the responsibilities of private collectors and the rights of the state.

Furthermore, by failing to recognise the complex nature of ownership rights related to archaeological artefacts, this interpretation could hinder cooperative efforts among various stakeholders, including collectors, researchers, and governmental bodies. An inclusive approach that acknowledges both state interests and private ownership rights is crucial for creating a balanced framework for managing archaeological heritage, ensuring that cultural treasures are protected while also respecting the legitimate claims of individuals and institutions.

---

<sup>178</sup> Article 36b. 1. The search for hidden or abandoned movable monuments using electronic or technical devices may be conducted by an adult individual, provided that they have the consent of the property owner and the holder of the property, and after registering the search with the search registry.

The new wording of paragraph 1 in article 35 will come into effect on July 1, 2027 (Journal of Laws of 2023, item 1904, of 2024, item 647, and of 2025, item 537), the added part is point 3.

There are several avenues, at least six, through which ownership rights to archaeological heritage may be acquired, each governed by distinct legal frameworks and conditions. First, archaeological artefacts that are legally acquired abroad and subsequently imported into the country are not automatically excluded from commercial circulation. Such objects, once they have been lawfully obtained in accordance with international and national regulations, can be freely traded within the domestic market. However, this assumes that the transaction complies with all relevant export and import laws governing cultural property and heritage. Many countries impose restrictions on the movement of archaeological heritage across borders, requiring export permits, provenance documentation, and customs declarations to ensure that objects are not illicitly trafficked. Failure to comply with these legal requirements may result in the confiscation of the artefact, criminal liability, or claims for restitution by the country of origin. Some jurisdictions maintain a legal distinction between archaeological objects discovered in situ and those already present in the art market before the enactment of protective legislation. In such cases, artefacts with verifiable provenance demonstrating legal acquisition before the implementation of restrictive laws may benefit from grandfather clauses, allowing them to be held or traded as private property. Problems related to establishing ownership rights over culturally significant archaeological goods also arise when purchasing an item without documentation confirming the seller's ownership. The literature notes that the absence of documentation does not always correlate with the object's criminal origin, although this is often the case.<sup>179</sup>

Second, archaeological artefacts can also be introduced into the market through decisions made by relevant administrative authorities. This process typically involves the Minister of Culture and National Heritage granting approval for the sale of museum artefacts (objects that are in a deposit in museums), which is usually done upon the formal request of the museum director, and after receiving a positive recommendation from the museum's governing board. While such instances are relatively infrequent, they provide a legitimate mechanism for the sale or transfer of certain cultural objects that are no longer considered essential for public display or preservation. Additionally, museums may exchange artefacts between themselves, subject to the same regulatory oversight, thus facilitating the movement of heritage items in a

---

<sup>179</sup> See: A. Gerecka-Żołyńska, *Karnoprawne Ograniczenia Poszukiwania Zabytków Archeologicznych jako Element Krajowego Systemu Ochrony Dziedzictwa Kulturowego (Uwagi Modelowe)* [Criminal Law Restrictions on the Search for Archaeological Artefacts as Part of National System of Cultural Heritage Protection (Model Remarks)], *Ruch prawniczy, ekonomiczny i socjologiczny*, rok LXXXVI, zeszyt 4, Uniwersytet im. Adama Mickiewicza w Poznaniu, Poznań 2024, pp. 87-88.

controlled environment.<sup>180</sup> Objects that may be deemed redundant, duplicative, or outside the museum's core collection can be lawfully reintroduced into the market, provided that their sale does not compromise public heritage interests. Deaccessioning decisions must often comply with strict legal and ethical guidelines to prevent the arbitrary disposal of cultural assets and to ensure that proceeds from sales are reinvested in collection care or acquisitions that enhance the institution's curatorial objectives. Additionally, beyond direct sales, museums may also exchange artefacts among themselves under similar administrative oversight. Such inter-institutional transfers enable collections to be rebalanced, ensuring that artefacts are housed in institutions where they are most relevant to historical or regional contexts. This controlled circulation of artefacts allows for the optimisation of museum resources while maintaining public access to cultural heritage.

Third, ownership of archaeological artefacts can be acquired through inheritance, particularly when the decedent legally possessed the artefact at a time when the relevant law and regulations governing its ownership did not yet apply (i.e. before 1962 Act). In such cases, the heir inherits the artefact along with the associated ownership rights. Furthermore, the individual may later acquire ownership through a legitimate purchase from another person who holds full legal rights to the artefact. This transaction provided it is conducted in compliance with the law, transfers the ownership of the item to the new owner. It is also important to note the possibility of an endowment of such an object, acquired before 1962, and transferred during the owner's lifetime, which would be recognised as a transfer of ownership through a deed of gift and would also allow for further trade. Additionally, this category includes the potential for the sale or exchange of the object by a person legally entitled to do so, provided, again, they possessed the object prior to 1962, introducing the artefact into circulation before the State Treasury *ex lege* ownership of it.

Fourth, it is also important to consider the possibility of acquiring ownership of an archaeological artefact from an individual who did not possess the legal authority to sell or dispose of the item, but who acted in good faith. This situation was possible before 2017, when article 46 of Act on the restitution of national assets<sup>181</sup> forbade the acquisition by an unauthorised person. However, before 2017, in situations where a purchaser acquires the artefact without knowledge of any legal encumbrances or claims, the principle of good faith can sometimes afford protection to the buyer, provided they can demonstrate they acted with

---

<sup>180</sup> See: Ustawa z dnia 21 listopada 1996 r. o muzeach [Act of 21 November 1996 on museums], Dziennik Ustaw 1997 no 5, pos. 24, Dziennik Ustaw 2022, uniform text, pos. 385, art. 23.

<sup>181</sup> Ustawa z dnia 25 maja 2017 r. o restytucji narodowych dóbr kultury [Act of 25 May 2017 on the restitution of national cultural assets], Dziennik Ustaw 2019, uniform text, pos. 1591.

due diligence and without any intention to circumvent legal norms. Given these various scenarios, it is necessary to anticipate a distinction between two categories of archaeological artefacts in the marketplace. The first category consists of items that are legally recognised as the property of the State Treasury, which are excluded from circulation due to their cultural and national significance. These artefacts are typically protected by strict laws, making them unavailable for trade or sale. The second category encompasses artefacts that may be freely traded in the market, having been acquired or sold in a manner consistent with the legal framework governing cultural property. This dual categorisation helps to clarify the legal status and marketability of archaeological objects, ensuring that some items are preserved for public heritage while others may be subject to commercial transactions.<sup>182</sup> Article 169 of Civil Code introduces acquisition of a moveable thing from an unauthorised person:

§ 1. If a person not authorised to dispose of a movable thing transfers ownership and delivers the item to the buyer, the buyer acquires ownership at the moment of taking possession, unless acting in bad faith.

§ 2. However, if the item was lost, stolen, or otherwise involuntarily removed from the owner and is transferred within three years from the time of its loss, theft, or involuntary removal, the buyer acquires ownership only upon the expiration of this three-year period. This limitation does not apply to money, bearer instruments, or items acquired at an official public auction or through enforcement proceedings.

§ 3. The provisions of §§ 1 and 2 do not apply to items registered in the national register of lost cultural property.

This article establishes an exclusion only for goods that have been registered in the national register of lost cultural property, without explicitly exempting archaeological monuments as a distinct category. The absence of a specific exclusion for archaeological monuments suggests that the legislator did not intend to treat this part of the cultural heritage differently.

Fifth, the ownership of archaeological heritage may be acquired by a private individual through restitution claims made prior to 2017 and the enactment of the Act on the restitution of national cultural assets.<sup>183</sup> Typically, the restitution process involves state-to-state transactions, where objects that were unlawfully removed or exported from a country are returned to the State Treasury of the nation initiating the claim. However, there are documented instances where restitution has extended beyond public ownership, allowing private individuals to

---

<sup>182</sup> K. Zeidler, M. Trzciński, *Wykład Prawa dla Archeologów* [Law Lecture for Archaeologists], Wolters Kluwer, Warszawa 2009, pp. 91-93.

<sup>183</sup> Ustawa z dnia 25 maja 2017 r. o restytucji narodowych dóbr kultury [Act of 25 May 2017 on the restitution of national cultural assets], *Dziennik Ustaw* 2019, uniform text, pos. 1591.

reclaim objects that rightfully belong to their culture.<sup>184</sup> While the general trend favours state restitution, the past possibility of individual restitution highlights the complexities and nuances of heritage law, where the distinction between public and private ownership may not always be clear-cut, especially in the context of cultural property.

Sixth, it is important to reconsider the possibility of adverse possession of both moveable and immovable monument i.e. land property containing monument, a process that was permitted prior to the introduction of the Act on the restitution of national cultural assets in 2017.<sup>185</sup> Article 46 of this Act clearly established that:

The ownership of national cultural property of the Republic of Poland that is part of public collections cannot be acquired from an unauthorised person nor through adverse possession.

Under this new legal framework, public collections are defined as all monuments and cultural assets owned by the State Treasury, which, by implication, includes archaeological heritage. This provision has effectively closed off the route of acquiring ownership of such heritage through adverse possession. However, prior to 2017, the possibility of adverse possession of monuments was recognised. Under the Civil Code, specifically article 172, adverse possession could be invoked to acquire ownership of immovable property, including land with archaeological heritage, provided certain conditions were met. According to this article:

§ 1. The possessor of immovable property who is not its owner acquires ownership if they have possessed the property continuously for twenty years as an independent possessor, unless they acquired possession in bad faith (adverse possession).

§ 2. After thirty years, the possessor of the immovable property acquires ownership, even if they obtained possession in bad faith.

---

<sup>184</sup> See: E.G. Sevillano, *Legitimate Concerns, or Neocolonialism? Germany Expresses Worry about the Fate of the Benin Bronzes, Following their Restitution to Nigeria*, 2023, <https://english.elpais.com/international/2023-05-19/legitimate-concerns-or-neocolonialism-germany-expresses-worry-about-the-fate-of-the-benin-bronzes-following-their-restitution-to-nigeria.html> [available on: 06.02.2025]; N. Fischer, *Critics fear Benin Bronzes could be privatised by royal heir*, DW, 2023, <https://www.dw.com/en/critics-fear-benin-bronzes-could-be-privatized-by-royal-heir/a-65550237> [available on: 06.02.2025].

<sup>185</sup> Although it remains debatable whether the intent of this Act extends to the protection of immovable monuments and the prohibition of their adverse possession, a textual and purposive interpretation of its provisions suggests that its primary focus is on movable monuments and other similar categories of national assets. The definition of national assets within the Act implies an explicit inclusion of movable cultural property and other goods within its regulatory scope. However, the absence of a clear reference to immovable monuments raises interpretative challenges regarding their legal status under this framework. Given the significance of immovable heritage in cultural preservation, a more precise legislative delineation would be required to unequivocally establish whether such assets fall under the Act's protective measures and whether adverse possession of immovable monuments is explicitly precluded.

In cases where the land property contains an immovable archaeological monument, the monument is regarded as an inseparable part of the land, as outlined in article 47 of the Civil Code:

§ 1. A component part of a thing cannot be a separate object of ownership or other property rights.

§ 2. A component part of a thing is anything that cannot be detached from it without damaging or significantly altering the whole, or without damaging or significantly altering the detached object.

§ 3. Objects connected to a thing only for temporary use are not considered part of it.

Further elaboration on what constitutes a component part of land is provided in article 48, which includes:

In particular, buildings and other structures permanently attached to the land, as well as trees and other plants from the moment of planting or sowing.

With these provisions in mind, it could be argued that an immovable archaeological monument, as a permanent and inseparable part of the land, might also be considered a component part under the law. Consequently, in cases where a person acquires land with an immovable archaeological monument through adverse possession, they could potentially acquire ownership of the entire property, including the archaeological monument as part of it. This would, in theory, allow for the transfer of ownership over both the land and the cultural heritage it contains, prior to the 2017 amendment which explicitly prohibits such transfers through adverse possession for national cultural property.

This legal framework would permit the trade of archaeological heritage through two distinct mechanisms. Firstly, archaeological monuments may be transferred as an integral part of a land transaction. In such cases, the sale of the land would inherently encompass the transfer of ownership rights over any archaeological heritage (e.g. barrow, tomb) present within its boundaries. Secondly, individual elements of an archaeological monument or historic structure, such as the ruins of a castle, foundational remains, or other structural fragments, could be dismantled and alienated separately. This would apply even if these components were originally deemed inseparable from the land or the monument itself. Once they become physically detached, whether due to natural decay, structural collapse, or deliberate removal, they may acquire the legal status of movable property, thereby becoming subject to independent trade. The issue of determining the state affiliation of archaeological artefacts primarily concerns

movable artefacts due to their inherent characteristic of mobility,<sup>186</sup> here however there is no state affiliation due to adverse possession.

This issue primarily pertains to the legal interpretation of "component parts" and the manner in which the relevant provisions may be applied in practice, particularly in situations where the physical integrity of a monument is altered. Pursuant to article 47 of the Civil Code, component parts of a property are defined as elements that cannot be detached without causing damage to or modifying the whole. However, the application of this provision remains open to interpretation, particularly in cases where a segment of an archaeological monument is physically removed and alienated separately, disregarding its prior classification as a "component part" of the land. A key legal issue arises from the fact that the physical destruction or separation of a portion of the monument, such as a brick or stone from the ruins of a historic structure, could be construed as excluding it from the statutory definition of a component part. Once detached, such an element may no longer satisfy the criteria of inseparability or integral connection to the land's overall value as a cultural asset. This raises significant concerns regarding the legal status of removed components and the extent to which heritage protection laws may impose restrictions on their independent trade or disposition.

The construction of the state's subjectivity should be considered on two levels of action, relating to the spheres of *imperium* and *dominium*. In the first case, the state, acting in the interest of public welfare, functions as a ruler, holding rights and obligations derived from public law. In the second case, it acts as an owner, endowed with rights and obligations established by private law. Within the *dominium* sphere, the State Treasury is a party to civil-law relations in accordance with article 34 of the Civil Code. The State Treasury can be regarded as a legal entity when the state, in its fiscal capacity (*fiscus*), carries out its social and economic functions (*dominium*) through its organisational units lacking legal personality (*stationes fisci*).<sup>187</sup> These functions lack a public-law (sovereign) character, meaning the state engages in civil-law relations, both proprietary and non-proprietary, on an equal footing (partnership basis) with other legal entities.<sup>188</sup>

The central legal question in this context is whether immovable monuments, including archaeological heritage under the ownership of the State Treasury, should be afforded

---

<sup>186</sup> A. Gerecka-Żołyńska, *Karnoprawne Ograniczenia Poszukiwania ...*, p. 84.

<sup>187</sup> D. Lee, *Sources of Sovereignty: Roman Imperium and Dominium in Civilian Theories of Sovereignty*, *Politics Antica*, Fascicolo 1, 2012, pp. 79-94; R. Taylor, *Dominium vs. Imperium: Was Expropriation by Reason of Public Utility Possible under Roman Law?* [in:] R. Taylor, *Public Needs and Private Pleasures, Water distribution, the Tiber River and the Urban Development of Ancient Rome*, *Studia Archaeologica*, no. 109, L'Erma di Bretschneider, Rome 2000, pp. 93-127.

<sup>188</sup> See: J. Desautels-Stein, *Imperium and Dominium* [in:] J. Desautels-Stein, *The Right to Exclude: A Critical Race Approach to Sovereignty, Borders, and International Law*, Oxford University Press, Oxford 2023.

protection within the sphere of *imperium* or, alternatively, treated as assets within the sphere of *dominium*, akin to other state-owned property. The distinction between these two spheres is crucial in determining the legal regime governing such monuments. Within the sphere of *imperium*, the state acts in its sovereign capacity, exercising public-law authority to regulate, protect, and manage heritage assets in the interest of public welfare. Protection under this framework would entail the application of regulatory measures, such as conservation laws, administrative controls, and restrictions on alienation or modification, ensuring that cultural heritage remains safeguarded as part of the nation's collective patrimony. Conversely, if such monuments were classified within the sphere of *dominium*, they would be regarded as assets of the State Treasury, subject to the principles of also private law governing ownership and property transactions. This approach would imply that immovable monuments are treated similarly to other state-owned properties, potentially allowing for their sale, lease, or other forms of commercial exploitation, subject to applicable legal restrictions. The classification of immovable monuments within either of these spheres carries significant legal and policy implications, particularly concerning the degree of protection afforded to cultural heritage, the extent of state obligations in preservation efforts, and the potential risk of commodification or alienation of historically significant sites. Adverse possession appears to be clearly applicable within the sphere of *dominium*, where the legal relationship between the state and other parties is characterised by horizontal equality rather than vertical authority. In this context, the State Treasury holds property rights in a manner similar to that of private entities, subject to the general principles of civil law. As a result, property owned by the state within this sphere may, in principle, be subject to adverse possession under the same legal framework that governs private ownership.

It may appear that the legislator did not intend to differentiate archaeological heritage from other assets that could potentially fall under the ownership of the State Treasury in the context of adverse possession. The statutory provisions governing adverse possession do not expressly exclude archaeological heritage from its application, suggesting that such property may, in principle, be subject to the same legal framework as other types of assets. Following with article 174 of Civil Code there is directly excluded only one group of goods (within moveable objects):

§ 1. A possessor of a movable thing who is not its owner acquires ownership if they have possessed the thing continuously for three years as an independent possessor, unless they possess it in bad faith.

§ 2. The provision of § 1 does not apply to items registered in the national register of lost cultural property.

Unless an archaeological monument is registered in the national register of lost cultural property (what happens rarely), explicitly referenced in the Civil Code rather than the Act on the Protection and Preservation of Monuments, it remains subject to the possibility of adverse possession, including its movable components.

In the case of moveable objects, they can only be possessed in good faith. The concepts of "good faith" and "bad faith" are not explicitly defined in Polish legislation. However, both case law and legal literature consistently interpret these terms as referring to the state of awareness of the possessor. It is generally accepted that good faith implies a justified belief, under the given circumstances, that the possessor holds the right to exercise control over the object in the manner in which they actually do.<sup>189</sup> An independent possessor acquiring an object may be deemed to have acted in good faith, a *sine qua non* condition for acquiring ownership of a movable thing through adverse possession, if they have exercised due diligence to verify that the purchased object is not of stolen origin. However, if the possessor gains unequivocal knowledge that the object was obtained through theft, their possession is classified as being in bad faith for the entire duration of possession. However, the steps taken to verify the legal provenance of the object do not need to be unusual or extraordinary, rather, they must align with the standard of due diligence expected under the circumstances. In the context of acquiring cultural property, a reasonable level of scrutiny is required to ensure that the object was not unlawfully obtained. A fundamental measure in fulfilling this duty of care appears to be consulting the national register of lost cultural property. This registry serves as an official source of information regarding items reported as unlawfully removed or missing, and checking it constitutes a basic and reasonable precaution for any potential acquirer. Failure to conduct such a verification could be interpreted as negligence, potentially undermining a claim of good faith in possession. Additionally, depending on the nature of the transaction, further inquiries, such as obtaining provenance documentation, verifying the seller's legal authority to transfer ownership, or consulting experts in cultural heritage, may be advisable to reinforce the legitimacy of the acquisition.

In situations where professional entities, such as auction houses or specialised art dealers, are involved in the sale of monuments or cultural property, the responsibility for verifying provenance and ensuring the legitimacy of the transaction primarily falls upon these entities. According to the article 355 of the Civil Code, given their professional status and

---

<sup>189</sup> See: Wyrok Sądu Okręgowego w Łodzi z dnia 3 kwietnia 2017, III Wydział Cywilny Odwoławczy, sygn. III Ca 1773/16 [Judgment of the District Court in Łódź of April 3rd 2017, III Civil Appeals Chamber, III no. Ca 1773/16] <https://www.saos.org.pl/judgments/284556> [available on: 12.02.2025].

expertise, they are expected to exercise a heightened standard of due diligence in assessing the legal origin of the objects they handle:

§ 1. The debtor is required to exercise the level of diligence generally expected in relations of a given kind (*due diligence*).

§ 2. The due diligence required of a debtor in the course of their business activity is determined with consideration of the professional nature of that activity.

This obligation includes conducting thorough provenance research, which may involve reviewing historical ownership records, consulting relevant databases such as the national register of lost cultural property, obtaining certifications or declarations from previous owners, and engaging experts in art, archaeology, or cultural heritage law when necessary. Failure to perform adequate due diligence may not only undermine a good-faith acquisition by a buyer but could also expose the auction house or dealer to legal liability, including claims for restitution, accusations of negligent conduct, or potential criminal liability if the transaction involves illicitly obtained cultural property. Therefore, professional sellers bear a legal and ethical duty to ensure that the objects they trade have a clear and lawful provenance, mitigating the risk of unlawful dispossession of cultural heritage.<sup>190</sup> The burden of proof in both scenarios of bad faith, which would prevent the acquisition of ownership through possession, rests with the party seeking restitution from the possessor. In legal proceedings concerning restitution, the claimant (typically the original owner or a party with a superior legal claim) must provide sufficient evidence demonstrating that the possessor acted in bad faith. This may involve proving that the possessor either had actual knowledge of the unlawful origin of the object or, at the very least, willfully disregarded clear indications that the acquisition was improper. The standard of proof required may vary depending on the specific legal framework and judicial interpretation, but it generally necessitates showing that the possessor failed to exercise due diligence in verifying the object's provenance. Evidence could include records of theft or loss, the absence of credible ownership documentation, suspicious circumstances surrounding the transaction, or the possessor's failure to consult official registers, such as the national register of lost cultural property. Since good faith is often presumed in civil law jurisdictions, the claimant must actively refute this presumption by demonstrating the possessor's knowledge or

---

<sup>190</sup> See: M. Weller, Wem Gehört der Versteigerte Kandinsky?, Legal Tribune Online, 28.12.2022, <https://www.lto.de/recht/hintergruende/h/auktionshaus-grisebach-versteigerung-kandinsky-gutgläubiger-erwerb-polen-diebstahl> [available on: 12.02.2025].

recklessness. This principle underscores the importance of proper documentation and provenance verification in transactions involving valuable or historically significant property.

When a purchase occurs under suspicious circumstances, heightened vigilance is required, and the provenance of the artefact must be thoroughly verified. Examples of such situations include acquiring an object through an online auction with limited seller transparency, purchasing from an unlicensed street vendor, or buying from an individual in an open field who insists on a cash-only transaction without providing documentation. In these cases, a higher standard of due diligence applies, as the circumstances themselves raise red flags regarding the legality of the object's origin. Conversely, in more standard transactions, such as purchases from reputable dealers, established auction houses, or licensed institutions, the legal doctrine generally requires only the ordinary fulfilment of due diligence obligations. This typically involves verifying the object's provenance through available documentation, consulting relevant databases (such as the national register of lost cultural property), and ensuring that the seller has the legal right to transfer ownership. Failing to exercise due diligence, especially in high-risk transactions, may lead to legal consequences, including a finding of bad faith possession, which could prevent the buyer from acquiring lawful ownership. Therefore, the level of scrutiny required depends on the specific circumstances of the acquisition, with higher-risk transactions demanding increased diligence to mitigate the risk of acquiring unlawfully obtained cultural property. The acquisition of ownership of a movable thing through adverse possession occurs *ipso jure* (by operation of law), and once the prescribed statutory period has elapsed, the process is deemed complete without the need for further legal action.

The general prohibition on the adverse possession of state-owned real property, which has been in effect since July 21, 1961, based on the Act on land management in cities and settlements<sup>191</sup> till 1985 and the prohibition in article 177 of the Civil Code, which was also repealed on October 1, 1990, reflects a broader shift in legal and policy trends regarding state ownership and private property rights. The fact that such prohibitions were initially established and later revoked suggests an evolving stance by the state, implicitly acknowledging the possibility of adverse possession of state-owned property under certain conditions. Also archaeological heritage is nowhere explicitly excluded from this possibility and monuments are being adversely possessed by private entities and the other way, by State Treasury as well.<sup>192</sup>

---

<sup>191</sup> Ustawa z dnia 14 lipca 1961 r. o gospodarce terenami w miastach i osiedlach [Act of 14 July 1961 on land management in cities and settlements], Dziennik Ustaw no. 32, pos. 159, repealed 1 August 1985.

<sup>192</sup> See: Postanowienie Sądu Najwyższego z dnia 14 czerwca 2005 r., sygn. V CK 305/05, [Decision of the Supreme Court of June 14, 2005, no. V CK 305/05].

This legislative change may indicate a move toward a more flexible approach, where the rigid distinction between state and private ownership is reconsidered. By removing explicit prohibitions, the state effectively allows room for interpretation and potential claims of adverse possession against public property, particularly in cases where long-term, uninterrupted, and good-faith possession can be demonstrated.<sup>193</sup> Despite some claims that monuments cannot be acquired through adverse possession,<sup>194</sup> and archaeological heritage is falling in a specific outside scope where most provisions from Civil Code are not applicable,<sup>195</sup> it is not explicitly mentioned nowhere in the Codes or Act that it should be this way.

Having those six methods in mind, a significant challenge arises in distinguishing between archaeological artefacts that the State Treasury previously owned under the 1962 Act and those that began to be protected following the enactment of the 2003 Act. Under the earlier legal framework, ownership of archaeological excavations and finds was clearly designated to the state. However, there has been ongoing debate regarding the nuances of ownership rights in the context of archaeological heritage, particularly concerning the criteria for what constituted state ownership. Despite this historical context, the legislation does not provide clear guidelines or a comprehensive description of which specific archaeological finds fall under state ownership. This ambiguity is concerning, as it raises questions about the types of artefacts that are included in this designation, whether all categories of finds encompassed, those discovered accidentally, items uncovered through clandestine activities, or artefacts derived from academic research and pre-investment surveys. Or if the scope is limited solely to artefacts obtained through formal archaeological excavations. The lack of clarity in language contributes to confusion and may hinder effective enforcement of the laws regarding cultural heritage protection.

It is important to note that the 1962 Act did not differentiate between archaeology and palaeontology, addressing both disciplines as if they were inseparable. This conflation could lead to misunderstandings regarding the distinct goals, methodologies, and areas of focus inherent to each field. Article 5 of the 1962 Act positioned palaeontology within the same protective framework as archaeology, thereby implying an equal treatment of both disciplines in terms of legal and regulatory measures concerning preservation and conservation:

In terms of material substance, the objects of protection may include, in particular:

---

<sup>193</sup> See: M. Zirk-Sadowski, *Prawo a Uczestniczenie w Kulturze* [Law and Participation in Culture], Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1998.

<sup>194</sup> See: W. Kowalski, *Nabywanie Własności Dzieła Sztuki od Nieuprawnionego* [Acquisition of Ownership of a Work of Art from an Unauthorized Person], Zakamycze-Kraków 2004.

<sup>195</sup> A. Jagielska-Burduk, *Cultural Heritage as a Legal...*, pp. 256-271.

5) archaeological and paleontological objects, such as surface traces of early settlement and human activity, caves, prehistoric mines, fortified settlements, cemeteries, burial mounds, and all artefacts of ancient cultures.

In practice, such an indistinct categorisation could obscure the specific needs and approaches characteristic of each discipline. Archaeology primarily deals with the study of human history and prehistory through material remains, aiming to interpret cultural practices, societal structures, and historical developments. Conversely, palaeontology focuses on the study of ancient life forms, including fossils, and their biological and ecological significance. Although both disciplines contribute to our understanding of the Earth's history, their methodologies and objectives differ substantially. In contemporary practice, the separation of the two fields has been recognised and formalised in various legal frameworks and professional standards. Today, archaeology and palaeontology are governed by distinct regulations, reflecting a more nuanced understanding of their unique contributions to knowledge and heritage. This divergence allows for specialised protections and management practices tailored to the specific context of each discipline, enhancing the effectiveness of heritage conservation efforts. Palaeontology is also excluded from the 2003 Act and does not form part of cultural heritage (rather natural heritage), meaning it is also not considered anymore as state ownership.

It is important to highlight the ongoing international disputes regarding dinosaur skeletons, particularly the well-known case of the dinosaur known as Sue,<sup>196</sup> which has become a focal point in debates surrounding the ownership and repatriation of paleontological artefacts. The involvement of Joseph L. Sax in these discussions has brought attention to the complex interplay of law, ethics, and cultural heritage in the realm of fossil preservation and ownership.<sup>197</sup> However, under the current Polish legislation, the situation regarding paleontological artefacts is treated distinctly and does not allow for the same level of discourse as that surrounding archaeological treasures. Polish law, particularly as articulated in the existing frameworks for the protection of cultural heritage, differentiates between archaeological and paleontological findings, establishing separate categories for their management and ownership. This divergence means that the principles governing the protection and ownership of archaeological objects in Poland do not directly apply to paleontological

---

<sup>196</sup> Sue is the nickname of the largest, most complete, and best-preserved *Tyrannosaurus rex* skeleton ever discovered. Found in South Dakota in 1990, Sue lived about 67 million years ago and measured around 40 feet long. After its discovery, Sue became the center of a long legal battle over ownership that involved the fossil hunter, the landowner, and the U.S. government. The case ended with Sue being auctioned in 1997 and eventually placed on display at the Field Museum in Chicago, where it remains today.

<sup>197</sup> J.L. Sax, *Legal Concepts of Cultural Property*, RBM: A Journal of Rare Books, Manuscripts, and Cultural Heritage, vol. 7, issue 1, Association of College and Research Libraries, California 2006, pp. 67-78.

finds, including dinosaur skeletons, that falls out of scope of cultural heritage. The legislation clearly delineates these domains, thereby preventing the application of similar legal arguments or frameworks for paleontological artefacts, which may be subjected to different standards and regulations, often focused more on scientific study and less on historical or cultural significance. Moreover, while international debates over artefacts like Sue often centre on issues of cultural patrimony, legal ownership, and ethical considerations surrounding collection practices, these discussions do not fully resonate within the Polish context. Instead, Polish law emphasises the public interest in the protection of its cultural and natural heritage. Paleontological resources in Poland must be understood and managed separately from archaeological ones, reflecting a more specialised approach to conservation that addresses the unique aspects of each discipline. The controversy surrounding dinosaur skeletons illustrates broader global issues of ownership and heritage protection. However, in Poland, current legislation distinctly separates the treatment of paleontological and archaeological artefacts, leading to a lack of discourse on the similarities that might exist between the two realms. This emphasises the need for specific legislative approaches that reflect the unique nature of paleontological heritage while protecting the rights of cultural heritage more broadly.<sup>198</sup>

Ownership rights can also constitute problems concerning other provisions of article 35 of the 2003 Act:

3. The storage location for archaeological monuments that have been discovered, accidentally found, located, or obtained as a result of searches mentioned in Article 36b, paragraph 1, or acquired through archaeological research, shall be determined by the voivodeship conservator of monuments. By way of a decision, this conservator will transfer these items to a museum or another organisational unit with its consent.
4. The transfer of archaeological monuments to a museum or other organisational unit may occur if that unit provides: 1) permanent storage; 2) the completion of inventory and appropriate conservation works; 3) access to these monuments for scientific purposes.
5. The voivodeship conservator of monuments may issue a decision to revoke the deposit of archaeological monuments if the museum or other organisational unit fails to meet the conditions specified in paragraph 4.
6. Upon the request of the museum director, archaeological monuments in the custody of that museum may be transferred to its ownership based on a decision by the voivodeship conservator of monuments.

---

<sup>198</sup> A. Jagielska-Burduk, *Cultural Heritage as a Legal...*, pp. 256-271.

Some museums, both private and public, are now requesting fees for the storage of archaeological artefacts. This situation becomes particularly complex given that the responsibility for covering the costs associated with archaeological research and documentation primarily falls to the investor, as outlined in article 31.1a of the 2003 Act. This article states that such funding is only required when the research is deemed essential for the protection of the archaeological monuments in question. It is important to note that these investors do not have ownership rights over the archaeological heritage, rather, such ownership resides with the State Treasury. This distinction raises significant questions about the financial responsibilities associated with the management and preservation of cultural heritage. Investors may feel compelled to recoup costs for storage (an intriguing precedence) due to financial pressures, even though their obligations are limited to research and documentation expenditures that contribute to the protection of the monuments.<sup>199</sup> It should be noted that the first paragraph of this provision, article 31.1, which initially foresaw that the costs of archaeological research should be incurred by the investor, was revoked on the grounds of unconstitutionality, acknowledging the fact that the mechanism should rely on co-financing (article 82a), establishing the rule that the state should cooperate in the protection of heritage that belongs to the State Treasury. This did not entirely exempt investors from the obligation to incur such costs.<sup>200</sup>

If an investor is required to incur expenses related to the maintenance and storage of a monument, it can be reasonably inferred that they assume at least the role of its possessor. Their actions, characterised by a commitment to care for and protect the monument, suggest a level of involvement that goes beyond mere investment and aligns them closely with the responsibilities typically associated with ownership.

The behaviour exhibited by the investor clearly indicates that they are not simply a passive entity but fulfil the role of a possessor. Their obligations to maintain and protect the monument involve a level of commitment that suggests ownership-like stewardship, as they ensure the preservation and proper management of the cultural asset. This distinction raises important considerations regarding the rights and responsibilities of market participants who engage with cultural heritage, especially in instances where the boundaries between ownership and possession become blurred. In light of this complexity, it may be beneficial to reassess the legislative provisions governing archaeological and cultural heritage. By recognising the

---

<sup>199</sup> A. Michalak, A. Ginter, *Ustawa o Ochronie Zabytków i Opiece nad Zabytkami, Komentarz* [Act on the Protection and the Preservation of the Monuments, Commentaries], Wolters Kluwer, Warszawa 2016, pp. 198-199.

<sup>200</sup> Wyrok Trybunału Konstytucyjnego z dnia 8 października 2007 roku sygn. K 20/07, OTK-A 2007/9/102, Dziennik Ustaw 2007, no. 192, pos. 1394 [Judgment of Polish Constitutional Tribunal of 8 October 2007].

evolving roles of investors as active stewards of monuments, the legal framework could be adapted to create clearer guidelines regarding the responsibilities and rights associated with possession, thereby fostering a more collaborative approach to the protection and appreciation of cultural heritage. When ownership of monuments resides with private individuals or entities, the legal rights and responsibilities surrounding the possession, sale, and transfer of these items become significant. Individuals who possess such artefacts must navigate the complexities of ownership laws while ensuring they comply with regulations intended to protect cultural heritage.

In circumstances where ownership or provenance of an object cannot be established or is unknown, article 189 of the Civil Code comes into play, which stipulates that the State Treasury assumes ownership of the monument:

If an item is found under circumstances where searching for the owner would obviously be futile, it becomes the subject of co-ownership in fractional shares between the finder and the owner of the property where the item was found. However, if the item is a cultural monument or archival material, it becomes the property of the State Treasury, and the finder is obliged to promptly hand it over to the appropriate county governor.

It means that in such situations, the finder holds a claim to a fractional share of ownership, acknowledging their contribution to the discovery of the artefact. Such a provision recognises the collaborative nature of archaeological discovery, where both the landowner and the finder play essential roles in uncovering cultural heritage. However, the situation shifts significantly if the item in question is categorised as a cultural monument or archival material. In these cases, the article dictates that the ownership automatically transfers to the State Treasury, reinforcing the principle that items of significant cultural and historical value are considered public assets. The finder is then legally obligated to immediately submit the item to the appropriate county governor, ensuring that it is preserved and managed in accordance with national heritage preservation laws. By doing so, it aims to mitigate the risks associated with illicit trade and unauthorised ownership. The obligation imposed on finders to report their discoveries further enhances transparency and accountability within the system, ensuring that heritage objects are managed and preserved for future generations.

However, it is possible that a found monument, classified as an archaeological artefact, may not automatically belong to the state under this article if its ownership is known and it is, e.g. presumed to be part of modern archaeological contexts with easier-to-establish provenance history or was already under one of six categories allowing for private ownership. In such cases,

the monument could be considered exempt from the category of *res extra commercium* (items that cannot be owned or traded), as it does not fall under the regulations of either the current 2003 Act or the earlier 1962 Act. It appears that article 189 of the Civil Code may not serve as a *lex specialis* in relation to the general principle of state ownership outlined in article 35 of the 2003 Act.<sup>201</sup> We are confronted with dual regulations, as the norms do not contradict or overlap with one another, instead, they serve to complement each other.<sup>202</sup> The number of such artefacts is likely to exceed initial expectations. Ultimately, the interplay between established ownership rights and state-assumed ownership under article 189 of the Civil Code provides a crucial mechanism for managing the complexities of archaeological finds.

The presumption that the number of archaeological artefacts that fall outside the category of *res extra commercium* will be confined to a limited few may significantly underestimate the complexities involved in the legal and practical realities of heritage management. This assumption fails to account for the various exceptions and circumstances that arise in accordance with established legal principles, which necessitate a comprehensive reconsideration of the application of this category within the context of archaeological heritage. The concept of *res extra commercium* typically refers to items that are not subject to private ownership or trade due to their cultural, historical, or social significance. However, the rigid application of this classification may not adequately reflect the diversity and abundance of archaeological artefacts that already exist in various contexts and under differing circumstances. It may be beneficial to reconsider the continued use of the *res extra commercium* category in relation to archaeological heritage. Transitioning away from this rigid classification could encourage a more inclusive understanding of what constitutes significant cultural property, ultimately fostering better stewardship and protection of a wider array of archaeological assets. Embracing a more adaptable framework can enhance not only the legal treatment of such artefacts but also public engagement and appreciation for the cultural heritage they represent.

### **2.3.3.3. Obligations over archaeological monuments**

Besides obligations mentioned in article 31.1a where a natural person or organisational entity that intends to conduct construction work on an immovable monument listed in the registry or

---

<sup>201</sup> J.S. Piątkowski, Komentarz [Commentary] [in:] J. Ignatowicz (ed.), *System Prawa Cywilnego, Prawo Własności i Inne Prawa Rzeczowe* [System of Civil Law, Property Law, and Other Property Rights], vol. 2, Zakład Narodowy im. Ossolińskich, Wrocław-Warszawa-Kraków 1977, p. 372.

<sup>202</sup> M. Dreła, *Własność Zabytków* [Ownership of Monuments], C.H.Beck, Warszawa 2006, p. 199.

under conservation protection based on local zoning plans or that is recorded by the regional conservator of monuments must also consider the implications of any earthworks or changes to the existing activities on land containing archaeological monuments, and cover the costs associated with archaeological research and its documentation if this research is essential for the protection of these monuments, there are also other obligations over archaeological monuments.

Article 32 of the 2003 Act imposes obligations over accidentally found monuments during structure work:

Anyone who discovers an object during construction or earthworks that is suspected to be a monument is obliged to: 1) cease all work that could damage or destroy the discovered object; 2) secure the object and the site of the discovery using available means; 3) promptly notify the appropriate regional conservator of monuments, and if that is not possible, to inform the relevant village mayor (town mayor, city president).

The village mayor (town mayor, city president) is required to promptly forward the notification mentioned in paragraph 1, point 3, to the regional conservator of monuments within three days. The regional conservator is obliged to inspect the discovered object within five days of receiving this notification. Should the regional conservator fail to conduct the inspection within the specified timeframe, work that was halted may be resumed. After inspecting the discovered object, the regional conservator of monuments issues a decision. This decision may allow for the continuation of interrupted work if the discovered object is not classified as a monument, or it may permit ongoing work if the object is indeed a monument and its continuation will not result in destruction or damage. In cases where the object warrants further investigation, the conservator can mandate a suspension of work, requiring archaeological research to be conducted at the expense of the individual or organisation responsible for the project. Work may not be halted for more than one month from the delivery date of this decision. In circumstances where the archaeological research uncovers a monument of exceptional value, the regional conservator has the authority to extend the work suspension period, although this extension cannot exceed six months from the date of the prior decision. Furthermore, the discovery of any object specified in paragraph 1 occurring in Polish marine areas must be reported promptly to the appropriate director of the Maritime Office, and the provisions regarding notifications and inspections apply accordingly.

This regulatory framework establishes a detailed protocol that underscores the importance of archaeological oversight. The obligations imposed on local officials and regional

conservators reflect a strong commitment to accountability in the discovery process, ensuring that significant findings receive the necessary legal attention. The specified timelines for notifications and inspections facilitate timely responses to discoveries, promoting both the protection of cultural artefacts and the continuity of ongoing work. Moreover, the provision allowing for the resumption of work, if inspections are not conducted within the designated timeframe embodies a balance between the need for preservation and the practicality of construction activities. The emphasis on archaeological research, especially when remarkable artefacts are uncovered, highlights the necessity of prioritising cultural heritage.

On the other hand, article 33, concerns accidentally found archaeological monuments, regardless of any work:

Anyone who accidentally discovers an object that is suspected to be an archaeological monument is obligated to secure the item using available means, mark the location of its discovery, and promptly notify the appropriate regional conservator of monuments. If this is not possible, they must inform the relevant village mayor (town mayor, city president).

The provision requiring individuals who accidentally discover an object suspected to be an archaeological monument to secure the item, mark the location and promptly notify the appropriate authorities presents several potential challenges and problems that could arise in practice. One significant issue lies in the ambiguity surrounding the definition of an "archaeological monument." If individuals are uncertain about what qualifies as such, they may not recognise the importance of the item they have found, leading to delays in reporting to the authorities and potential loss or damage to valuable cultural heritage. Clear guidelines and educational outreach are essential to ensure the public is informed about the types of artefacts and sites requiring immediate attention. Another problem stems from the logistical challenges of securing an archaeological find. Not all individuals may have the resources or knowledge to properly protect an artefact. Ensuring adequate preservation may necessitate expertise in conservation practices, which the average person may not possess. This lack of capacity can result in further deterioration of the artefact or the loss of important contextual information regarding its discovery. The requirement to mark the location of the find poses additional complications. Properly documenting the site requires knowledge of archaeological methodologies. If a finder inadvertently disturbs the site while trying to mark it, they may remove or alter valuable context that is critical for interpretative analysis and historical understanding. Such actions could compromise the integrity of the archaeological record.

Furthermore, the obligation to report findings promptly may not always be practical,

especially in remote or rural areas where access to authorities is limited. Delays in communication or failure to report discoveries due to various reasons, such as fear of legal repercussions or lack of awareness, can further jeopardise the preservation of the archaeological asset. The provision implies that the responsibility for managing archaeological finds primarily rests on individuals rather than on state authorities or governmental agencies. This places a significant burden on members of the public, which could lead to inconsistent compliance and varying levels of engagement across different communities. Some individuals may choose to disregard the obligation altogether, resulting in unauthorised handling, illicit trade, or destruction of cultural artefacts. While the provision is designed to encourage responsible behaviour when encountering potential archaeological heritage, it presents various challenges that could undermine its effectiveness.

The new addition is an expanded article 33a concerning an accidental finding during the search for hidden or abandoned movable monuments using electronic or technical devices conducted by an adult individual, provided that they have the consent of both the property owner and the holder of the property and that they have registered the search with the relevant search registry. The provisions indicate a structured process for the discovery of archaeological artefacts, emphasising again the responsibilities of individuals who find such items and the procedures that must be followed to ensure their protection. The already mentioned requirement for individuals to secure and report archaeological finds imposes a significant burden on the discoverers is not the only issue. The stipulation that three or more findings found within a limited area trigger a mandatory report to the regional conservator raises practical concerns. If an individual finds several artefacts within a small radius, the requirement to halt further searching until an inspection is conducted might not discourage exploration of the site at that moment but simply cause dishonesty and not admitting any findings. Furthermore, if there are delays in the conservator's response, the conservation of artefacts and their contexts may be jeopardised. The six-day window for the regional conservator's inspection is another area where challenges may arise. Given the varying capacities of local conservators, there may be instances where timely inspections are not feasible.

This could result in undue delays that diminish the integrity of the site or allow for unauthorised access, which could further damage or compromise the archaeological findings. The subsequent requirement for the regional conservator to assess and communicate the significance of the found items within 30 days introduces further complexity. There may be cases where the conservator determines that the items do not qualify as monuments, which can lead to frustration for the discoverer. Additionally, the potential for differing interpretations of

what constitutes a monument could lead to inconsistencies in enforcement and protection across different regions. Finally, the provision stating that after confirming an item is a monument, the conservator must record it in the search registry underscores the importance of proper documentation. However, if the registry lacks sufficient public access or transparency, it may limit opportunities for research and education, undermining the overall goals of protecting the archaeological heritage.

Cooperation with metal detectorists in the protection of archaeological heritage is increasingly being recognised as an essential strategy for effective heritage management. Rather than adopting a purely adversarial stance that seeks to eliminate the activities of metal detector enthusiasts, fostering a collaborative relationship can yield significant benefits for the preservation and understanding of archaeological resources. While legitimate concerns may be associated with metal detecting, particularly regarding unauthorised excavations and the potential for artefact loss, outright elimination of detectorists is not the most effective approach.

Last, worth mentioning is the new wording of article 34, including not the obligation but the acquiescence, this time on the side of the state, to reward individuals who discover an archaeological monument during construction or earthworks, accidentally find it, or locate or obtain during searches with technical devices. They are entitled to a monetary reward or a diploma if they have fulfilled all of the obligations concerning securing and reporting the discovery. A monetary reward is granted when the archaeological monument possesses exceptional historical, artistic, or scientific value, in other cases, a diploma is awarded. The value of the monetary reward cannot exceed twenty-five times the amount of the average monthly salary in the national economy from the previous calendar year, as announced by the President of the Central Statistical Office in the Official Journal of the Republic of Poland "Monitor Polski." In exceptional cases, where an archaeological monument not only possesses extraordinary historical, artistic, or scientific value but also has significant material value, the amount of the monetary reward may be increased to thirty times the average monthly salary upon the request of the regional conservator of monuments. Monetary rewards are disbursed from the financial resources allocated within the part of the state budget for which the minister responsible for culture and national heritage protection is the managing authority. The minister responsible for culture and national heritage protection will define, by way of regulation, the process for awarding monetary rewards and diplomas, taking into account the need to ensure transparency and efficiency in the proceedings. However, monetary rewards for individuals who discover archaeological monuments are quite rare, despite the provisions already outlined in the relevant legislation.

## Minor conclusions 2

Attempting to provide the summary, the classification and protection of archaeological heritage present a complex landscape that varies significantly across legal systems and cultural contexts. On one hand, archaeological heritage is often included within the broader category of cultural heritage, emphasising its importance as part of a nation's historical and cultural identity. This integrative approach fosters a comprehensive view of heritage preservation, recognising the interconnectedness of all cultural assets. However, there are instances where archaeological heritage is afforded a separate definition and protection, highlighting its unique characteristics and the specialised methodologies required for its protection and management. This differentiation acknowledges the distinct principles that govern archaeological practices and the inherent value of archaeological artefacts and sites in providing insights into human history.

The definition of an archaeological monument can also vary, it encompasses a broad spectrum of items that hold significant cultural, historical, or scientific value, regardless of their age. Traditionally, archaeological monuments have been associated with ancient artefacts and sites that provide insights into prehistoric human life. However, contemporary interpretations of archaeological monuments recognise the importance of more recent finds, emphasising that items of modern origin can also be classified as archaeological heritage. An archaeological monument is generally defined as a physical remnant of human activity, carefully preserved to reflect the understanding and heritage of past cultures. These can include immovable objects such as historical structures, burial sites, and ancient ruins, as well as movable artefacts such as tools, pottery, and artworks. The classification does not depend solely on the item's antiquity, rather, it encompasses any object deemed to have archaeological significance, whether it originated thousands of years ago or was created in the last century or even a decade. This inclusive understanding acknowledges that cultural heritage is dynamic and evolving. Modern artefacts, such as those from the Industrial Revolution or items related to contemporary societal movements, contribute to the narrative of history and identity and are therefore deserving of protection and preservation. The context in which these items are found often influences their interpretation and significance.

Moreover, the interplay between archaeological heritage and palaeontology can further complicate the regulatory framework. While both fields contribute vital knowledge about the past, their differing focuses on human versus prehistoric life might blur the lines of classification and protection. This overlap can lead to legal ambiguities and challenges in defining ownership rights, necessitating clear guidelines that respect the distinctiveness of each

discipline while facilitating effective management. Finally, the levels of protection for archaeological heritage vary considerably across Europe, within the European Union, and at the national level, as exemplified by Poland's legal framework. Each jurisdiction has its own legislative measures and enforcement mechanisms, reflecting diverse cultural priorities and historical contexts. This variation underscores the need for ongoing dialogue and cooperation among states to harmonise approaches to archaeological heritage protection.

The implementation of the Council of Europe, UNESCO and UNIDROIT conventions regarding the protection of cultural heritage can vary significantly from one state to another. Each country interprets and integrates these international agreements into its legal framework based on its unique historical, cultural, and legal contexts. This variability can result in different levels of protection afforded to cultural heritage, including archaeological sites and artefacts. For instance, while some states may adopt robust measures to implement conventions mentioned and commented previously, reflecting a strong commitment to cultural preservation, others may exhibit a more limited scope in their application, resulting in inadequate protections. This discrepancy highlights the challenges of achieving uniform standards for heritage protection across diverse jurisdictions. Factors such as political will, available resources, and public awareness can significantly influence how these conventions are operationalised and enforced at the national level. As a great example can serve the existence of the 2001 UNESCO Convention on the underwater cultural heritage offering a framework for the protection of submerged archaeological sites and artefacts. However, many countries do not have corresponding legal categories for underwater cultural heritage within their legal systems. This lack of alignment creates significant gaps in protection, as the absence of dedicated laws makes it difficult to prevent the illicit trade of submerged artefacts or to implement effective conservation measures.

Consequently, the inability to exclude underwater heritage from trade stems largely from the legislative void regarding its classification and protection. If a state's legal framework does not specifically recognise underwater cultural heritage, then artefacts recovered from submerged sites may not be afforded the same protections as those found on land. This discrepancy can lead to the commodification and unauthorised removal of these valuable cultural assets, undermining the objectives of international conventions aimed at ensuring the preservation of all forms of cultural heritage. This disparate recognition and application of conventions among states can result in varying levels of protection for cultural heritage. In light of these considerations, it is essential for policymakers and heritage professionals to continuously assess and refine the definitions, classifications, and protective measures

surrounding archaeological heritage. By doing so, they can enhance the efficacy of heritage preservation efforts, promote public understanding, and ensure that both archaeological and cultural assets are respected and protected for future generations.

The designation of state ownership over archaeological monuments presents various detrimental implications, particularly when individuals are primarily tasked with the responsibility of protecting these assets. The burden placed on individuals to protect state-owned archaeological monuments can lead to feelings of frustration and inadequacy, especially when they lack the necessary resources, training, or support from authorities. Individuals may not have the expertise to manage or protect these sites effectively, making it difficult for them to fulfil this responsibility without guidance and support from the state. Consequently, this situation can result in the degradation of archaeological sites due to uninformed or improper handling by individuals who are unsure of their duties or how to carry them out.

Concluding, the category of *res extra commercium*, which refers to items that cannot be owned or traded due to their cultural significance, presents several challenges when applied to archaeological heritage in Poland. While the intention behind this classification is to protect important cultural assets, the reality is that Polish law includes numerous situations in which the trade of archaeological monuments is permissible. This legal flexibility creates a tension between the ideal of completely safeguarding archaeological heritage and the practical realities that allow for the sale and exchange of certain artefacts. This reality suggests that the strict application of *res extra commercium* may not be necessary, as many archaeological artefacts may already be subject to legitimate trade and ownership frameworks. The assertion that all archaeological heritage should be excluded from trade overlooks the complexities of how some items can be integrated into the market while still being respected as cultural assets. Furthermore, the nuanced legal landscape allows for responsible stewardship that accommodates both protection and scholarly research and in some cases, encourages public engagement with cultural heritage. Ultimately, while the concept of *res extra commercium* aims to prioritise the protection of archaeological heritage, the existing legal provisions in Poland reveal that a more balanced approach could be explored. Acknowledging the contexts in which archaeological items can be traded may allow for effective management of cultural resources without undermining the principles of preservation and respect for cultural heritage.

## Chapter 3

### Archaeological monument in the liberalism vs communitarianism debate

#### Introduction

The protection of cultural heritage involves a complex interplay of interests between the state and individuals, reflecting the significant roles both parties play in protection, stewardship and conservation. Each has distinct motivations for preserving cultural assets, and these interests can, at times, both align and clash. From the state's perspective, safeguarding cultural heritage is not only a matter of preserving national identity but also a reflection of its commitment to societal values, history, and future development. The state recognises that cultural heritage contributes to a sense of belonging and continuity for citizens, which can strengthen social cohesion and public trust in governmental institutions. Moreover, protecting archaeological sites and cultural monuments is vital for promoting tourism and education, as these sites often serve as valuable resources for economic development and cultural diplomacy. However, the state must also contend with pressures for development, urbanisation, and private interests that may prioritise immediate economic gains over long-term cultural preservation. In some cases, individuals may wish to destroy or alter cultural assets in pursuit of profit or progress, necessitating state intervention to safeguard the public good and public interest.

Nevertheless, individuals and communities may also have vested interests in protecting cultural heritage, stemming from personal connections, historical narratives, and cultural identity. Community members may engage in preservation efforts to retain aspects of their heritage that resonate with their collective memory or social practices. This engagement often arises from a genuine appreciation for cultural assets that play a critical role in shaping local identities. In some cases, individuals may possess archaeological artefacts or historical sites that they feel attached to, leading them to actively protect these resources either for personal pride or to contribute to the broader narrative of cultural heritage.

This chapter explores the dynamic between state ownership and private ownership of cultural heritage which is both important and contentious. While state ownership emphasises that cultural assets belong to the public and serve the common good, private ownership can promote proactive stewardship from individuals who find personal value in the preservation of their heritage. Nevertheless, these concepts frequently clash, as differing priorities between state authorities and private owners can lead to legal disputes and tensions surrounding the management of cultural resources. The resolution of these conflicts may benefit from both

liberal and communitarian frameworks. Liberalism emphasises individual rights and ownership, advocating for a model where personal freedoms extend to the protection and management of cultural heritage. This perspective encourages private stakeholders to take initiative in preserving culturally significant items. Conversely, communitarianism places greater emphasis on the collective identity and shared responsibilities of communities, asserting that cultural heritage is best protected when community values and collective action are prioritised. This approach advocates for policies that recognise the communal dimensions of cultural heritage, promoting shared stewardship that includes the voices and interests of local stakeholders. Hence, this chapter assesses the protection of cultural and archaeological heritage, which is inherently complex, requiring a balance between state and individual interests, and the constant battle of the concept of liberalism vs communitarianism. Both entities play crucial roles in safeguarding these treasures, and their interactions can lead to both collaboration and conflict. Recognising the contributions of liberal and communitarian perspectives may enhance the dialogue surrounding cultural heritage protection, ultimately fostering a more inclusive approach that respects both individual ownership and community responsibility, ensuring the preservation of cultural legacies for future generations.

This chapter begins by examining the historical development of liberalism and communitarianism, tracing their evolution from their foundational moments in history to the contemporary debates of the 21st century. After establishing a historical context, this chapter situates the ongoing dispute between liberalism and communitarianism within the realm of cultural heritage, specifically focusing on archaeological heritage. As debates surrounding cultural heritage intensify, the friction between individual ownership rights and communal responsibilities becomes increasingly apparent. The chapter will explore how these philosophical frameworks influence policies and practices related to archaeological heritage protection and trade. It will assess how different approaches to ownership and stewardship can shape the discourse surrounding archaeological finds, their preservation, and the rights of communities versus those of individual collectors. Finally, the chapter will analyse how the interplay between liberalism and communitarianism informs ongoing discussions about the ethical implications of archaeology, including the return of artefacts to their countries of origin and the need for inclusive heritage management practices. By examining these dynamics, the chapter aims to provide a deeper understanding of the cultural heritage landscape, highlighting the necessity of integrating both individual rights and communal values in the stewardship of archaeological resources.

### 3.1. Liberalism – an outline

Liberalism, both in theory and in practice, aims to foster social outcomes arising from individuals' free choices. This emphasis on autonomy highlights the belief that individuals should have the freedom to make decisions that affect their lives as long as those choices do not infringe upon the rights and freedoms of others. In this context, the validity of one's choices is contingent upon their respect for the equal rights and freedoms of all individuals. Choices that undermine the liberty or well-being of others are deemed invalid within the liberal framework. Economic liberalism advocates for individuals' rights to make choices regarding their labour, wealth, and income. It supports the notion that, within a free market, individuals should have the autonomy to pursue their economic interests and engage in trade, provided that such actions respect the liberty, property, and contractual rights of others. This creates a framework where competition and innovation can thrive, benefiting society while preserving individual rights. Social liberalism extends these principles to permeate various aspects of life beyond the economic sphere. It advocates for freedoms related to thought, expression, religion, movement, association, and sexual orientation, positing that individuals should be free to live their lives according to their own values and beliefs. However, this freedom is subject to a critical condition: the exercise of any particular right must not infringe upon the equal freedoms of others.<sup>203</sup>

While the concept of equal freedom might be interpreted as encouraging unrestricted liberty, potentially allowing harmful behaviours, such as acts of violence, it is essential to recognise that such absolute freedom would lead to a society fraught with conflict and insecurity. Therefore, the notion of equal freedom is best understood as one that necessitates mutual respect for boundaries. By establishing shared limits on behaviour, where actions cannot infringe upon the rights of others, the overall freedom of individuals is actually enhanced. The fundamental basis of these limits is the prohibition of force and fraud, ensuring that interactions among individuals occur with the free consent of all parties involved. Coercive actions are justified only when they are necessary to uphold these limits, particularly in instances where one individual violates another's rights. Liberalism emphasises the importance of individual freedom while recognising that its exercise must coexist with the rights of others. By establishing a balance between personal liberties and communal responsibilities, liberalism seeks to create a society where every individual can flourish without infringing on the freedoms

---

<sup>203</sup> J. Charvet, E. Kaczyńska-Nay, *The Liberal Project and Human Rights, The Theory and Practice of a New World Order*, Cambridge University Press, Cambridge 2008, p. 2.

of their neighbours. This approach fosters a more stable and respectful social environment, thereby enhancing overall societal well-being.

Liberalism, as a political doctrine, fundamentally revolves around protecting individual freedoms. This central tenet directs focus toward the imperative of safeguarding individual rights as a primary concern within the realm of governance. The inherent challenge within this paradigm lies in navigating the delicate relationship between government authority and personal liberty. The government plays a crucial role as a guarantor of individual freedoms. It is responsible for creating and enforcing laws designed to protect citizens from infringement on their rights, ensuring that individuals can exercise their freedoms without undue interference. Through the establishment of legal frameworks, the government can enhance the security and autonomy of its citizens, promoting an environment in which personal liberties are respected and upheld. Legislation pertaining to civil rights, freedom of speech, and equal protection under the law exemplifies how government action can support and reinforce the freedoms essential to a liberal society. The government itself may threaten individual liberty when exercising its power is unchecked or misused. There is a potential for governmental actions, whether through legislation, regulation, or law enforcement, to encroach upon the freedoms that liberalism seeks to protect. This tension between the need for an authoritative government to maintain order and the imperative to respect individual rights can lead to complex dilemmas. A government might justify restrictions on speech or assembly in the name of public safety or national security, which can unwittingly undermine the core values of a liberal democratic society.<sup>204</sup>

Additionally, this duality highlights the necessity for a robust system of checks and balances within government institutions. The risk of governmental overreach can be mitigated by implementing mechanisms such as judicial review, independent oversight bodies, and active civil society participation. Such structures ensure that individual rights remain protected despite governmental authority, fostering a political environment where freedoms can be enhanced rather than threatened. The interplay between government actions and individual rights is a foundational aspect of liberalism. While the government has a vital role in safeguarding and promoting individuals' freedoms, it also has the potential to infringe upon those very liberties. Understanding and addressing this dynamic is essential for maintaining a healthy balance that allows liberal democracies to thrive, ensuring that individual rights are protected while allowing for necessary governance and social order. Thus, ongoing dialogue and vigilance in addressing these issues are crucial for advancing liberal values within contemporary society.

---

<sup>204</sup> T. Ball, K. Minogue, *Liberalism*, Encyclopaedia Britannica, <https://www.britannica.com/topic/liberalism> [available on: 30.01.2025].

Liberalism emerges from two interconnected features inherent to Western culture. The first is the Western emphasis on individuality, which contrasts sharply with other civilisations that prioritise status, caste, and tradition. Historically, individuals often found themselves submerged within the larger constructs of their clans, tribes, ethnic groups, or kingdoms, where personal autonomy was secondary to collective identity. In the context of Western society, liberalism represents the culmination of historical developments that have championed the significance of human individuality. This ideology reflects a transformative shift in which individuals are liberated from an absolute subservience to the group, allowing for a greater sense of personal agency and self-determination. Central to this evolution is the relaxation of the strict constraints imposed by customs, laws, and authoritative structures that have historically dictated the terms of individual existence.<sup>205</sup>

As a political ideology, liberalism began to emerge distinctly in the early nineteenth century, particularly in the post-Napoleonic context of Spain. It was during this time that the term "liberal" transitioned from an adjective to a political noun around 1810, signifying a clear stance against absolutism and despotism.<sup>206</sup> Similarly, in France, the previously benevolent connotation associated with the adjective "liberal" evolved into a broader connection with Enlightenment ideals and the concept of "*idées libérales*".<sup>207</sup> However, there emerged a notable distaste for the radicalism seen during the revolutionary period, which was often characterised by collectivism. This critique led to the incorporation of moderate perspectives by thinkers such as Benjamin Constant. They advocated for more tangible expressions of moderation, emphasising the importance of diversity, representative constitutional governance, and the exercise of individual choice. This intellectual shift entailed the establishment of legal boundaries to prevent arbitrary rule and foster respect for personal spheres, private property, and individual security. Additionally, there was a strong emphasis on the enjoyment of individual liberty, which positioned itself as a counterbalance to concentrated political power. Overall, the evolution of liberalism during this period illustrates a commitment to striking a balance between the protection of individual rights and the exercise of political authority.

Liberalism emerged prominently during the nineteenth century, evolving into a humanist doctrine and taking institutional form as a political party capable of achieving state power. However, its foundational concepts regarding individuals in society derive from a

---

<sup>205</sup> T. Ball, K. Minogue, *Liberalism*, Encyclopaedia Britannica, <https://www.britannica.com/topic/liberalism> [available on: 30.01.2025].

<sup>206</sup> J.G. Merquior, *Liberalism Old and New*, Twayne Publishers, Boston 1991, p. 2.

<sup>207</sup> J. Leonhard, *Liberalismus: Zur Historischen Semantik eines Europäischen Deutungsmusters*, München-Oldenburg 2001, p. 131.

variety of earlier intellectual traditions that gradually coalesced to create a potent and influential movement. These earlier ideas can be referred to as proto-liberalisms, each contributing unique themes and perspectives. For instance, early resistance to tyranny and absolutism, as well as critiques of doctrines like the divine right of kings, laid the groundwork for the development of constitutional and limited government. This rich tapestry of thought not only shaped the principles of liberalism but also paved the way for broader discussions about individual rights and democratic governance.<sup>208</sup>

Even within this framework, liberal ideology stands apart from anarchism. In addition to advocating for individual liberation, it is anchored in a robust commitment to the rule of law, institutional stability, and the necessity for a certain degree of moderated sociability and social harmony. This need for balance is what led to the widespread adoption of the concept of the "social contract" among early liberal thinkers. The social contract serves as a foundational element that unites the idea of personal autonomy with the need to preserve a constitutional order designed to protect the rights of the vulnerable, prevent domination by social elites, and ensure continuity across generations. The social contract articulates the understanding that the state and other political institutions emerge from the collective will of individuals, firmly situating these entities as human constructs rather than intrinsic powers. This perspective asserts that governance should operate as a reflection of the mutually agreed-upon interests and consent of the governed rather than as an imposition by a ruling class. "As generally used . . . "liberal" and "liberalism"... denote in politics, and to some extent in literature and philosophy, the party which wishes to alter existing institutions with the view of increasing popular power. In short, they are not greatly remote in meaning from the words "democracy" and "democratic"."<sup>209</sup>

By prioritising individual rights alongside the need for a stable social framework, liberalism navigates the tension between personal freedoms and the collective good, ensuring that societal integrity is not sacrificed in the pursuit of individual autonomy. Furthermore, the implications of the social contract extend into various areas of public life, including economic practices and social interactions. While advocating for personal choice and expression, early liberals recognised that such freedoms must be exercised within a context that promotes equality and justice. This necessitated laws and institutions that protect individuals from exploitation and abuse, ensuring that all members of society have the opportunity to thrive. In reflecting upon these principles, the development of liberalism can be seen as a dynamic process that not only shapes individual rights but also lays the groundwork for resilient, democratic

---

<sup>208</sup> M. Freeden, M. Stears, Liberalism [in:] M. Freeden, L.T. Sargent, M. Stears (eds.) *The Oxford Handbook of Political Ideologies*, Oxford University Press, Oxford 2013, p. 390.

<sup>209</sup> J.F. Stephen, *Liberalism*, Cornhill Magazine, vol. V., Smith, Elder and Co., London 1862, pp. 72-73.

societies. The essential interplay between individual autonomy and social responsibility remains a foundational aspect of liberal thought, guiding contemporary discussions on governance, rights, and community values. By recognising both the importance of personal freedoms and the need for a cohesive social order, liberalism provides a framework for integrating these often conflicting ideals into a harmonious and just society.<sup>210</sup>

Ideologies invariably encompass specific conceptions of time, and liberalism is no exception to this tendency. In its broadest interpretation, liberalism perceives human progress as open-ended, eschewing teleological or deterministic views that suggest a predetermined outcome. Instead, it presents a forward-looking perspective that emphasises the pursuit of a good life in the present, focusing on present realities rather than abstract, utopian ideals that would require profound social upheaval to achieve. This approach contrasts sharply with a static understanding of liberalism defined by rigid spaces and boundaries. Instead, the vitality and dynamism of Victorian-era individual agency are redefined within a newly conceptualised understanding of human nature. Liberalism, as a movement, was inherently oriented toward progress, envisioning a future in which its core tenets, such as human rights, constitutionalism, and individualism, would gain traction globally.<sup>211</sup>

However, the dimensions of this new liberalism included an additional dimension that embraced a sense of natural and spontaneous biological and spiritual energy inherent in humanity. This perspective suggests that individuals possess an intrinsic drive that necessitates expression through suitable social arrangements, characterised by both tolerance and support. In this sense, liberalism is viewed as fundamentally coextensive with life, embodying human agency and potential. The understanding of liberalism as a conduit for the release of individual and collective energies implies a commitment to creating environments conducive to personal development and expression. By emphasising the importance of balance between individual freedoms and community welfare, this approach encourages the development of social structures that support diverse expressions of cultural identity and human experience. The ongoing evolution of liberal thought reflects the need to adapt to changing societal contexts while remaining grounded in the principles of freedom, equality, and respect for human dignity. To identify the core attributes of liberalism as a political conception, it is essential to consider liberalism within the context of democratic constitutionalism. One key component of this tradition is the doctrine of the social contract, exemplified by the works of Hobbes, Locke, and

---

<sup>210</sup> D. Boucher, P. Kelly (eds.) *The Social Contracts from Hobbes to Rawls*, Routledge, London 1994.

<sup>211</sup> L.T. Hobhouse, *Liberalism*, Williams and Norgate, London 1911, pp. 46, 124 after M. Freedon, M. Stears, Liberalism [in:] M. Freedon, L.T. Sargent, M. Stears (eds.) *The Oxford Handbook of Political Ideologies*, Oxford University Press, Oxford 2013, p. 396.

Rousseau. Another significant strand within this framework is utilitarianism, represented by thinkers such as Hume and John Stuart Mill. These varying philosophical foundations contribute to a comprehensive understanding of how liberalism frames notions of justice in a democratic society.<sup>212</sup>

Liberalism fundamentally revolves around the structuring of individual interactions within society based on a framework of rights that mandates respect for each other's liberty and equality. These rights need not be solely framed as natural or human rights, rather, there exist various liberal theories that advocate for the adoption of such rights on the premise that societies organised in this manner will yield a greater aggregate of utility or happiness compared to alternative social arrangements. Among the influential proponents of this utilitarian approach are British thinkers such as Jeremy Bentham and John Stuart Mill, who shaped liberal thought during the eighteenth and nineteenth centuries. Their ideas assert that the maximisation of happiness for the greatest number should guide political and social structures, thus presenting a moral justification for liberal rights based on practical societal outcomes. Conversely, another significant theoretical foundation for the liberal organisation of society is the concept of natural rights, which emerged from innovative theorists in the seventeenth century. Figures such as Hugo Grotius in the Netherlands, Samuel Pufendorf in Germany, and Thomas Hobbes and John Locke in England articulated the notion that individuals possess inherent rights by virtue of their humanity. According to this view, humans have a fundamental natural right to liberty, encompassing the freedom to take any action deemed necessary for self-preservation, provided that such actions do not infringe upon the equal liberty of others, except in cases where their own preservation is at risk. This philosophical landscape was profoundly influenced and refined by the liberal theory of Immanuel Kant in the late eighteenth and early nineteenth centuries. Kant introduced a rationalistic perspective that emphasised autonomy and the moral imperative to treat individuals as ends in themselves, not as mere means to an end. His ideas reinforced the foundational principles of liberalism, advocating for a society where individual rights are respected and upheld through a framework of moral obligations.<sup>213</sup>

These rights are regarded, akin to natural rights, as inherent entitlements of all human beings. This understanding asserts that individuals possess these rights by virtue of their innate nature and dignity. The 1948 United Nations Universal Declaration of Human Rights<sup>214</sup> which

---

<sup>212</sup> See: S. Freeman (ed.) *J. Rawls, Lectures on the History of Political Philosophy*, The Belknap Press of Harvard University Press-Cambridge-Massachusetts-London 2008, p. 17.

<sup>213</sup> J. Charvet, E. Kaczyńska-Nay, *The Liberal Project...*, p. 3.

<sup>214</sup> Universal Declaration of Human Rights (adopted on 10 December 1948), General Assembly, United Nations, Paris 1948.

has become a cornerstone of the modern Human Rights movement, emphasises this principle in article 1, stating

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

In this context, individuals retain these rights regardless of whether they are acknowledged within the political and legal frameworks of the societies to which they belong. A political and legal system that fails to uphold these rights fundamentally contravenes essential ethical standards. Such violations not only undermine personal dignity but also challenge the moral integrity of the society itself, highlighting the critical importance of ensuring that human rights are recognised, respected, and protected across all governance structures. The implications of this understanding extend far beyond mere theoretical rights. They challenge governments and institutions to create and maintain environments where all individuals can exercise their rights freely and equally.

Similarly, according to the article 17 of the Declaration:

Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

The discussion surrounding liberalism naturally extends to the concept of the right to possess, which is a central tenet in the framework of individual rights. The right to possess encompasses an individual's legal entitlement to own property and control it in a manner that reflects their personal interests and values. This principle not only underscores the importance of personal autonomy but also aligns with the broader themes of liberty and equality that characterise liberal thought.<sup>215</sup>

Moreover, the right to possess property is explicitly justified by John Locke through the lens of self-preservation. Locke argues that individuals exercise this right by engaging in acts of individual liberty to appropriate portions of the earth's surface. Essentially, the rights to life, liberty, health, and possessions can collectively be viewed as extensions of the core value of humans as rational, self-governing beings. This perspective underscores that the foundational principles of classical liberalism, particularly as articulated by Locke, center on liberty and

---

<sup>215</sup> See: I. Nakielska, *Prawo do Własności w Świetle Europejskiej Konwencji Praw Człowieka* [The Right to Property in Light of the European Convention on Human Rights], Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2002.

equality. Liberty can be interpreted in two distinct ways: positively, as the realised ability of individuals to govern themselves and make autonomous choices, and negatively, as the absence of external constraints that may inhibit one's ability to act according to personal will. However, the philosophical framework established by classical liberalism does not exclusively prioritise individual rights to the detriment of communal well-being. Within Locke's writings, there exists an acknowledgment of the importance of welfare considerations. While individual freedom remains paramount, the idea that individuals can only truly thrive if their basic needs, such as security, health, and social conditions, are met is implicit in Locke's vision. Consequently, this comprehensive understanding of liberalism allows for a dual recognition of individual rights and the collective welfare of society. Classical liberalism, therefore, advocates not only for the protection of personal liberties but also suggests that these liberties are best realised within a context where the welfare of all individuals is taken into account. This nuanced interpretation reinforces the notion that a balance must be struck between individual freedoms and the social responsibilities that help create an environment conducive to the flourishing of all members of society. In engaging with these themes, the classical liberal approach not only contributes to the discourse surrounding individual rights but also opens avenues for integrating welfare considerations into the realisation of a just and equitable society.<sup>216</sup>

### **3.2. Communitarianism – an outline**

Communitarianism is a social, political, and moral philosophy that asserts that individuals are fundamentally social beings whose identities, values, and beliefs are shaped by the communities they belong to. This ideology emphasises the primacy of the community over individual rights and liberties, arguing that a healthy society relies on strong communal bonds and shared values. Communitarians contend that the state cannot function as a neutral arbiter in society. Instead, they argue that any notion of state neutrality inherently reflects a specific value judgment, which can be detrimental to the cultivation of strong community ties. Central to the communitarian perspective is the belief that in order for individuals to thrive, they must feel connected to their communities. This connection fosters a sense of belonging and mutual obligation, which are essential for social cohesion and the well-being of individuals.

Communitarians advocate for the idea that societal values and norms should guide individual behaviour, asserting that a focus on individualism can lead to fragmentation and a

---

<sup>216</sup> See: J. Locke, *Second Treatise of Government*, 1690 (The project Gutenberg Ebook, digitised by D. Gowan) or C.B. Macpherson (ed.), *J. Locke, Second Treatise of Government, 1690*, Hackett Publishing Co., Indianapolis 1980.

loss of shared purpose within society. Furthermore, the communitarian critique of state neutrality suggests that policies intended to create a "neutral" public sphere may inadvertently undermine the cultural and social fabric that binds communities together. Rather than promoting true equality, such neutrality can privilege individualism at the expense of collective well-being. This perspective posits that human rights, often viewed as universal and absolute, are historically contingent and can vary depending on cultural and social contexts. Thus, the application of these rights should take into account the specific values and traditions of different communities. This belief in the significance of community can lead to practical implications for governance and social policy. Communitarians often argue for policies that strengthen local governance and enhance civic engagement, emphasising the role of local institutions in fostering responsibility and collective action. They advocate for initiatives that prioritise community well-being, such as education programs that emphasise social responsibility, public health initiatives that engage local populations, and cultural projects that celebrate community identity. However, communitarianism is not without its critiques. Critics argue that an excessive focus on the community may lead to the suppression of individual rights and freedoms, particularly for those who may not fit into prevailing social norms or who belong to marginalised groups. This tension highlights the importance of finding a balance between communal values and the protection of individual liberties.<sup>217</sup>

Communitarians examine the significance of the common good and the potential for its realisation, focusing on the relationships between individuals and their communities, as well as their nation-states. Most contemporary scholars categorise communitarianism into two primary branches: philosophical communitarianism and responsive communitarianism. The latter emphasises the need to reconcile normative principles with practical considerations. One of the key contributions of the communitarian movement has been its exploration of the concept of community and the means through which the common good can be achieved. This movement seeks to foster a more moral, social, and political environment aimed at transformative changes in values, behaviours, and public policies.<sup>218</sup> The communitarian critique of liberalism often stems not only from philosophical disagreements but also from concerns about the adverse social and psychological effects perceived within the atomistic nature of modern liberal societies.<sup>219</sup> Communitarians argue that individuals, though free, require a supportive

---

<sup>217</sup> R. Leper, Communitarianism [in:] R.L. Heath (ed.) *Encyclopedia of public relations*, Thousand Oaks, CA: Sage 2010, pp. 168-171.

<sup>218</sup> A. Etzioni, *Communitarianism revisited*, *Journal of Political Ideologies*, vol. 19, no. 3, Routledge, London 2014, pp. 241-260.

<sup>219</sup> D. Bell, Communitarianism [in:] E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2008, <https://plato.stanford.edu/entries/communitarianism/> [available on 02.02.2025].

community that can protect them from state overreach. This community plays a crucial role in sustaining moral values and ethical behaviours through interpersonal relationships, as opposed to relying solely on government regulation or fear of authority. Communitarianism advocates for the recognition of the interconnectedness of individuals and their communities, emphasising that a strong sense of community is essential for nurturing the common good and promoting the well-being of all members of society.<sup>220</sup>

While the philosophical roots of communitarianism trace back to Aristotle, the concept itself began to take shape in the mid-nineteenth century. The term 'communitarianism' was first coined by John Goodwyn Barmby in 1841, when he founded the Universal Communitarian Association.<sup>221</sup> It referred to the public philosophy of those interested in creating intentional and experimental communities. Following its initial use, the term saw little application until the 1980s, when it was associated with the works of thinkers like Michael Sandel, Charles Taylor, and Michael Walzer. Michael Sandel, in particular, became linked to the communitarian critique of liberalism, arguing that there should be shared conceptions of the good life rather than leaving such determinations solely to individuals. As a result, communitarianism asserts that the state cannot maintain neutrality.<sup>222</sup>

These thinkers emphasised the significance of the common good as a counterpoint to contemporary liberals and libertarians, who typically prioritised individual interests, particularly personal autonomy and individual rights. Among the foremost scholars associated with this iteration of communitarianism were Charles Taylor and Michael Sandel. Their works highlighted the necessity of community and shared values in shaping a moral framework that goes beyond mere individualism. In addition to Taylor and Sandel, several other political theorists and philosophers were frequently identified as communitarians or whose writings reflected communitarian principles. These included Shlomo Avineri, known for his contributions to political theory, Seyla Benhabib, who explored themes of identity and democracy, Avner de-Shalit, who addressed environmental issues within a communal context, Jean Bethke Elshtain, who examined the interplay between individual rights and social responsibilities, Amitai Etzioni, who emphasized moral community, William A. Galston, who engaged with the ethical underpinnings of political theory, Alasdair MacIntyre, noted for his critique of modern moral philosophy, Philip Selznick, who focused on the role of social

---

<sup>220</sup> M. Vujnovic, D. Kruckeberg, Communitarianism [in:] R.L. Heath, W. Johansen (eds.) *The International Encyclopaedia of Strategic Communication*, John WILEY & Sons Inc., Hoboken-New Jersey 2018, p. 1.

<sup>221</sup> R.G. Garnett, *Co-Operation and the Owenite Socialist Communities in Britain 1825-45*, University of Manchester Press, Manchester 1972, p. 24.

<sup>222</sup> A. Etzioni, *Communitarianism revisited*, *Journal of Political Ideologies*, vol. 19, no. 3, Routledge, London 2014, pp. 241.

institutions, and Michael Walzer, recognised for his work on justice and pluralism. Together, these scholars contributed to a robust discourse advocating for a view of society that prioritises collective well-being and mutual responsibilities, challenging the prevailing emphasis on isolated individualism in modern political thought.<sup>223</sup>

The concept of human rights is grounded in the notion that all individuals possess inherent entitlements that should be universally protected, irrespective of their nationality, culture, religion, or other distinguishing factors. These rights are viewed as inalienable, indivisible, and universal. The theory of human rights is typically associated with liberalism, which emphasises individual autonomy and freedom from state or societal interference. The tension between communitarianism and human rights arises from the divergent ways in which each philosophy conceptualises the individual and community. Human rights, as traditionally understood, are based on the idea of individual entitlements that exist independent of social structures, and their application is often seen as universal, irrespective of cultural or societal context. This emphasis on the individual can be at odds with communitarianism, which stresses the importance of collective responsibility, social obligations, and the role of shared values in the realisation of human flourishing. From a communitarian perspective, the universal application of human rights can undermine the social fabric by prioritising individual autonomy over communal well-being.<sup>224</sup>

Additionally, communitarian critiques of human rights often invoke concerns about cultural relativism. Communitarians argue that human rights, particularly those articulated in Western frameworks, may fail to account for non-Western cultures' moral and social norms. From this perspective, the imposition of a universal set of human rights may be viewed as a form of cultural imperialism, wherein the values and practices of one culture are imposed upon others. Conversely, proponents of human rights contend that certain fundamental rights, such as the right to life, the right to freedom from torture, and the right to non-discrimination, transcend cultural boundaries and must be protected universally, regardless of local customs or traditions. Moreover, the moral foundations of human rights and communitarianism differ significantly. Human rights are often grounded in abstract principles of individual dignity, autonomy, and justice, and are understood as inherent to all human beings by virtue of their humanity. These rights are typically framed as negative entitlements aimed at protecting individuals from external interference. Communitarianism tends to view rights through the lens

---

<sup>223</sup> A. Etzioni, *Communitarianism*, Encyclopedia Britannica, <https://www.britannica.com/topic/communitarianism> [available on: 02.02.2025].

<sup>224</sup> See: C.R. Beitz, *Human Rights as a Common Concern*, The American Science Review, vol. 95, no. 2, American Political Science Association, Cambridge University Press, Cambridge 2001, pp. 269-282.

of social cohesion, arguing that individual rights are best understood in the context of duties and responsibilities toward others within a community.

The communitarian conception of rights emphasises the interdependent relationship between individuals and their communities or the state. It posits that both the individual and the community are essential partners in the progress and well-being of the state, with each relying on the other for its flourishing. In this framework, the idea of rights extends beyond the individualistic understanding typically associated with liberalism to a more collective and reciprocal interpretation. Rights are not viewed merely as individual entitlements but as shared obligations that bind citizens to one another, as well as citizens to the state. In this context, rights acquire meaning only within the social and communal setting, as one's claim to rights presupposes the recognition and respect of others, including the state authorities. The communitarian perspective sees rights not merely as proscriptive but also prescriptive. Proscriptive rights refer to freedoms that restrict what others or the government can do to individuals, such as prohibiting discrimination based on race, gender, or ethnicity. These are often referred to as negative rights because they specify what the government or society must refrain from doing to individuals, i.e., they protect individuals from harm or unfair treatment. However, the communitarian view goes further, insisting that rights are not limited to protection from harm. Rights also include obligations, duties owed by individuals and the state to one another, such as duties of care, justice, and mutual respect. Thus, rights must be understood in terms of both what individuals are protected from (negative rights) and what they are expected to contribute to the collective good (positive obligations). This broader understanding links individual rights with the moral and social responsibilities that arise within a community, suggesting that rights cannot be fully realised outside of a context that fosters communal interdependence and shared moral norms.<sup>225</sup>

For communitarians, rights and responsibilities are interdependent, and the realisation of individual rights cannot be separated from the social context in which they are exercised. Despite these tensions, it is possible to reconcile communitarianism and rights by acknowledging that each concept can complement the other when appropriately contextualised. One potential avenue for reconciliation is to frame human rights within the particular cultural and social context in which they are to be realised. This approach would recognise that while certain human rights may be universal, their implementation must account for local customs, norms, and practices. By adopting a more flexible, context-sensitive approach to rights,

---

<sup>225</sup> U. Obioha, *Communitarian Understanding of Human Rights as a Basis for the Pursuit of Human Well-Being*, International Journal of Research in Art and Social Sciences, vol. 11, no. 2, University of Nigeria, Nsukka 2018, p. 2.

communitarian concerns about cultural relativism can be addressed while still safeguarding the fundamental dignity of individuals. Another potential reconciliation point is the inclusion of social responsibility as an integral part of human rights discourse. Communitarian thinkers argue that the granting of individual rights should be coupled with a strong sense of communal obligation, wherein individuals not only possess entitlements but also bear duties to contribute to the well-being of others. In this framework, human rights are not merely individual privileges but also collective commitments that require individuals to consider the impact of their actions on the broader community.

Further, a more expansive conception of social justice can help bridge the gap between communitarianism and human rights. Rather than viewing human rights solely as individual entitlements, a more inclusive understanding might emphasise the importance of securing the conditions necessary for human flourishing. This broader vision would not only focus on protecting individual freedoms but also on ensuring that individuals have access to the social, economic, and cultural conditions needed to live fulfilling lives. In this context, communitarianism can contribute to a more holistic understanding of human rights, one that considers both the individual and the collective dimensions of justice.<sup>226</sup>

Communitarianism suggests that the allocation and distribution of property should be done in a way that promotes social cohesion and the common good. This might involve policies that address economic inequality, ensure access to essential resources for all members of society, or regulate the use of property in a way that benefits the community at large. The communitarian view of the right to own and possess property situates this right within a framework of mutual responsibility, social context, and the common good. Ownership is not viewed as an isolated or purely individual entitlement but as a social and moral practice that obligations to the community must balance. Property rights, in this sense, are understood as both proscriptive and prescriptive: they protect individuals from arbitrary interference, but they also impose responsibilities that contribute to social harmony, equitable access, and the well-being of all members of society.

---

<sup>226</sup> See: K. Sosenko, *Komunitarianizm i Liberalizm. Uwagi w Związku z Prawami Człowieka* [Communitarianism and Liberalism. Comments in Relation to Human Rights], *Prakseologia* no. 158, t. 2, Instytut Filozofii i Socjologii Polskiej Akademii Nauk, Warszawa 2016.

### 3.3. Liberalism vs communitarianism in the 21st century

Contemporary liberal political theory has emerged as the dominant framework in the resurgence of normative political philosophy following the era of positivism and behaviouralism, during which it was widely believed that normative analysis was both intellectually unfeasible and politically unnecessary. The seminal work often credited with initiating the revival of political philosophy, and which serves as a focal point for much of the modern communitarian critique, is John Rawls's *A Theory of Justice*.<sup>227</sup> Other significant contributions to contemporary liberal thought include Robert Nozick's *Anarchy, State, and Utopia*,<sup>228</sup> and Ronald Dworkin's *Taking Rights Seriously*.<sup>229</sup> The principal challenge to liberalism is presented by communitarianism, and the discourse between these two schools of thought has shaped contemporary political philosophy for the past two decades. Prominent communitarian thinkers include Michael Sandel,<sup>230</sup> Michael Walzer,<sup>231</sup> Alasdair MacIntyre,<sup>232</sup> and Charles Taylor.<sup>233</sup>

The existent debate often presents a false dichotomy between liberalism and communitarianism as the only choice. It can be argued that this false dichotomy has significant implications for international relations. Several recent scholars argue that the debate between liberalism and communitarianism can be framed around three key arguments presented by the communitarian camp against the liberal perspective.<sup>234</sup> These arguments are: first, descriptive claims regarding the nature of individuals as inherently social beings, second, normative claims concerning the value of community, and third, meta-ethical claims about the status and justification of political principles as shared values within the community. It is contended that neither liberalism nor communitarianism, in isolation, offers a sufficient foundation for international political theory. However, it is possible to reconcile the valuable insights that can be drawn from both perspectives.<sup>235</sup>

In first argument, liberals generally assert that the individual possesses an inherent identity and value that exists independently of society. According to this perspective, the

---

<sup>227</sup> See: J. Rawls, *A Theory of Justice*, Oxford University Press, Oxford 1972.

<sup>228</sup> See: R. Nozick, *Anarchy, State and Utopia*, Oxford University Press, Oxford 1974.

<sup>229</sup> See: R. Dworkin, *Taking Rights Seriously*, Harvard University Press, Harvard 1977.

<sup>230</sup> See: M. Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, Cambridge 1982.

<sup>231</sup> See: M. Walzer, *Spheres of Justice*, Oxford University Press, Oxford 1983.

<sup>232</sup> See: A. MacIntyre, *After Virtue, a Study in Moral Theory*, Duckworth-London 1981.

<sup>233</sup> See: C. Taylor, *The Malaise of Modernity*, House of Anansi Press, Toronto 1991.

<sup>234</sup> See: S. Caney, *Liberalism and Communitarianism: A Misconceived Debate*, Political Studies, vol. 40, issue 2, Oxford University Press, Oxford 1992; C. Taylor, Cross-Purposes: The Liberal-Communitarian Debate [in:] N. Rosenbaum (ed.), *Liberalism and the Moral Life*, Harvard University Press, Harvard 1989, p. 165.

<sup>235</sup> D. Morrice, *The Liberal-Communitarian Debate in Contemporary Political Philosophy and its Significance for International Relations*, Review of International Studies, vol. 26, Cambridge University Press, Cambridge 2000, pp. 233- 239.

legitimacy and acceptance of principles of justice are only valid when they are viewed as the impartial choices of abstract, rational individuals. These individuals, in the "original position" behind a "veil of ignorance," would be unaware of their specific natural or social identities, ensuring that principles of justice are selected impartially and without bias. Under liberal thought, individuals possess rights that precede the formation of a political society. Political authority and structures, therefore, can only emerge legitimately if they do not infringe upon these natural, pre-existing rights. In contrast, communitarians challenge these liberal assumptions by asserting that individuals are fundamentally shaped by the communities in which they exist. They argue that the values influencing an individual's behaviour, as well as the meanings by which they understand their lives, are deeply rooted in the culture and traditions of their community. Communitarians maintain that individuals cannot be understood as isolated, self-sufficient entities but are instead "embedded" within a network of social relationships and shared practices that give life meaning and structure. Consequently, individuals are bound by these community ties and obligations, which inform their identity and moral framework.

Second argument consists of liberals prioritising individualism, self-interest, and limited government intervention, advocating for a neutral state that allows individuals to pursue their own conceptions of the good life. They emphasise market-driven distribution over state regulation and argue that justice should take precedence over individual goods. In contrast, communitarians critique individualism for eroding social cohesion and argue that the state should promote a common good that transcends individual interests. They contend that a thriving society requires a shared understanding of the good life.<sup>236</sup> Lastly, final argument, certain contemporary liberals seek a neutral or objective foundation for political principles to ensure their universal applicability. Individuals act in the original position as rational agents choosing neutral principles of justice that all rational individuals would accept, emphasising the priority of right over the good. For communitarians, political philosophy's role is not to establish universal objective principles, but to elucidate the shared values and meanings within a community. Political philosophy, therefore, becomes a matter of interpretation rather than proof.<sup>237</sup>

Currently, the debate between liberalism and communitarianism also mirrors the discourse within international relations theory between cosmopolitanism and

---

<sup>236</sup> M. Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, Cambridge 1998, p. 183.

<sup>237</sup> D. Morrice, *The Liberal-Communitarian Debate in Contemporary Political Philosophy and Its Significance for International Relations*, Review of International Studies, vol. 26, Cambridge University Press, Cambridge 2000, pp. 233-239.

communitarianism. Scholars have posited that, particularly in the modern era, the cosmopolitan vs communitarian distinction is broadly inclusive, encompassing a wide array of positions. This division is intrinsically tied to one of the central questions in any normative theory of international relations: the moral value attributed to particularistic political communities, such as nation-states, in contrast to the value placed on humanity as a whole or the claims of individual human beings. This debate is critical, as it addresses foundational issues in international law and governance, such as the tension between the rights of states to prioritise their own citizens and interests, and the obligation to uphold universal human rights and the protection of global common goods. The cosmopolitan position typically emphasises universal principles of justice and human rights, arguing that moral obligations extend beyond national borders, whereas communitarianism often underscores the primacy of community-specific values and the right of political collectivities to define their own moral and legal frameworks. This ideological divide influences international legal principles, particularly in areas like humanitarian law, global governance, and the regulation of cross-border issues such as the export and import of goods. Therefore, the cosmopolitan/communitarian divide in international relations theory is not merely an academic distinction but has profound implications for the formulation of global legal norms and the balancing of competing interests in an increasingly interconnected world.<sup>238</sup>

Sovereign nations possess the authority to define their cultural patrimony according to their own criteria, including asserting ownership over some property. While nations may claim ownership for a range of reasons, it is undeniable that nationalistic motivations often play a significant role in these claims.<sup>239</sup> The 1970 UNESCO Convention, considering the ownership right to cultural property, the preamble is clear with its message and the role of the state in the protection of cultural heritage:

Considering that cultural property constitutes one of the basic elements of civilisation and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

---

<sup>238</sup> C. Brown, *International Relations Theory, New Normative Approaches*, Columbia University Press, New York 1993, pp. 12, 27 and next.

<sup>239</sup> J. Cuno, *Who Owns Antiquity?...*, p. 33.

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations

Further, the phrase "as appropriate for each country," as used in articles 5 and 10, grants the state the sovereignty to determine how to implement those norms within the framework of those provisions.

Critics have raised concerns about the expansive application of a nation's power to claim any object or cultural artefact within its borders as part of its national cultural heritage. The idea that everything within a nation's jurisdiction should be considered its cultural property is problematic, as it risks conflating the concepts of ownership and cultural preservation. This broad interpretation of national patrimony implies that it is inherently desirable for a nation to retain all of its art, or even all of its significant cultural artefacts, without considering the broader implications of such a stance.<sup>240</sup> The notion that every piece of art or cultural object within a nation's borders is automatically its "national property" disregards the complexity of cultural exchange and the global nature of cultural heritage. Art and cultural artefacts are not always the product of a single, homogeneous cultural history, they often transcend national borders, drawing on influences and traditions from multiple societies. Consequently, the idea that a nation should claim exclusive ownership over its cultural patrimony risks erasing the interconnectedness of cultural history and ignoring the role of international dialogue and exchange in the development of human creativity.

Furthermore, critics argue that the concept of national patrimony should not be narrowly defined to suggest that all art or culturally significant objects should remain within the national boundaries of their country of origin. Such a view ignores the possibility that certain pieces may be more meaningful or valuable in contexts beyond their country of origin, whether due to historical, artistic, or political reasons. Some works may have a broader significance that extends beyond the borders of a single nation, and their preservation or display in international collections may serve to foster global understanding, respect, and dialogue. The presumption that a nation should retain all of its significant cultural property overlooks the practical realities of preservation and access. In some cases, it may be more beneficial for cultural heritage to be held in institutions that can provide better care, conservation, and accessibility than those within the country of origin. National borders should not be the sole determinant of cultural stewardship, instead, the focus should be on ensuring the protection and accessibility of cultural

---

<sup>240</sup> P.M. Bator, *The International Trade in Art*, University of Chicago Press, Chicago 1983, p. 33.

artefacts for present and future generations, regardless of where they are physically located. The uncritical application of national ownership over cultural property can be problematic.<sup>241</sup>

Critics might argue that the 1970 UNESCO Convention, while aimed at fostering international cooperation on cultural property, inadvertently strengthens cultural property nationalism. It places no limitations on how a state defines what constitutes its cultural property, allowing each country to unilaterally decide what can or cannot be exported. This gives nations the freedom to make decisions based on their own interests, often leading to the denial of export permissions in specific cases. As a result, the Convention may unintentionally legitimise the over-retention, or even hoarding, of cultural property.<sup>242</sup> This broad autonomy granted to states leads to the widespread practice of "over-retention," where cultural artefacts are held within national borders for preservation or display, even when they might be better served by being shared internationally. Objects that have been looted, traded, or taken from other countries throughout history may be kept in national collections under the premise of cultural preservation despite the historical context of their acquisition. This can lead to the hoarding of significant cultural property that could otherwise be part of a broader global discourse about heritage, history, and cultural exchange. The problem of over-retention becomes particularly acute when we consider the disparity between rich nations with large, well-funded cultural institutions and poorer nations that may lack the resources to properly care for or display their own cultural artefacts. Wealthier nations, armed with legal protections under the Convention, may be able to retain objects of immense historical value that were originally removed from other countries under questionable circumstances. This perpetuates a cycle where cultural property remains within the control of a select few nations, while the countries of origin, which often have a deeper historical and cultural connection to the objects, are left without access or control.

Source nations, backed by UNESCO and supported by archaeologists, continue to retain cultural objects, often in direct contradiction with international trade liberalisation agreements. At the same time, these nations urge other countries to enforce their stringent export restrictions and blanket claims of "ownership." Leading archaeologists maintain that their position is correct, viewing collectors, museums, and the art market as fundamentally misguided. They argue that any international interest in the circulation of cultural property is adequately addressed through inter-institutional loans and exchanges, without the need for broader trade.

---

<sup>241</sup> See more: K. Zeidler, *Restitution of Cultural Property: A Hard Case - Theory of Argumentation - Philosophy of Law*, Gdańsk University Press-Wolters Kluwer, Gdańsk-Warsaw 2016, pp. 136-202.

<sup>242</sup> J.H. Merryman, *Cultural Property Internationalism*, *International Journal of Cultural Property*, vol. 12, Cambridge University Press, Cambridge 2005, pp. 11-39.

UNESCO conventions align with source nations and archaeologists, envisioning a cultural property landscape dominated by governments and institutions, while opposing the existence of markets for cultural goods.<sup>243</sup> Opposition to restrictions on trade and ownership, when such restrictions are deemed necessary in the public interest, is likely futile, as states have historically always exercised this authority. The central issue, therefore, is whether cultural property should, for policy purposes, be classified as a distinct category of goods.<sup>244</sup>

The debate over whether cultural property should be considered the heritage of humankind or the patrimony of individual states lies at the intersection of competing philosophical, political, and ethical frameworks. On one side, proponents of viewing cultural property as the "heritage of humankind" argue that cultural artefacts and heritage are part of a shared global legacy, transcending national boundaries and belonging to all of humanity.<sup>245</sup> On the other, those who view cultural property as a national patrimony contend that such items are inextricably linked to the identity, history, and sovereignty of the state that claims them. This argument touches upon fundamental questions of ownership, preservation, and access and is influenced by broader ideological divides, such as cosmopolitanism versus nationalism, liberalism versus communitarianism, and universalism versus particularism.<sup>246</sup>

From a cosmopolitan or universalist perspective, cultural property is seen as part of the shared heritage of all people, regardless of national origin. This viewpoint holds that cultural objects, whether they are ancient sculptures, manuscripts, or artworks, are expressions of human creativity and achievement that belong to the entire global community.<sup>247</sup> This perspective often draws on ethical principles rooted in the belief that culture, as a common good, should be accessible to all, and that the preservation of cultural artefacts should serve broader human interests. In this context, the emphasis is on cross-cultural understanding, shared knowledge, and the universal value of heritage, rather than on exclusive national ownership. UNESCO, through conventions such as the 1970 UNESCO Convention also promotes this cosmopolitan vision. It emphasises the need for international cooperation in the preservation and protection of cultural property, arguing that cultural objects are not merely the property of the nations in which they are found but should be viewed as the responsibility of all countries. This line of thinking supports the idea that cultural objects should circulate freely, provided that they are

---

<sup>243</sup> J.H. Merryman, *Cultural Property Internationalism...*, p. 32.

<sup>244</sup> P.M. Messenger (ed.) *The Ethics of Collecting Cultural Property, Whose culture? Whose Property?*, 2nd ed. University of New Mexico Press, Albuquerque 2003, p. 125.

<sup>245</sup> See: UNESCO, UNIDROIT, Council of Europe conventions concerning cultural heritage and its preambles.

<sup>246</sup> See: A. Anderson, *The Way We Argue, A Study in the Cultures of Theory*, Princeton University Press, Princeton 2006.

<sup>247</sup> P. Kleingeld, E. Brown, *Cosmopolitanism*, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/cosmopolitanism/> [available on: 03.02.2025].

not trafficked illegally and that institutions across the world, including museums, galleries, and cultural heritage centres, should share responsibility for their care and display.

The nationalist or particularist argument views cultural property as belonging to individual states, emphasising that such artefacts are tied to the unique history, identity, and sovereignty of the nations in which they are located. This perspective often aligns with communitarian approaches to property rights, where the state's role in defining and protecting cultural property is seen as integral to its national identity and cultural integrity. Under this view, cultural objects are the patrimony of the state or nation, and the state has the exclusive right to determine their fate, including whether they are kept, returned, or shared with other nations or institutions. Many states assert claims to cultural artefacts based on the belief that these objects are part of their national identity, history, and heritage, and that their retention is vital to preserving that identity. This argument is often framed in terms of sovereignty, where the state has the ultimate authority over the cultural assets within its borders, much like any other resource or asset. Moreover, nationalist arguments may emphasise the protection of cultural heritage as part of a broader effort to reclaim or protect historical narratives that may have been disrupted by colonisation, war, or exploitation. This view also aligns with communitarian thought, which prioritises the collective well-being of a community over individual rights. From this perspective, the protection and preservation of cultural property is not only about individual or national pride, but also about the shared responsibilities of the community, whether local, national, or even regional, in safeguarding heritage for future generations.

In this context, the idea of cultural property as national patrimony recognises that the rights to access, share, and preserve cultural artefacts are bound by social and cultural responsibilities, not just individual entitlements. At the heart of this debate lies the tension between universalism and particularism: should cultural property be treated as part of a shared human heritage, accessible and protected for all, or should it be seen as a reflection of the unique cultural identity of a particular nation, where control and stewardship rest with the state? Furthermore, this tension intersects with the concepts of liberalism and communitarianism in relation to property rights. Liberalism tends to prioritise individual autonomy, freedom, and rights, often supporting the argument that cultural property should be accessible to all, promoting the free exchange of ideas, goods, and cultural artefacts. Under liberal frameworks, there is a tendency to see cultural objects as global commodities or goods, subject to international laws and agreements that ensure their equitable distribution. However, this can sometimes come into conflict with the communitarian emphasis on the collective good, which

values the role of cultural heritage in shaping national or community identities and traditions. The liberal position may argue that the circulation of cultural property across borders fosters a more interconnected world and promotes the democratisation of culture and knowledge. It sees cultural property as part of a broader global discourse where the free movement of objects can enrich all societies, supporting education, cultural exchange, and cross-cultural understanding. This view often assumes that international legal frameworks, such as those governing trade or property, should apply to all cultural property as well, treating it like any other commodity in the global market.

However, the communitarian position may view the preservation of cultural property as inherently tied to the well-being of specific communities, with an emphasis on the moral and social obligations individuals and states have toward their cultural heritage. From this perspective, the retention of cultural artefacts within the national context is not just a matter of legal entitlement but also of ethical responsibility to the community. The right to possess, protect, and define the significance of cultural objects is framed in terms of the social bonds that unite members of a nation and the value these objects hold in contributing to collective identity and social cohesion. The debate over whether cultural property should be considered the heritage of humankind or the patrimony of states raises profound questions about ownership, identity, and ethical responsibility. It highlights the fundamental philosophical divide between those who see cultural property as a global common good shared by all of humanity and those who view it as an integral part of national or communal identity, with rights and responsibilities tied to specific states or communities.<sup>248</sup> Contemporary communitarian international theorists emphasise the moral importance, autonomy, and distinctiveness of the nation and/or the state. When cosmopolitan international theorists argue that principles of justice and morality extend beyond national and state borders, advocating for universal standards that apply to all individuals regardless of their country of origin.<sup>249</sup>

This debate of liberalism versus communitarianism is nowadays shaped by broader ideological conflicts, including cosmopolitanism versus nationalism and universalism versus particularism, each offering distinct perspectives on the value and stewardship of cultural heritage and human rights.<sup>250</sup> These ideological divides influence how we view the rights of individuals versus the collective good and the role of the state in protecting or sharing cultural assets. They also raise complex questions about the balance between global equity and local

---

<sup>248</sup> C. Gans, Nationalism, Particularism and Cosmpolitanism [in:] C. Gans, *The Limits of Nationalism*, Cambridge University Press, Cambridge 2009, pp. 148-168.

<sup>249</sup> See: C.R. Beitz, *Political Theory and International Relations*, Princeton University Press, Princeton 1992.

<sup>250</sup> See: A. Galla (ed.) *World Heritage, Benefits Beyond Borders*, Cambridge University Press, Cambridge 2012.

autonomy, particularly as they relate to the protection and preservation of cultural heritage and the rights of communities to determine their own cultural and historical narratives.

### **3.4. Referring the dispute between liberalism and communitarianism to archaeological monuments**

The dispute between liberalism and communitarianism can be meaningfully applied to the issue of archaeological monuments, where the two ideologies offer divergent perspectives on ownership, preservation, and the role of the state in managing cultural heritage. On one hand, the scope of freedom, including the exercise of the right to use an object of such freedom, is delineated by the rights of others. On the other hand, the limitations on property rights arise from the imperative to protect the broader concept of the common good. Accordingly, on one side is the individual's right, and on the other, an interest of the community often initially ill-defined and seemingly ambiguous.<sup>251</sup> The right of ownership consists of a bundle of rights, which includes *ius possidendi* (the right to possess), *ius utendi* (the right to use), *ius fruendi* (the right to enjoy the fruits or benefits), and *ius disponendi* (the right to dispose of the property). If cultural heritage, including archaeological heritage, constitutes a common good, as it is reflected in the legal definitions of a cultural heritage in most legal acts, then the owner's rights over such a monument may be limited in various ways. Thus, if we consider that a monument is not merely an ordinary object, but one with exceptional value that implicates a public interest in its preservation, it follows that it becomes both justifiable to subject it to protection, including legal protection.<sup>252</sup>

From a liberal perspective, archaeological monuments, like other cultural property, would be viewed through the lens of individual rights and universal principles. Liberals often emphasise the autonomy of individuals and their right to access and engage with cultural heritage, seeing monuments as part of a shared human legacy that transcends national borders. In this framework, the ownership and control of monuments should ideally be governed by international agreements that promote the free exchange and circulation of archaeological artefacts. The emphasis would also be on protecting human rights, ensuring that archaeological

---

<sup>251</sup> K. Zeidler, *Ograniczenia Prawa Własności w Świetle Sporu Liberalizmu z Komunitaryzmem* [Restrictions on Property Rights in the Context of the Liberalism vs. Communitarianism Debate], Gdańskie Studia Prawnicze, vol. 35, Gdańsk 2016, p. 538.

<sup>252</sup> K. Zeidler, *Restytucja Dóbr Kultury ze Stanowiska Filozofii Prawa. O Trudnych Przypadkach na Granicy Kultury i Prawa* [Restitution of Cultural Goods from the Perspective of Legal Philosophy: On Difficult Cases at the Intersection of Culture and Law], Wolters Kluwer, Warszawa 2011, p. 99.

sites are preserved for the benefit of humanity at large, and mitigating the possibility of cultural heritage being restricted or monopolised by any single nation.

The communitarian perspective would focus on the role of the community, specifically, the nation-state, in defining, preserving, and controlling its own cultural heritage. From this standpoint, archaeological monuments are seen not just as objects of universal significance but as integral parts of a nation's identity and historical narrative. As such, it is the state's responsibility to regulate, protect, and sometimes restrict access to archaeological sites in order to preserve them for future generations. The preservation of monuments is not merely a matter of scientific or historical inquiry but a moral obligation to safeguard the collective identity and traditions of the people to whom these monuments belong. The state is seen as the legitimate authority to safeguard its people's history and cultural patrimony, even if this means prioritising the interests of the nation over global access or universal rights to cultural property.

The protection of the common good becomes the most significant justification for interference with property rights. The exercise of this right, as traditionally accepted, is limited by analogous rights held by others. Property is also subject to detailed regulations that restrict the ability to dispose of or use it, such as those found in building laws, environmental protection laws, and heritage preservation regulations. However, any such restriction on property rights must be justified by an important interest of the property owner, other legal entities, and, ultimately, the interest of the community, including the state community.<sup>253</sup> The challenge also lies in the precise definition of concepts such as "individual interest" and "common interest," regardless of the terminology used to describe these interests, as highlighted above. While it is often justified, in the process of lawmaking, to introduce such external references, terms that are left to be filled with content during the process of application of the law or in public discourse, it is difficult to define them in a static and universally applicable way. It may not even be desirable to do so. However, it is important to note that the public interest is not synonymous with the interest of the state, nor is it simply the sum of individual interests. In this context, the concept of *raison d'état* (the reason of state) is sometimes invoked, often equated with "the common good." This, in turn, leads directly to considerations about one of the criteria for distinguishing public law from private law, a criterion that is both one of the oldest and, at the same time, no longer fully applicable in contemporary legal discourse.

This distinction is expressed by Ulpian's sentence stating that public law seeks to protect the general interest, while private law seeks to protect the individual's interest (*Publicum ius*

---

<sup>253</sup> K. Zeidler, *Ograniczenia Prawa Własności...*, p. 540.

*est quod statum rei Romanae spectat privatum quod ad singulorum utilitatem*). The difficulty in defining these terms lies in the complexity and subjectivity inherent in what constitutes "individual" versus "common" or "public" interest. In many cases, the interests of the individual and those of the community may conflict, and the balance between them becomes a matter of legal and philosophical interpretation. The concept of the "common good" is, therefore, a fluid and often contested one, shaped by political, social, and legal forces. What is considered the "public interest" may vary depending on the ideological leanings of lawmakers, judicial bodies, and public opinion, making it a highly dynamic and context-dependent term.<sup>254</sup>

Laws governing cultural heritage have deep historical roots, with most states exercising authority over both terrestrial and underwater archaeological exploration and excavation. In many countries, the regulation of such activities follows a consistent approach, granting exclusive control over archaeological exploration and excavation to the appropriate organ. Many nations with rich archaeological heritage have enacted laws that vest ownership of antiquities, and more broadly, archaeological heritage, in the state. These laws establish property rights that are recognised even if objects are removed from their country of origin and subsequently traded in foreign markets. The enactment of such vesting laws serves two primary purposes. First, the primary objective of these laws is to deny title to the finder or any subsequent purchaser, effectively removing the economic incentive to loot archaeological sites. By legally attributing ownership to the state, these laws seek to prevent the illicit excavation and trafficking of cultural property, which often results in the loss of invaluable historical and cultural context. The intention is to curb the trade in looted antiquities by making it legally unprofitable and ethically questionable to buy or sell items that have been improperly removed from their place of origin. Second, these vesting laws aim to enable the country of origin to realise the economic and cultural value of its heritage. By retaining ownership, the state can control how archaeological sites and artefacts are used, ensuring that the benefits derived from them, such as revenue from tourism, academic scholarship, and educational initiatives, are returned to the community and contribute to the nation's broader development. These benefits include promoting historical knowledge, fostering national identity, and boosting local economies through cultural tourism. Through such laws, the state positions itself as both the protector and custodian of its cultural legacy, ensuring that archaeological treasures are

---

<sup>254</sup> K. Zeidler, *Ograniczenia Prawa Własności...*, p. 541.

preserved, studied, and appreciated in ways that serve the collective good rather than being exploited for individual profit.<sup>255</sup>

Within many archaeological traditions, there are three primary orientations: nationalist, colonialist, and imperialist. Most archaeological traditions, particularly in Europe, have historically been shaped by nationalistic impulses. The development of European prehistoric archaeology was profoundly influenced by the rise of nationalism and romanticism in the aftermath of the Napoleonic Wars. This period, marked by a resurgence of national pride and the search for distinct cultural identities, created fertile ground for archaeological inquiry, which was often viewed as a means to solidify national narratives and strengthen patriotic sentiments. Colonial-era archaeology, wherever it was practised, often played a role in diminishing the status of Indigenous societies by attempting to portray them as stagnant and incapable of self-driven development in prehistoric times. This form of archaeology was closely intertwined with ethnology, which similarly depicted contemporary native cultures as "primitive" or underdeveloped in the eyes of the broader public. This portrayal of primitiveness was often used to justify European colonial expansion, asserting that European powers were entitled to take control over, or even replace, this indigenous culture. Imperialist or globally oriented archaeology is typically linked to a few powerful states that have historically exerted political dominance over vast regions of the world. As part of this hegemony, these nations have also wielded significant cultural influence, in addition to their political and economic power, over neighbouring territories and peoples.<sup>256</sup>

The reevaluation of archaeology during the 1980s emerged as a critical response to preceding theoretical frameworks. This period saw a shift toward adopting logical positivism as the guiding paradigm, positioning archaeology as an objective and scientifically grounded discipline, ostensibly free from political influence. National governments, however, play a pivotal role in regulating the practice of archaeology within their territorial jurisdiction. These governments exercise control by granting excavation permits, which not only authorise specific archaeological activities but also determine which sites, often linked to a nation's ancient past, are recognised as significant for preservation and study. By establishing these regulations, governments effectively prioritise certain archaeological sites and narratives, underscoring their cultural and historical value from a nationalistic perspective. In addition to granting permits,

---

<sup>255</sup> P. Gerstenblith, Theft and Illegal Excavations, Legal Principles for Protection of the Archaeological Heritage [in:] F. Franconi, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 208.

<sup>256</sup> B.G. Trigger, *Alternative Archaeologies: Nationalist, Colonialist, Imperialist*, Man, New Series, vol. 19, no. 3, Royal Anthropological Institute of Great Britain and Ireland, London 1984, pp. 355-370.

national governments frequently provide financial support and oversee the management of designated archaeological sites, thus ensuring that the research and preservation efforts align with broader national interests. Given that these regulatory actions serve the interests of the state, it is inevitable that they are influenced by a nationalist agenda, which may reflect a desire to construct or reinforce particular historical narratives that align with the state's identity, values, and political goals instead of broader universal values recognised by e.g. continents. While these regulatory measures may be framed as neutral, in practice, they often reflect broader nationalistic objectives, shaping the ways in which a nation's past is understood, interpreted, and presented,<sup>257</sup> leaning towards communitarianism rather than the liberal perspective.

Some scientists believe that source nations which are believed to hold significant quantities of surplus archaeological objects in storage, could begin to gradually release these items into a legitimate market while issuing export permits for privately held objects, all at a controlled pace. Over time, the source nation could implement a more pragmatic set of regulations governing future excavations and removals, explicitly considering the ongoing supply of the legitimate market. The introduction of antiquities with verifiable provenance into a lawful market would help undermine the black market, reducing, though not entirely eliminating, the demand for illicit antiquities. By enforcing more narrowly defined cultural property laws domestically, the source nation could achieve more cost-effective and efficient results. Foreign museums, collectors, dealers, and auction houses sourcing from a legitimate market would be more inclined to comply with less restrictive export controls, and authorities within market nations would likely be more willing to enforce these controls. Additionally, the revenue generated from this legal trade could be directed toward various beneficial initiatives, such as providing increased funding for domestic archaeological projects and ensuring the proper supervision of exploration, excavation, and preservation of archaeological sites.<sup>258</sup>

The rationale for treating archaeological heritage differently from other forms of cultural heritage remains unclear. While movable cultural property, such as works of art and monuments, constitutes an inseparable part of a nation's cultural heritage, exerting significant influence on its history and identity, such items are not subject to the same level of stringent

---

<sup>257</sup> J. Cuno, *Who Owns Antiquity?...*, p. 52-53.

See: D.D. Fowler, *Uses of the Past: Archaeology in the Service of the State*, *American Antiquity*, vol. 52, no. 2, Cambridge University Press, Cambridge 1987, p. 229-248; J. O'Sullivan, *Nationalism and Archaeology*, Cruithne Press, Glasgow 1996; P.L. Kohl, C. Fawcett (eds.), *Nationalism, Politics, and the Practice of Archaeology*, Cambridge University Press, Cambridge 1995.

<sup>258</sup> J.H. Merryman, *A Licit International Trade in Cultural Objects*, *International Journal of Cultural Property*, vol. 4, issue 1, Cambridge University Press, Cambridge 1995, p. 37.

protection concerning ownership rights and are falling under more liberal rigour. The distinction between the treatment of archaeological heritage and other forms of cultural heritage raises a crucial legal question regarding the varying levels of protection and control over ownership. Archaeological heritage, by virtue of its historical, cultural, and scientific significance, is often subject to stringent ownership laws that vest title in the state, even when objects are removed from their country of origin and traded abroad. However, this approach is not consistently applied to other forms of movable cultural property, such as works of art or monuments, which also hold immense value for a nation's history, identity, and cultural legacy. While objects like paintings, sculptures, and architectural monuments undoubtedly contribute to the cultural identity of a nation, they are generally treated more flexibly in terms of ownership rights. These objects are often subject to the private ownership of individuals, collectors, or institutions, and the legal framework governing their sale, export, and transfer is less restrictive than that of archaeological heritage. The justification for this differential treatment remains a point of contention.

The distinction between the spheres of *dominium* (private ownership governed by civil law) and *imperium* (state authority exercised through public law) is central to the legal and philosophical debate concerning the appropriate role of the state in cultural heritage property regulation. This debate is particularly relevant in the context of liberal and communitarian legal theories, which offer divergent views on the transfer of public assets to private ownership and the extent to which cultural and historical heritage, including archaeological heritage, should be protected under state control or integrated into the private legal sphere. Liberal legal theory, rooted in principles of individual autonomy and economic efficiency, supports the expansion of *dominium* by advocating for the privatisation of state-owned assets, including monuments and archaeological artefacts. The classical liberal tradition, as expressed in legal thought, maintains that property rights arise through use, investment, and contractual transactions, thereby justifying the divestment of state-owned cultural heritage, including archaeological objects and historic sites, to private entities. The state's role, in this view, is limited to the enforcement of contracts, protection of private property, and adjudication of disputes, rather than direct ownership or management of historical and infrastructural assets. Communitarian legal theory challenges the liberal emphasis on privatisation by asserting that certain categories of property, particularly those of cultural, historical, and archaeological significance, should remain under the authority of the state to preserve their collective value. From a legal standpoint, communitarianism argues that monuments, archaeological sites, and artefacts should not be treated as ordinary assets subject to free market principles but as elements of the

public domain that embody national identity and historical continuity. The legal doctrine derived from this approach supports legislative measures that restrict the alienation of cultural property, impose obligations on private owners to maintain and protect such assets, and uphold the state's regulatory oversight to prevent the commodification of historical heritage. The reconciliation of these competing legal theories necessitates a balanced approach that incorporates both the efficiency of private ownership and the protective function of state regulation. Legislative mechanisms such as heritage protection statutes, public-private partnerships, and conservation easements provide potential legal frameworks to mediate the tension between *dominium* and *imperium*. However, as the privatisation of state assets continues, legal systems must adapt to address the evolving nature of property rights and the role of the state in safeguarding cultural, historical, and archaeological heritage within an increasingly privatised legal landscape.

This disparity in treatment raises fundamental questions about the justification for the state's exclusive claim over archaeological heritage, which is often defended by arguments regarding the preservation of national identity and historical narrative. However, while the cultural value of art and monuments is often similarly linked to the identity and history of the nation, these objects are generally treated as marketable assets, reflecting a legal trend that prioritises individual ownership and the international art market. The underlying issue is whether the distinction between archaeological heritage and other forms of movable cultural property is still justifiable in the modern dispute between liberalism and communitarianism, which translates into legal frameworks. As global markets and the international circulation of art and antiquities have expanded, the question arises whether such differentiation in ownership laws and public-private interest remains defensible or whether a more uniform approach to the protection and stewardship of cultural heritage, regardless of its nature, should be adopted.

### **Minor conclusions 3**

Attempting to provide a summary, archaeological objects represent a complex and challenging case in the current debate. Liberalism and communitarianism propose different visions of social order. Liberal philosophy can be characterized by five core principles. First, liberalism prioritizes individual rights and freedoms over the common good, a principle often expressed as *in dubio pro libertate*. This priority also explains liberalism's skepticism toward group or collective rights. In essence, liberal philosophy places greater emphasis on individual interests—understood as personal rights and freedoms—than on the pursuit of the common

good. Second, the state is tasked not only with protecting citizens' rights and freedoms but also with actively promoting and expanding them. Third, liberalism requires the state to remain neutral in ideological, philosophical, ethical, and religious matters, accordingly, the state should refrain from actions that could interfere in these domains. Fourth, liberalism is primarily concerned with individual rights rather than with the duties individuals owe to the state. Finally, liberal philosophy emphasizes negative rights and freedoms—commonly described as “freedom from” interference. As a result, liberalism tends to be skeptical of positive rights and freedoms, which are framed as “freedom to” act or receive certain benefits.<sup>259</sup>

Communitarianism promotes principles and ideals that stand in contrast to liberalism. First, it advances the principle that the common good takes precedence over individual rights, often referred to as *in dubio pro communitate*. Second, from a communitarian perspective, the state has a duty to protect and promote the common good. Third, a central responsibility of the state is to defend values that sustain the identity and integrity of the community. Consequently, the state should not remain neutral in ideological, philosophical, ethical, or religious matters. Fourth, communitarianism emphasizes the equality of individuals' rights and freedoms in relation to the community, rather than privileging individual interests alone. Finally, communitarian thought places primary emphasis on positive rights and freedoms—namely, rights exercised by members of particular groups or communities. In this sense, priority is given to group and collective rights over strictly individual rights.<sup>260</sup> For liberals, society is a collection of free individuals who, based on complete autonomy and voluntarism, come together in groups in order to more effectively achieve their own goals. When for communitarians, society is a community within which the individual exists, and only through this community can the individual realise their goals.<sup>261</sup>

Consequently, the debate between liberalism and communitarianism regarding archaeological heritage and its trade centres on the balance between individual rights and collective responsibilities. Liberals generally emphasise individual property rights, arguing that archaeological artefacts, when legally acquired, should be freely traded in the market. They advocate for a neutral state that enables individuals to make their own decisions, including those

---

<sup>259</sup> L. Morawski, *Podstawy Filozofii Prawa* [Fundamentals of Philosophy of Law], Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, Toruń 2014, pp. 116-117.

<sup>260</sup> L. Morawski, *Filozofia Prawa* [Philosophy of Law], Towarzystwo Naukowe Organizacji i Kierowania „Dom Organizatora”, Toruń 2014, pp. 123.

<sup>261</sup> L. Morawski, *Główne Problemy Współczesnej Filozofii Prawa. Prawo w Toku Przemian* [The Main Problems of Contemporary Philosophy of Law. Law in the Process of Transformation], Warszawa 2000, pp. 125-126.

See: L. Morawski, *Prawo Jednostki a Dobro Wspólne. (Liberalizm a Komunitaryzm)* [Individual Rights and the Common Good. (Liberalism and Communitarianism)], Państwo i Prawo, vol. 11, Komitet Nauk Prawnych Polskiej Akademii Nauk, Warszawa 1998, pp. 26-42.

regarding the ownership and exchange of cultural property. Communitarians stress the importance of community and national identity, viewing archaeological heritage as a collective resource tied to the history and culture of specific communities or nations. They argue that the trade of such heritage should be regulated to protect cultural identity, emphasising that these artefacts should not be treated merely as commodities. They contend that cultural heritage must be preserved and controlled in a way that respects the values of the community, often prioritising national ownership and restricting the market trade of cultural property. The conflict arises over how to balance these two perspectives: whether cultural heritage be treated as individual property subject to market forces, or should it be safeguarded as a public good that transcends personal ownership and trade.<sup>pa</sup>

Concepts of trade and, thus, the private possession of archaeological artefacts are not new.<sup>262</sup> There are at least six legal avenues through which archaeological heritage can be introduced into the trade market under the Polish law. Additionally, in some other jurisdictions, there may be even more mechanisms or legal frameworks that facilitate the commercial circulation of such cultural assets. These pathways are shaped by a combination of national heritage protection laws, international agreements, and the specific legal context of each country. In Poland, for instance, the introduction of archaeological heritage into the market typically follows established channels, such as legal acquisition, restitution, or decisions by relevant authorities. Some of these channels allow for the lawful trade of artefacts that have clear provenance, while others focus on ensuring that cultural property is preserved and not exploited improperly. However, the complexities of these legal avenues often intertwine with broader debates around heritage protection, ownership, and the ethical considerations tied to the movement of cultural property. Other countries may have additional or alternative processes due to differing national regulations or historical practices surrounding the trade and ownership of cultural heritage. This variation across states underscores the importance of understanding both national and international frameworks when discussing the commercialisation of archaeological heritage, as the legal approaches and their potential for misuse can vary widely.

However, whenever these possibilities of introducing an object into trade circulation have been proposed in the past, they have often been undermined by intense nationalist sentiment. Calls to "protect" a nation's "cultural heritage" by imposing export restrictions still resonate emotionally, as do denunciations of those who seek to sell the "national cultural patrimony." In some source nations, advocating for the release of cultural objects, especially those deemed surplus, to the international market would require extraordinary political courage

---

<sup>262</sup> See: P.M. Bator, *The International Trade in Art*, University of Chicago Press, Chicago 1983.

and significant diplomatic skill would be needed to secure support for such a proposal. This form of cultural nationalism remains potent, partly because it has not been subjected to sustained critical scrutiny within the international political arena. Even when the retentive policies of source nations appear excessive, these policies are rarely directly or openly challenged by the authorities of market nations. Consequently, major source nations continue to assert overly restrictive cultural property laws and policies.<sup>263</sup>

The prevailing practice in art-rich countries of imposing broad, often unenforceable export restrictions on all antiquities and archaeological materials has fostered a regressive and inflexible environment that hinders the implementation of practical, rational, and effective reforms. This approach sustains the misleading notion that all art must remain within its country of origin, regardless of whether it was legally excavated or is the result of recent looting, and that permitting or even encouraging some art to travel abroad freely is inherently wrong and unpatriotic. Furthermore, it creates unrealistic expectations about achieving perfect enforcement, presenting an idealised and unattainable vision of cultural property protection. In doing so, it distorts what is truly desirable and feasible, ultimately discouraging more reasonable and pragmatic solutions.<sup>264</sup>

It appears that the concepts of liberalism and communitarianism alone are insufficient to fully address the complexities surrounding archaeological heritage and its trade. While liberalism focuses on individual rights and freedom in market transactions, and communitarianism emphasises collective cultural identity and preservation, these perspectives fail to account for the broader global and local dynamics. The introduction of universalism, which advocates for global moral standards and shared human values, and nationalism, which stresses the importance of national sovereignty and cultural preservation, adds necessary layers of understanding. Similarly, cosmopolitanism, which promotes global interconnectedness and shared responsibility for heritage, contrasts with particularism, which focuses on local, community-specific values and interests. By integrating these additional concepts, a more nuanced framework can emerge that balances individual rights, community responsibilities, national interests, and global ethical standards in the context of cultural heritage. The ongoing shift from *imperium* (communitarianism) to *dominium* (liberalism) reflects broader legal and economic changes, with increasing privatisation of roads, monuments, and even archaeological heritage. Liberal legal theory supports this transition, emphasising efficiency and private

---

<sup>263</sup> J.H. Merryman, *A Licit International...*, p. 37.

<sup>264</sup> See: P.M. Bator, *The International Trade in Art*, University of Chicago Press, Chicago 1983.

property rights, while communitarian perspectives argue for state control to preserve cultural and historical significance.

Concluding, the ideas and concepts within legal, philosophical, and societal frameworks are constantly evolving in response to the changing needs of society. As society progresses and faces new challenges, it becomes imperative to reassess and adapt these concepts to remain relevant and effective. Repeating past approaches without considering the current context risks stagnation and failure to address contemporary issues. Therefore, it is essential to regularly reevaluate established ideas, ensuring that they align with the present and anticipate future developments, fostering a dynamic and responsive legal and philosophical environment. The tension between public and private interests has always been delicate, particularly in the context of cultural heritage. Roman law established the foundational principle that property rights could be held by individuals, but also recognised the public's interest in protecting certain types of property for the common good, such as *res publicae*. The state's role in protecting cultural heritage is crucial for preserving history and collective identity, but it must balance this with the rights of individuals. As past law acknowledges the protection of private property within the boundaries of public welfare, modern legal frameworks must similarly find a harmonious approach, respecting both the collective need to safeguard cultural assets and the individual's right to own and manage personal property. Overstepping the protection of public interests can infringe upon individual property rights, while neglecting the collective interest can lead to cultural loss. Therefore, it is essential to continuously assess how to uphold both public responsibility and private ownership in the evolving landscape of cultural heritage.

## Chapter 4

### The institution of *res extra commercium* and *res in commercio* in the cultural heritage law

#### Introduction

The protection of cultural heritage is a fundamental concern in legal systems worldwide, as it safeguards the historical, artistic, and cultural identity of societies. Within this legal framework, the distinction between *res extra commercium* (things outside commerce) and *res in commercio* (things within commerce) plays a crucial role in determining the legal status, ownership, and transferability of cultural property. This distinction influences not only private property rights but also public interest considerations, shaping how cultural heritage is managed, preserved, and protected. The concept of *res extra commercium* has deep historical roots, originating from Roman law, where certain objects were deemed inalienable due to their significance to the state, religion, or public use.

In the modern context, this principle is applied also to cultural heritage law, restricting the commercialisation of artefacts and monuments such as archaeological monuments. Conversely, *res in commercio* encompasses objects that, while culturally significant, are legally permitted to be bought, sold, and transferred under regulated conditions. This chapter explores the interplay between these two categories which is central to defining the legal regime governing cultural property, as it determines whether an artefact can be owned by private individuals, traded on the art market, or remains under strict state control.

Each year, discussions and legislative reform proposals frequently address issues that intersect with the legal category of *res extra commercium*. The increasing focus on this concept can be attributed to both international and domestic legal developments aimed at strengthening the protection of cultural heritage. On the international level, several key legal instruments have contributed to this heightened attention. These include efforts to ratify the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which seeks to harmonise restitution mechanisms for unlawfully displaced cultural property, and the ratification of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, which establishes a legal framework for safeguarding submerged cultural assets and its protection *in situ* in stead of trade of objects. Additionally, the implementation of Directive 2014/60/EU of the European Parliament and the Council, which governs the return of unlawfully removed

cultural objects within the European Union, has further reinforced the legal discourse surrounding the concept of *res extra commercium*.

At the national level, legislative initiatives and policy measures continue to shape the regulation of cultural property. These include the development of the Act on Found Property,<sup>265</sup> the revision of the national legislation on the protection and preservation of monuments, and the formulation of comprehensive heritage protection programs. Furthermore, ongoing legal and academic discussions concerning archaeological heritage and other categories of cultural assets excluded from commercial transactions, such as archival materials, highlight the complexities involved in balancing state interests, private ownership rights, and the broader public interest in cultural heritage preservation. The evolving legal landscape underscores the significance of *res extra commercium* in cultural heritage law, as it serves as a foundational principle in delineating which objects are subject to commercial exchange and which must remain outside the stream of commerce due to some values they possess. Hence, this chapter assesses the application of *res extra commercium* and *res in commercio* in cultural heritage law, analysing their implications for ownership, trade restrictions, and legal disputes concerning cultural property. By examining sources of public international law, as well as national legislations, this study aims to clarify the boundaries between commercial and non-commercial cultural assets, contributing to the broader discourse on cultural heritage protection in law.

The profound historical experiences of the partitions and numerous wars, which had a direct and often devastating impact on the preservation of national heritage, played a significant role in shaping legal and policy measures aimed at protecting cultural property. The widespread destruction, looting, and displacement of historical artefacts during these turbulent periods underscored the urgent need for legal safeguards to prevent further loss. Consequently, these historical traumas intensified the push for stringent restrictions on the commercial trade of monuments and other culturally significant objects. The legislative efforts to limit the circulation of heritage assets reflect not only a legal response to past injustices but also a broader commitment to safeguarding national identity and cultural continuity for future generations. Nevertheless, the trade in archaeological artefacts must be examined within a broader legal and economic framework, taking into account not only national regulations but also the dynamics of the international art and antiquities market. The global demand for cultural objects, coupled with the complexities of provenance, ownership disputes, and illicit trafficking, necessitates a comprehensive approach to the regulation of archaeological heritage.

---

<sup>265</sup> Ustawa z dnia 20 lutego 2015 r. o rzeczach znalezionych [Act of 20 February 2015 on found property], Dziennik Ustaw 2015, pos. 397, Dziennik Ustaw z 2023, uniform text, pos. 501.

Therefore, this chapter begins by exploring the legal concept of *res extra commercium*, starting with its origins in Roman law. It analyses the foundational principles that led to the classification of certain objects as being outside the realm of private commerce, as well as the specific categories that were initially recognised under Roman legal doctrine. This historical analysis serves as a basis for understanding how the concept has evolved and how it informs contemporary legal frameworks, particularly within Polish law. Following this foundational discussion, the chapter transitions to the application of *res extra commercium* in the field of cultural heritage protection, seeking to comprehend legal mechanisms designed to exclude monuments and other culturally significant objects from commercial transactions, ensuring their preservation for public and national interests. A key point of analysis is the ongoing legal debate concerning the status of archaeological monuments, whether they should categorically fall under *res extra commercium* or whether their classification remains subject to legal interpretation and policy considerations. This discussion provides insight into the evolving nature of cultural heritage law and the legal justifications for restricting certain objects from private trade and ownership.

#### **4.1. *Res extra commercium* in Roman law and in contemporary civil law**

The classification of things as either in general circulation or excluded from it dates back to ancient Roman law. In Roman legal doctrine, a distinction was made between those things removed from circulation by divine law (*res extra commercium divini iuris*) and those excluded by human law (*res extra commercium humani iuris*). Under divine law, objects considered as sacred were:

- *res sacrae* - things dedicated to religious worship, e.g., temples,
- *res religiosae*- objects dedicated to the worship of the deceased, e.g., tombs, and
- *res sanctae*- items placed under the protection of the gods, such as boundary markers, walls and gates of cities.

These objects were removed from commercial exchange, held in reverence, meant for religious or ceremonial purposes, and thus excluded from everyday trade. For something to become *res sacrae* it was necessary to take an oath (*votum*), approved by a resolution (*dedicatio*) of the

people, the Senate, and later the emperor, followed by the final consecration by priests (*consecratio*).<sup>266</sup> What was subject to divine law could not be in anyone's possession.<sup>267</sup>

On the other hand, human law (*res human iuris*) also recognised certain categories of property that were removed from circulation, primarily for reasons of public welfare or communal use. This included:

- *res omnium communes*, which were goods that were freely available for public use, which therefore could not become anyone's property, such as seas, air, and natural resources, as well as
- *res publicae*, which were public goods owned by the state or to the Roman commune (*res universitatis*) and intended for public use, such as roads and bridges, but also public squares, ports, theatres stations and statues.

These goods, though not sacred, were deemed necessary for the functioning of society and were therefore excluded from private ownership and trade.

In Roman times, cultural heritage was certainly valued and enjoyed, though it was not regarded within the modern framework of cultural property or archaeological heritage as we understand it today.<sup>268</sup> While Romans placed great importance on the preservation of certain objects, monuments, and practices that held cultural, religious, and political significance, these items were not categorised as *res extra commercium* (things excluded from commerce) in the same way we think of heritage objects today. In Roman law, *res extra commercium* referred primarily to things that were either sacred or intended for public use, such as religious temples, public roads, and certain land. These items were protected from private ownership or trade, not due to their cultural or archaeological significance, but because of their religious or civic importance. For example, temples dedicated to gods or the graves of important individuals were often considered *res sacrae* or *res religiosae* and thus excluded from the market, being reserved for religious or state functions. Similarly, while some of Rome's great public monuments, statues, and architectural works were respected and preserved, they were not regarded as *archaeological heritage* in the way we define it today. Roman culture certainly valued art, history, and monuments, but the modern concept of archaeological heritage, understood as a distinct category of material culture meant for long-term preservation and study, did not yet

---

<sup>266</sup> F. Zoll, *Pandecta czyli Nauka Rzymskiego Prawa Prywatnego* [Pandecta or the Science of Roman Private Law], vol. 1, Część ogólna, Spółka Wydawnicza Polska, Kraków 1914, pp. 294-295.

<sup>267</sup> Gai, *Institutiones or Institutes of Roman Law by Gaius*, with a translation and commentary by the late Edward Poste, M.A. 4th ed., revised and enlarged by E.A. Whittuck, M.A. B.C.L., with a historical introduction by A.H.J. Greenidge, D.Litt, Clarendon Press, Oxford 1904.

<sup>268</sup> See: D. Karmon, *The Ruin of the Eternal City: Antiquity and Preservation in Renaissance Rome*, Oxford University Press, Oxford 2011.

exist. What was preserved in Roman times was often more tied to civic pride, religious devotion, and political power rather than the recognition of these objects as integral to a historical or archaeological narrative. The Roman Empire's approach to cultural preservation was largely utilitarian, focusing on the function of objects and monuments rather than their value as part of an enduring historical record. Objects of art, for instance, were often seen more as symbols of power or tools for propaganda than as treasured artefacts of cultural heritage. The idea of protecting cultural heritage for future generations, and of recognising objects as valuable primarily for their historical or archaeological significance, only emerged in more modern times, long after the fall of the Roman Empire. Thus, in Roman times, although cultural and religious objects were certainly appreciated and preserved, they did not fall into the categories of *res extra commercium* or archaeological heritage as we understand them today. These modern concepts, with their focus on preserving the past for its own sake, would evolve much later, in response to the changing values of culture, history, and property.

What is particularly noteworthy in this historical context is that some of the goods excluded from circulation in Roman law, such as air, do not fit neatly into the modern civil law conception of "things" as they are understood in contemporary legal systems, including those within the European Union. While Roman law addressed these exclusions based on their religious or public nature, today, the concept of "things" is more narrowly defined, focusing on tangible property that can be owned or traded. Thus, some items, like natural elements or public resources, present unique challenges in the context of modern property law, as they are often considered outside the realm of private commercial transactions while still playing a vital role in legal and environmental frameworks.

The concept of things excluded from trade, originating from the Roman classification of property, is not explicitly defined or regulated within the Polish legal framework. Despite its recognition and application by legal scholars, judicial decisions, and occasionally by the legislator, there remains a lack of a comprehensive and universally accepted definition of what constitutes things excluded from trade. While the concept is frequently invoked in legal discussions and is integral to certain areas of law, particularly in the context of cultural heritage and property rights, there has yet to be a clear and standardised legal definition in Polish law that fully encapsulates its scope and implications. This absence of a unified understanding presents challenges in its consistent application across various legal contexts, particularly when determining which objects or assets should be excluded from commercial transactions for reasons of public interest, cultural value, or historical significance.

According to article 45 of the Polish Civil Code,<sup>269</sup> the term "things" refers exclusively to tangible, material objects. However, in civil law theory, a broader interpretation is adopted, where things are understood as material parts of nature that have been sufficiently separated from it, whether through natural processes or human intervention, such that they can function as independent goods within social and economic relations.<sup>270</sup> This definition indicates that things are those items that are physically distinct and capable of being owned, transferred, or traded. Consequently, under this framework, neither intangible assets nor rights are considered "things" in the legal sense. Similarly, material objects that have not been sufficiently separated from their natural state, those that are still considered part of nature, do not qualify as "things" for the purposes of legal transactions. However, despite this general rule, specific legal provisions may designate certain non-material goods or rights as the subject of property law. For example, through particular statutes, rights over intangible property or even certain goods that have not been physically separated from nature might still be treated as objects of property rights, enabling their legal regulation in matters of ownership, transfer, or protection.

In civil law, the term "things" is typically understood to refer to objects that are, or could be, subject to trade, meaning they are part of the legal circulation of goods. This includes items that are freely traded, as well as those that may be subject to certain restrictions or regulatory frameworks (such as items in restricted or licensed trade). Therefore, objects that are explicitly excluded from trade, or those deemed *res extra commercium*, do not fall within this general definition of "things," as they are outside the realm of permissible commercial exchange. However, despite this logical distinction, the concept of *res extra commercium* remains relevant and continues to appear in Polish legal scholarship. Legal scholars still engage with the classification of certain objects as being excluded from commercial transactions, especially in the context of cultural property. This ongoing discourse reflects the enduring influence of this concept in shaping legal understandings of ownership, trade, and the protection of cultural heritage, even if these objects do not conform to the broader definition of "things" under civil law.<sup>271</sup>

---

<sup>269</sup> Article 45 of Polish Civil Code.

<sup>270</sup> J. Wasilkowski, *Zarys Prawa Rzeczowego* [Outline of Property Law], Państwowe Wydawnictwo Naukowe, Warszawa, 1963, p. 8.

<sup>271</sup> A. Obłąk, *Rzeczy Wylączone z Obrotu (Res Extra Commercium) w Polskim Porządku Prawnym* [Items Excluded from Circulation (Res Extra Commercium) in the Polish Legal System] [in:] J. Jezioro, K. Zagrobelny (eds.) *Wybrane Zagadnienia Polskiego Prawa Prywatnego, Księga Pamiątkowa ku czci Doktora Józefa Kermis i Doktora Jerzego Strzebinczyka* [Selected Issues of Polish Private Law, Memorial Book in Honor of Dr. Józef Kermis and Dr. Jerzy Strzebinczyk], E-Wydawnictwo, Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2019, pp. 185-186.

Any discussion on the subject of *res extra commercium* would be incomplete without addressing the concept of the common good. This concept has undergone significant evolution over the centuries, with each historical period shaping its interpretation in accordance with prevailing legal, social, and philosophical frameworks. In legal doctrine and scholarly literature, the term has been associated with various designations, including public good, common benefit, social welfare, collective interest, public interest, and general prosperity.<sup>272</sup> In contemporary legal discourse, the common good is closely aligned with the principles of public interest and public goods, remaining a fundamental subject of analysis, particularly within administrative law. Certain natural resources, such as water, air, and forests, fall within the ambit of legally protected assets due to their essential role in serving the public interest. Similarly, matters concerning public security and the preservation of ecologically valuable areas are subject to regulatory protection to ensure their sustainability for the benefit of society as a whole. Accordingly, the common good must be understood in relation to the broader framework of social order, extending its relevance beyond legal theory into the domains of ethics and economics. The essence of the common good, in practice, consists in ensuring that the benefits of voluntary cooperation within society are preserved and promoted.<sup>273</sup> Consequently, the common good is not merely a principle of theoretical significance but a legally and socially recognised value that commands both protection and obligations. It represents a collective interest that transcends individual rights, requiring a legal framework that balances private ownership with societal needs to ensure equitable access and sustainable management of shared resources.

Besides the common goods, there is a concept of public goods. Public goods are a specific category of public property in a strict sense. Public goods include items such as roads, bridges, rivers, canals, parks, beaches, air, light, seawater, and others. The public character of a good can arise either due to its inherent natural properties (such as a river or coastal shoreline) or by legal designation (such as a road). This distinction also relates to the classification of goods as natural or man-made. Natural goods are those created by natural forces, while man-made goods are products of human activity. However, this division is becoming increasingly less distinct, as many natural resources are subject to continuous human intervention (e.g., river

---

<sup>272</sup> M. Zirk-Sadowski, *Wprowadzenie do Filozofii Prawa* [Introduction to the Philosophy of Law], Zakamycze-Kraków 2000, p. 29.

<sup>273</sup> M. Piechowiak, *Konstytucyjna Zasada Dobra Wspólnego – w Poszukiwaniu Kontekstu Interpretacji* [The Constitutional Principle of the Common Good – In Search of an Interpretative Context] [in:] W.J. Wołpiuk (ed.) *Dobro Wspólne. Problemy Konstytucyjnoprawne i Aksjologiczne* [The Common Good. Constitutional, Legal, and Axiological Issues], Wyższa Szkoła Zarządzania i Prawa im. Heleny Chodkowskiej w Warszawie, Warszawa 2008, p. 131.

regulation and coastal management). The maintenance of many natural resources also requires significant labor and capital investments, such as efforts to preserve water and air quality. In principle, public goods are objects of public ownership, typically owned by the state or local government. It is important to note that the issue of ownership does not necessarily determine whether a good is public in nature. While the state or local authorities generally own public goods, ownership of certain goods designated for public use may also rest with other entities, such as churches or religious organisations. This definition highlights the legal and social considerations surrounding the management and protection of public goods. The notion of public goods extends beyond ownership to include broader responsibilities of accessibility, preservation, and equitable use for the benefit of society as a whole. It emphasises the collective interest in ensuring these goods are used sustainably and fairly, and that their benefits are accessible to all members of society. The evolving relationship between natural resources, human intervention, and legal classification underscores the dynamic nature of public goods in modern legal frameworks.<sup>274</sup>

The concept of *res extra commercium* laid the foundation for our modern understanding of public goods, including natural resources and items designated for public use. In contemporary legal systems, certain goods and resources, such as roads, waterways, air, and public parks, are similarly protected from private ownership. Their use is regulated by public law to ensure that they remain accessible for the collective benefit of society. These goods may be subject to certain legal restrictions, preventing private individuals from exercising full control over them or profiting from their exploitation. In modern legal frameworks, the ownership of public goods does not always lie with the state, but rather, the state assumes the role of guardian and regulator, ensuring that these resources remain available and protected for public use. The evolving nature of property law reflects an increasing recognition of the importance of maintaining these resources for the common good, much like the Roman principle that certain things were deemed to be beyond the reach of private commercial dealings.

Public goods, as objects of public ownership, are subject to a special legal regime that primarily focuses on limiting the owner's rights to dispose of the property. This means that public goods are not only protected from private control but also restricted in how they can be used or transferred. Historically, even in pre-war literature, it was emphasised that public goods

---

<sup>274</sup> I. Sierpowska, *Drogi Publiczne jako Kategoria Dobra Publicznego- w Świetle Poglądów Doktryny i Rozwiązań Normatywnych* [Public Roads as a Category of Public Goods – in Light of Doctrinal Views and Normative Solutions], *Studia Erasmiana Wratislaviensia*, no. 3, Uniwersytet Wrocławski-Koło Naukowe Doktryn Politycznych i Prawnych, Wrocław 2007.

are inalienable as long as they serve public purposes. They are not subject to statutes of limitations, liens, or forced execution. Public goods must remain available for use in the public interest and cannot be sold or transferred at will. In certain circumstances, administrative authorities have the power to decide on the designation or loss of public status for specific goods. However, any change in the purpose or transfer of public property requires meeting specific legal conditions and is subject to state, judicial, and social oversight. Public goods that have particular historical, cultural, or national value are generally excluded from the market and are subject to special legal protection. Such goods are considered of exceptional importance, and therefore, cannot be traded like ordinary property. Some assets are inherently destined to remain as public property, including public roads, correctional facilities, and historical-national landmarks.<sup>275</sup> These items are irreplaceable and vital to the public and national heritage, and as such, they are permanently excluded from private ownership. The ownership of such assets is reserved for the state or public entities, ensuring they are used for the collective good and are not subject to privatisation or commercial exploitation. The legal framework surrounding public goods underscores their collective value and recognises the importance of maintaining them for future generations. Any attempt to alienate these goods, whether by sale, transfer, or modification of their public function, must undergo strict legal procedures and be subject to public scrutiny. Thus, the status of public goods remains protected under laws that balance individual property rights with the broader interests of society and the nation.

Through public goods, the administration fulfils public tasks, addressing the material and immaterial needs of society. The execution of public duties is closely connected to the public's universal access to these goods. Public utility is an inherent characteristic of the goods in question. The concept of public utility, however, is not uniformly defined. In its broadest sense, it is often equated with the public tasks that fall under the responsibility of government and local administration.

The public utility of the discussed goods is fundamentally linked to their continuous and widespread use to meet the ongoing needs of society. This concept emphasises that these goods are available for public use, ensuring that essential needs are satisfied without interruption. However, it is important to note that the idea of universal use does not mean that all individuals use the good simultaneously or to the same extent. Rather, it suggests that the good is accessible to the public as a whole, but usage may vary among individuals depending on their specific

---

<sup>275</sup> J. Szachulowicz, *Własność Publiczna* [Public Ownership], Wydawnictwo Prawnicze, Warszawa 2000, pp. 19-20.

needs and circumstances. Moreover, the use of public goods can be subject to various restrictions. These limitations may stem from legal regulations or administrative actions that define the conditions under which the public can access and use these goods. For example, authorities may impose requirements such as fulfilling certain criteria, paying fees, or adhering to specific guidelines in order to regulate access. These mechanisms ensure that the good is utilised in a way that balances public access with the need for responsible management and sustainability. In this sense, public utility is not an absolute right, but rather a regulated entitlement that can be adjusted based on the changing needs of society, legal frameworks, and administrative priorities. It is also subject to a level of oversight that ensures the fair distribution and proper use of the resource, which in turn contributes to the overall well-being of the community.

The concept of public utility ties directly into the notion of *res extra commercium*, or goods that are outside the realm of private ownership and commercial trade. Public goods, such as roads, parks, or water, are inherently accessible to all, providing essential services to society. However, while they are available for public use, they are subject to legal restrictions and administrative oversight to ensure responsible management. These goods are not owned in the same way as private property, as their purpose is to serve the common good and meet societal needs. The idea of *res extra commercium* emphasises that certain goods, due to their nature, are exempt from private trade and exploitation, and instead, their use is regulated to preserve their public utility for all.

#### **4.2. The concept of *res extra commercium* in cultural heritage law**

There is uncertainty regarding whether the Romans would even classify cultural heritage goods within the framework of possessions that are considered *res extra commercium*. Specifically, it is unclear whether they would categorise these items as *res divinae iuris* (things under divine law) or *res humanas iuris* (things under human law). This ambiguity raises important questions about the Romans' perspective on cultural heritage. Would they perceive cultural heritage goods as inherently valuable and deserving of special protection, possibly placing them within the category of *res divinae iuris* due to their cultural and historical significance? Alternatively, would they regard these items in a more secular context, categorising them as *res humanas iuris* and subjecting them to the whims of commerce and human negotiation?<sup>276</sup>

---

<sup>276</sup> W. Szafranski, *Res Extra Commercium* [in]: A. Jagielska-Burduk (ed.), W. Szafranski, Ł. Gaweł, *Mechanizmy Prawne Zarządzania Dziedzictwem Kultury* [Legal Mechanisms for Managing Cultural Heritage], Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk-Warszawa 2016, pp. 130-131.

Contemporary scholars seeking a foundation for integrating this Roman category into modern discussions often highlight two additional categories: *res communis omnium* and *res communis humanitatis*. These classifications are instrumental in framing the notion of common heritage of humanity, a concept that has gained momentum since the 1960s and serves as a rationale for significant shifts in public international law. The category of *res communis omnium* refers to resources that are common to all people, such as air, water, and wildlife, emphasising the shared rights of humanity to certain fundamental resources. On the other hand, *res communis humanitatis* focuses more specifically on cultural and historical artefacts and heritage that belong to all humanity, transcending national and territorial boundaries. The evolution of these categories plays a crucial role in the development of legal frameworks that advocate for the protection and preservation of cultural heritage on a global scale. Since the 1960s, there has been an increasing recognition in international law that cultural heritage sites, artworks, and traditions are not merely local or national assets but belong to a collective human legacy. This perspective has led to the creation and implementation of various treaties and agreements aimed at safeguarding these treasures for future generations, underscoring a collective responsibility toward preserving our shared cultural heritage.<sup>277</sup>

One might wonder what quantity of cultural heritage needs to be designated as public property, or where the threshold lies that signifies the conclusion of the process of "publicising ownership." Governments have identified that a strong legal and factual framework is the most reliable means of ensuring effective protection of heritage. This framework typically either restricts private ownership or designates a substantial share of heritage, particularly that which is deemed to have the highest value, as public property. Determining the precise moment when conservation authorities will transition away from a more secure, albeit less effective, solution is challenging. This is particularly relevant in light of theories of utility maximisation, which posit that when faced with options, stakeholders will tend to choose paths that involve less risk and more certainty, even if such choices yield lower returns. This preference for lower-risk options can be closely linked to a pervasive lack of trust among heritage stakeholders towards one another. From the standpoint of established practices and the decision-making processes of cultural policy makers, when examined from a behavioural perspective, this approach taken may be seen as appropriate. Consequently, there remains a prevailing argument that public ownership is more effective in managing cultural heritage. It is essential to consider the implications of public ownership in managing heritage. Public ownership could potentially foster a sense of collective responsibility, ensuring that cultural heritage resources are preserved

---

<sup>277</sup> K. Baslar, *The Concept of the Common...*, pp. 40-43.

for future generations. It can also facilitate broader access to heritage sites for the public, fostering education and cultural appreciation. However, it is important to balance this with the need for efficient management and potential challenges, such as bureaucratic delays or lack of funding. The relationship dynamics among stakeholders, including government entities, private owners, and the community at large, play a crucial role in shaping policies around heritage. A collaborative approach that builds trust among these groups may help to mitigate concerns about risk and effectiveness while ensuring that preservation efforts are both sustainable and inclusive. Overall, the discourse around public versus private ownership in cultural heritage management is complex, intersecting legal, ethical, and practical considerations.

The volume of cultural heritage is also rapidly expanding, particularly the segment that resides outside public collections, which is substantial and, importantly, will likely grow at a much more accelerated rate than the items in public holdings. Private collectors are significantly more active in the art market compared to public institutions, and they frequently acquire artefacts that fall within the category of cultural goods *in spe*, objects that have potential cultural significance but may not yet be fully recognised as such. From the standpoint of funding efforts related to the management of both private and public heritage, as well as the operational effectiveness of state cultural institutions, tasks that are essential to their mission, the current landscape is concerning and inefficient.<sup>278</sup>

Many cultural institutions struggle with limited resources, which affects their ability to safeguard and promote cultural heritage effectively. Meanwhile, the dynamic nature of private collecting, often driven by market trends and personal tastes, can lead to a disparity in how cultural goods are valued and preserved. Expanding on this situation, it's essential to consider the implications also of the growing private sector in cultural heritage. While collectors may drive demand and provide “new homes” for cultural artefacts, the absence of formal regulatory frameworks raises concerns about provenance, authenticity, and ethical ownership. Objects acquired in this context may not receive the same level of care, public access, or historical context as those in public collections. This disparity can lead to a fragmented understanding of cultural heritage, where important artefacts are sequestered away from educational and communal opportunities that enrich public knowledge. Moreover, the prioritisation of private over public heritage management can create challenges for cultural policy. Stakeholders must navigate a landscape where financial incentives often overshadow the intrinsic cultural and historical values of heritage goods. As a result, policymakers are encouraged to seek innovative

---

<sup>278</sup> W. Szafranski, P. Lasik, *Prawo Ochrony Dziedzictwa Kulturowego. Quo Vadis?* [Heritage Protection Law. Quo Vadis?], Santander Art and Culture Law Review, vol. 1, Opole 2021, pp. 195-220.

solutions that bridge the gap between private collectors and public institutions, fostering partnerships that can enhance the preservation and appreciation of cultural heritage for future generations.

The concept of *res extra commercium* frequently emerges in judicial decisions, museum discussions, and public debate. Although there exists a substantial body of jurisprudence surrounding this principle, there are no specific judicial rulings that explicitly invoke this rule as a basis for excluding certain items from commerce.<sup>279</sup> Nonetheless, it is commonly employed in arguments pertaining to the protection of cultural heritage. In its explanation to the ruling concerning the park and the building recognised as cultural heritage, the Supreme Court stated that:

“The absence of a statutory provision explicitly prohibiting the acquisition of ownership through adverse possession of land designated for public parks, which has thus far belonged to public authorities. [...] In the opinion of the Supreme Court, this does not deprive legally organised parks, which are utilised for their intended purpose and constitute public property, of their status as what is known as public goods (*rei publico usui destinatae*). This status prevents their appropriation and the establishment of ownership through adverse possession. Consequently, such properties should be recognised as a category of things excluded from commerce (*res publicae extra commercium*). The Supreme Court has taken a similar stance in relation to public roads. While the jurisprudence has permitted the establishment of possession over properties designated for public use, which contain public character facilities and are owned by other entities, this can lead to ownership acquisition through adverse possession only in relation to the State Treasury (a local government unit) as a holder, with respect to its factual control (*corpus*) and intent to possess as an owner (*cum animo rem sibi habendi*) — while recognising another entity as the actual owner. It has been indicated that the intention of public entities to possess property for themselves cannot be equated with how the owned property is used to fulfill the statutory tasks of these entities, which are meant to serve public needs, although a connection may exist between the two.”<sup>280</sup>

The Supreme Court's opinion highlights several important conclusions concerning cultural heritage. First and foremost, the classification of these spaces as public goods underscores their cultural and communal significance. Parks and public roads serve as more than just functional sites, they embody shared heritage and identity, enhancing the quality of life and promoting cultural continuity within communities. By categorising public parks as *res*

---

<sup>279</sup> A. Jagielska-Burduk, *Cultural Heritage as a Legal...*, p. 226.

<sup>280</sup> Postanowienie Sądu Najwyższego z dnia 30 września 2021 r., sygn. V CSKP 110/21 [Decision of the Supreme Court of 30<sup>th</sup> September 2021, no. IV CSKP 110/21] <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/V%20CSKP%20110-21.pdf> [available on: 10.03.20225].

*publicae extra commercium*, the court emphasizes that certain cultural heritage assets should remain outside commercial transactions. This designation is crucial for safeguarding the integrity and accessibility of these sites, ensuring that cultural heritage is not reduced to mere commodities that can be exploited for profit. Moreover, the ruling effectively prevents the appropriation of public spaces through adverse possession, a legal safeguard essential for ensuring cultural heritage, including parks and public infrastructure, remains accessible to the public. This preservation is vital for fostering community use and enjoyment, rather than allowing these spaces to be privatised or misappropriated for individual interests. The opinion also highlights the responsibility of public authorities to manage and maintain these properties to fulfil their intended purposes. Such stewardship aligns with the broader ethical obligation to preserve cultural heritage for future generations, ensuring that public spaces continue to serve community interests and needs. The nuances in the court's ruling regarding possession underscore the necessity of balancing private claims with public welfare priorities. Finally, the court's recognition of the connection between public entities and their duties emphasises the importance of community engagement in managing cultural heritage. Involving local communities in decision-making processes can enhance the relevance and effectiveness of stewardship efforts.

Undoubtedly, the concept of *res extra commercium* plays a significant role within the framework of international cultural heritage law, particularly as evidenced by various UNESCO and UNIDROIT conventions. A landmark development in this area was the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, with article 13:

The States Parties to this Convention also undertake, consistent with the laws of each State:

- a) to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
- b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners ;
- d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

International recognition of the status of *res extra commercium* could have been achieved in article 13(d) of the Convention if this norm did not include the phrase “consistent with the laws of each State” and were applied directly, or if states were obligated to recognise the status of this institution by making changes in their national legislation.<sup>281</sup>

Next, the regulations outlined in the European Convention on Offences Relating to Cultural Property, which was established in Delphi on June 23, 1985, should be interpreted in a similar vein. Article 3 of this convention allows each participating state to indicate that certain actions enumerated in Annex III, point 2, are considered criminal offences. Notably, this list includes the alienation of cultural property, which is recognised as inalienable according to the domestic laws of the respective contracting party. Even though this convention has not been ratified, it represents a significant indication of the growing international consensus on the need to safeguard cultural heritage. By recognising specific acts, such as the alienation of cultural property, as offences, the convention underscores the importance of cultural heritage and the necessity of protecting it from unlawful activities. The inclusion of such provisions highlights an essential principle: the acknowledgment of national regulations regarding *res extra commercium* within the broader context of international law. This principle reinforces the idea that certain cultural assets are so vital to a community's identity and history that they should remain protected from commercialisation and exploitation, regardless of local legislative frameworks.

A groundbreaking convention was certainly the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects. Although there were efforts to establish a distinct status for cultural property as a public good, along with assertions regarding the unique principles of inalienability and immunity from statutes of limitations,<sup>282</sup> the final version of the Convention does not directly recognise cultural property as *res extra commercium*. This means that cultural goods can still be acquired through good faith transactions or adverse possession, as well as being pledged or otherwise encumbered. It is only when these cultural items are involved in a restitution claim grounded in state agreements, specifically mentioned in articles 3 or 5, and subsequently returned to their country of origin that they regain their distinctive status concerning property rights.<sup>283</sup>

---

<sup>281</sup> See: A. Gerecka-Żołyńska, *Restytucja dóbr kultury i dzieła sztuki* [Restitution of cultural goods and arts], Ruch Prawniczy, ekonomiczny i socjologiczny, zeszyt 2, Uniwersytet im. Adama Mickiewicza w Poznaniu, Poznań 1996.

<sup>282</sup> R. Monaco, *Outlines for a Private Law Convention the International Protection of Cultural Property*, UNIDROIT, Study LXX- Doc. 2, Rome 1988, pp. 3-4.

<sup>283</sup> W. Szafrński, *Res Extra Commercium...*, p. 141.

This aspect of the convention illustrates a nuanced approach to cultural property, while it does not outright prevent the commercialisation of these goods, it does create conditions under which they can return to a protected status. Thus, although the Convention lacks explicit recognition of cultural goods as *res extra commercium*, it indirectly acknowledges their unique nature by stipulating that once they are sought for restitution and returned, they regain their special legal status within national legal system. This characteristic is significant as it highlights the ongoing challenges in balancing the commercial aspects of cultural heritage with its intrinsic value to communities and nations. Moreover, this framework encourages states to consider the cultural significance of these items, promoting a greater understanding of the moral and ethical responsibilities involved in their ownership and exchange. It reflects an evolving legal perspective that seeks to reconcile the interests of states with cultural heritage and the necessity of preserving such treasures for future generations.

The concept of indirectly recognising the status of cultural property as *res extra commercium* is also present within European Union regulations. The principle of free movement of goods, which forms the cornerstone of trade within the EU, encompasses an exception found in article 36 of the Treaty on the Functioning of the European Union (ex article 30 of the Treaty establishing European Community).

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States

This article permits member states to deviate from the prohibitions established in article 28 and subsequent sections, specifically for the protection of national treasures possessing artistic, historic or archaeological value. This provision underscores the importance that the EU places on cultural heritage, allowing member states to implement measures that prioritise the preservation of their unique cultural assets. Each country is granted a degree of discretion in deciding how to structure the protection of cultural goods based on their specific legal, historical, and cultural contexts. Consequently, different member states may interpret and apply this principle in varying ways, leading to a diverse landscape of cultural heritage protection across the union. For instance, some countries may take a more stringent approach, enacting laws that heavily restrict the export and sale of significant cultural artefacts, while others may

adopt a more *laissez-faire* attitude, allowing greater freedom in trade for such items. This flexibility enables states to tailor their cultural heritage protection strategies to meet their national interests and historical legacies, ensuring that cultural property is recognised and preserved in a manner consistent with their values and priorities. This variability also highlights the ongoing challenge of balancing the ambitions of free trade with the necessary protections for cultural heritage. As cultural items often embody a community's identity and history, member states must navigate the complexities of international commerce while safeguarding elements that are irreplaceable and integral to their cultural fabric. Ultimately, the exception provided in article 36 illustrates the EU's commitment to recognising the intrinsic value of cultural goods and the necessity of protecting them within the broader context of the single market.<sup>284</sup> The same situation can be seen in the Directive 93/7/EEC and later Directive 2014/60 EU.

The convention that introduced the category of *res extra commercium* into international law in a clear and consistent manner is the UNESCO Convention on the Protection of the Underwater Cultural Heritage, established in 2001. Article 2, item 7 of this Convention explicitly prohibits the commercial exploitation of underwater cultural heritage. This prohibition is crucial, as it helps to safeguard the integrity and historical significance of submerged artefacts and sites. The significance of this principle cannot be overstated, it emphasises the understanding that underwater cultural heritage is not merely a resource to be exploited for profit but rather a vital component of our collective history that deserves protection and preservation. In addition to this prohibition, the convention prioritises the preservation of underwater heritage in situ, which means that it should be maintained in its original location rather than removed for study or display. This approach emphasises the importance of context and integrity in archaeological research and cultural heritage management that is closely connected to the prohibition of trade.<sup>285</sup>

The growing recognition of the category of *res extra commercium*, whether in a direct or indirect manner within international law, has a significant impact on states that have previously utilised this regime for specific types of cultural goods, as well as on those countries for which this concept is entirely novel. This evolution in legal thought suggests that states may need to reassess their existing frameworks and approaches to cultural heritage. In numerous legal systems, public collections, such as those found in museums, archives, and libraries, are

---

<sup>284</sup> W. Paczuski, *Handel Dzielami Sztuki...*, pp. 135-195.

<sup>285</sup> V. Cogliati-Bantz, C. Forrest, *Consistent: The Convention on the Protection of the Underwater Cultural Heritage and the United Nations Convention on the Law of the Sea*, Cambridge Journal of International and Comparative Law, no. 2, Cambridge University Press, Cambridge 2013, pp. 536-561.

often treated as inalienable assets. This status means they cannot be sold or transferred due to their classification as public property or because of a special categorisation that acknowledges their significance and value to society. The principle of inalienability ensures that culturally significant items remain within the public domain and accessible for education, research, and cultural enrichment. For those states that have historically approached certain cultural goods with commercial intent, the recognition of *res extra commercium* may prompt a reevaluation of their practices to align more closely with international standards that prioritise preservation over commodification. Additionally, for nations encountering the concept of *res extra commercium* for the first time, it offers an opportunity to develop and implement robust legal frameworks that protect their own cultural heritage. By adopting principles that prevent the exploitation of culturally significant items, these countries can foster a greater appreciation for their heritage and ensure that important artefacts and collections are preserved for future generations. Ultimately, the implications of integrating the category of *res extra commercium* into international law extend beyond just legal classifications, they encourage a collective commitment to safeguarding cultural heritage as an irreplaceable aspect of human history and identity.

#### **4.3. The dispute over the status of an archaeological monument as *res extra commercium***

Neither the Polish Act on the protection of cultural goods and museums from February 15, 1962, nor the current Act on the protection of monuments and preservation of monuments from July 23, 2003, explicitly grants the status of *res extra commercium* to specific categories of artefacts. The only exception made is for archaeological objects, which are designated *ex lege* as the property of the State Treasury. However, this designation raises important questions about whether it fundamentally excludes archaeological objects from commercial transactions. Some legal scholars argue that the role of the provincial conservation officer, who has the authority to administratively transfer found archaeological artefacts to a museum deposit or another organisational unit, complicates the ownership issue. When a museum director requests that an archaeological artefact be assigned to the museum's deposit, critics contend that this does not constitute a transfer of ownership under civil law. In their view, the conservation officer lacks the legal authority to transfer these archaeological items to other entities. Consequently, the ownership of museum items remains with the state, the entity that created them, rather than with the museums themselves.<sup>286</sup> As the conservation officer lack of power

---

<sup>286</sup> M. Drela, *Własność Zabytków* [Ownership of Monuments], C.H. BECK, Warszawa 2006, pp. 185-189.

to transfer ownership rights, it cannot be entirely dismissed that commercial transactions involving such artefacts may occur (as discussed in Chapter Two).

Furthermore, the potential for acquiring ownership through a court ruling in a civil procedure or administrative context adds another layer to this discussion. This suggests that the framework surrounding archaeological artefacts may allow for some degree of market activity, even if it is limited. Moreover, the argument that archaeological artefacts, due to their classification as State Treasury property, are exempt from acquisition through adverse possession or good faith acquisition under article 169 of the Polish Civil Code is also misguided (see Chapter Two). This perspective overlooks the complexities of property rights and the broader legal implications of ownership in public versus private contexts. While Polish law designates archaeological objects as state property, this does not definitively preclude their involvement in commercial activity or affect the potential for ownership claims under certain legal circumstances. As noted in previous chapters, state ownership of various public goods is not the only factor that justifies the exclusion from changing ownership rights and trade with such object.

The entity holding ownership rights does not determine the exclusion of the object in its possession from legal circulation, even for the sake of the public good. Merely owning an object does not give the owner (State Treasury) the absolute right to remove it from legal circulation or trade, without special provisions, even if they believe doing so serves the public good. Ownership rights do not inherently grant the power to dictate whether an item remains within the legal market or is withdrawn from use, as such decisions are governed by laws which are lacking here. This principle would ensure that ownership does not override broader legal and societal considerations, preventing individuals or entities from unilaterally restricting access to important goods or assets.

It is also important to highlight the issues related to the substantive definition of an archaeological monument, which consequently affects its classification as property of the State Treasury and its exclusion from commerce. The definition of an archaeological monument is often not sufficiently precise or comprehensive, leading to ambiguities in what is included under this category. For instance, differing interpretations may arise regarding which items qualify as archaeological artefacts based on their age, historical significance, context of discovery or importance to preservation. This lack of clarity can result in inconsistencies in how these monuments are treated legally and may lead to disputes over their ownership.

In the current legal and practical framework, it is not the *age* of an object but rather its *archaeological value* that determines whether it is classified as an archaeological monument.<sup>287</sup> This shift in criteria has led to an increasingly broad interpretation of what qualifies as an archaeological find. As a result, even relatively modern objects are sometimes treated as archaeological heritage, a trend that has been exacerbated by the growing popularity of activities such as metal detecting. This expansion of the definition has created a degree of legal and administrative confusion, effectively blurring the distinction between what should genuinely be considered an archaeological monument and what should not. By indiscriminately applying monument status to a wide range of objects, the legal framework risks maintaining a *fiction*, a system that does not effectively protect archaeological heritage but instead dilutes the concept by including artefacts of lesser significance. A precise understanding of what constitutes an archaeological monument is particularly important when determining whether an object should be considered property of the State Treasury. However, such classification should not automatically result in the object being designated as *res extra commercium*, meaning it cannot be legally traded or transferred. Doing so without careful evaluation could lead to excessive restrictions on private ownership and commerce, rather than a balanced approach to heritage protection.<sup>288</sup>

Although the legal framework governing archaeological monuments appears to follow a rational legislative model, there is little indication that lawmakers have deliberately intended to establish a formal *res extra commercium* status for such objects. If this had been the case, the legislature would have explicitly and unequivocally excluded them from legal circulation. Instead, the current legal approach creates ambiguity, as archaeological monuments are subject to various protections and ownership regulations without a clear, categorical prohibition on their trade or transfer. This lack of explicit exclusion suggests that lawmakers either did not fully consider the implications of restricting ownership rights or intentionally left room for flexibility in handling such objects.

The absence of a direct legislative declaration on this matter has led to uncertainty in legal practice. On one hand, certain interpretations of the law imply that archaeological monuments are, in effect, beyond commercial trade due to state ownership claims and heritage protection policies, and foremost the conservation doctrine. On the other hand, the lack of a clear designation as *res extra commercium* allows for differing legal interpretations, potential

---

<sup>287</sup> M. Trzciński, Definicja Zabytku Archeologicznego - Problemy i Kontrowersje Wokół Stosowania Prawa [The Definition of an Archaeological Monument – Issues and Controversies in the Application of the Law] [in:] K. Zeidler (ed.) *Prawo Ochrony Zabytków* [Cultural Heritage Law], Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Warszawa-Gdańsk 2014, p. 120.

<sup>288</sup> W. Szafranski, *Res Extra Commercium...*, p. 155.

loopholes, and inconsistencies in enforcement. If the legislator's true intent was to completely remove archaeological monuments from legal commerce, a direct and unambiguous legal provision should have been enacted.

#### **4.3.1. Permanent and temporary export of a monument abroad**

In addition to the challenges associated with the trade of archaeological artefacts, the export of such cultural items poses significant problems as well. When it comes to the permanent export of monuments or archaeological finds from Poland, the law mandates that individuals or institutions must secure a permit from the minister responsible for culture and the protection of national heritage. This stringent requirement essentially places major restrictions on the legal export of archaeological cultural goods. The rationale behind this regulation is to safeguard Poland's rich and diverse cultural heritage from being lost or diminished through unauthorised export. By requiring a permit, the government aims to ensure that any such export is conducted in a manner that respects the cultural significance of these items and preserves national history.

However, the complexity and bureaucratic nature of the permitting process often renders it nearly impossible for many archaeological artefacts to be legally transported out of the country. This regulation not only highlights the importance of protecting national heritage but also raises questions about the balance between preservation and the potential for research, exhibition, or trade that could involve international partnerships. While the intention is to prevent illicit trafficking and ensure that culturally significant items remain within Poland, it may inadvertently inhibit cultural exchange and collaboration that can enrich both local and global understanding of historical artefacts. Furthermore, as the global market for cultural goods evolves, it is essential for policymakers to find ways to facilitate legal and ethical exchanges that do not compromise the integrity of the nation's heritage. Enhanced dialogue among stakeholders, including cultural institutions, legal experts, and international bodies, could lead to more effective policies that encourage responsible stewardship of archaeological resources while allowing for scholarly access and cultural exchange.

According to article 51 of the 2003 Polish Act, archaeological heritage items that are at least 100 years old and form part of archaeological collections, or have been recovered through archaeological excavations or accidental discoveries may only be permanently exported after acquiring a specific one-time permit. This permit must be granted by the minister responsible for culture and the protection of national heritage. The legislation introduces a unique criterion, previously unused, which complicates the process of exportation even further. Unlike prior

regulations, which did not differentiate based on the significance or age of archaeological monuments, this provision has established a distinction in protection according to age. Theoretically, this means that artefacts younger than 100 years can be exported without any permissions, while those older than this threshold require governmental approval.

However, further examination of Point 4 within the same article reveals restrictions that significantly complicate the export process. This provision explicitly disallows the permanent export of certain categories of items: these include monuments listed in the official register of monuments, those included in the List of Heritage Treasures, objects housed in public collections owned by the state, and items that are catalogued in museum inventories or part of national library resources. At first glance, it may appear that these criteria only represent specific exceptions to the general rule regarding exports. However, when it comes to archaeological monuments, the implications are far more profound. The restrictions effectively mean that the vast majority of significant archaeological finds fall under the prohibitive categories, making any permanent export exceedingly challenging, if not impossible, for all practical purposes. This regulatory framework reflects a broader commitment to preserving national heritage, ensuring that valuable cultural artefacts remain within the country for research, education, and public access. The heightened scrutiny surrounding the export of older archaeological items underscores the societal value placed on these treasures and the importance of protecting cultural identity and historical continuity. Nonetheless, the complexity of the regulations also raises questions about the balance between preservation and the potential for legitimate academic research or international cultural exchange, highlighting the need for ongoing dialogue about how best to manage and protect cultural heritage in a globalised world.

The reality of archaeological monuments is that they are typically registered either as immovable assets in the official register of monuments or classified as movable items within public collections and museums. In most cases, these artefacts are state property, with only a few exceptions. Among these exceptions are the previously discussed possibilities, such as the transfer of ownership rights to a museum or another institution, the inheritance of artefacts that belonged to a testator prior to the enactment of the law, and the purchase of items abroad followed by their importation into Poland, among others. As a result, there is very limited opportunity for the permanent export of Polish archaeological heritage. Nevertheless, the importation of archaeological cultural goods into Poland is permitted. This leaves only the option of temporary export, which allows for the short-term movement of these cultural items beyond Polish borders without permitting any permanent exchanges between countries.

In essence, Polish archaeological heritage is bound to remain within the country's borders, with an emphasis on returning artefacts to their original location. Consequently, the physical materials that represent and narrate the local culture cannot be exchanged, disseminated, or displayed internationally without restrictions. These stringent regulations are particularly focused on archaeological heritage, limiting the possibilities for broader cultural engagement and exchange. While there are valid reasons for regulating the import and export of artworks, such as preventing crime and safeguarding national cultural heritage, these regulations may not effectively deter illicit activities. Instead, they may inadvertently hinder legitimate scholarly research and international collaboration. The challenge lies in finding a balance between protecting domestic cultural assets and allowing for responsible global exchange and understanding of those assets. By re-evaluating the current limitations, there may be opportunities to foster greater cultural diplomacy that respects the origins of archaeological treasures while facilitating their global recognition and study.

#### **4.3.2. Trafficking of archaeological heritage and illicit trade**

The trafficking of archaeological heritage constitutes a significant and escalating problem in the international arena, intertwining issues of cultural preservation, criminal activity, and ethical responsibility. This illicit trade involves the illegal excavation, removal, and sale of artefacts and antiquities that hold substantial historical, cultural, and educational value. Cultural heritage trafficking not only threatens the integrity and context of archaeological sites, but also undermines the cultural identities of communities and nations from which these artefacts originate. The emergence of powerful smuggling networks has further exacerbated the situation. These networks often operate transnationally, utilising established routes for drug and arms trafficking to move illicit artefacts across borders. Such fluidity complicates law enforcement efforts and makes it difficult to track the movement of stolen cultural heritage. The transition to online marketplaces has also introduced new challenges, as artefacts are increasingly bought and sold through e-commerce platforms and social media, making it more challenging to scrutinise transactions and verify provenance.

Additionally, the looting of archaeological sites often leads to the irreparable loss of historical context. When artefacts are removed from their original locations without proper scientific excavation, the valuable information they provide about ancient cultures, societies, and histories is lost. This destruction not only diminishes the archaeological record but also enriches the illicit market while robbing humanity of its shared heritage. Efforts to combat the

trafficking of archaeological heritage are gaining traction at both national and international levels. Organisations such as UNESCO and Interpol have made strides in creating legal frameworks and cooperative agreements to address this crisis.<sup>289</sup> The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property is a foundational treaty that aims to promote the return of stolen cultural property and the prevention of illegal trafficking.

At the national level, countries are implementing stricter regulations regarding the sale and export of antiquities, establishing clear protocols to ensure legality and ethical standards in the art market. Moreover, public awareness campaigns are being launched to educate potential buyers about the importance of provenance and the risks associated with purchasing looted artefacts.<sup>290</sup> In conclusion, the trafficking of archaeological heritage presents significant challenges that require a multifaceted approach encompassing legal, ethical, and educational components. By fostering international cooperation, strengthening legal frameworks, and raising public awareness about the value of cultural heritage, it is possible to mitigate the impact of this illegal trade and protect our shared human history for future generations.

Since the decline of ancient civilisations, the inhabitants of archaeologically rich regions such as Egypt, Greece, Turkey, and Italy have long recognised the existence of valuable treasures buried beneath their lands. The extraction of materials from these historic sites has been a continuous practice since the Middle Ages, with local populations mining stone, metal, and various other resources. A notable example of this repurposing can be seen in the medieval churches, which were often constructed from the remnants of dismantled Greek and Roman temples, utilising ancient stones for new religious edifices. Long before European explorers arrived in these regions, the tombs in the Valley of the Kings had already been subjected to extensive looting. By the 18th century, as European travellers began to explore the Eastern Mediterranean, they encountered communities that were actively dismantling their archaeological heritage. These travellers witnessed local individuals excavating and selling ancient artefacts, frequently demonstrating a disregard for their historical importance. In their pursuit of knowledge and understanding, these early European collectors began acquiring these artefacts, inadvertently laying the foundational stones for what would eventually evolve into the discipline of archaeology. This historical backdrop highlights the complex relationship

---

<sup>289</sup> See: UN, Launch of the Co- Action Against Trafficking in Cultural Heritage (CATCH) in the Mediterranean, <https://www.unodc.org/unodc/en/frontpage/2023/June/unodc-together-with-unesco-and-interpol-launch-the-catch-pilot-initiative-against-trafficking-in-cultural-heritage-in-the-mediterranean.html> [available on: 14.03.2025].

<sup>290</sup> See: UNESCO, Recent awareness - raising initiatives by State Parties to the 1970 Convention, <https://www.unesco.org/en/fight-illicit-trafficking/awareness-raising-material> [available on 14.03.2025].

between local populations and their archaeological heritage, illustrating how the ongoing extraction and commercialisation of cultural artefacts have shaped perceptions of history and the development of archaeological practices over time.

During the 19th and 20th centuries, this burgeoning interest led to the formation of collections that would eventually populate not only Western museums but also institutions in source countries. Many of the exhibits in museums located in Athens, Cairo, and Rome consist of items acquired from private collections that had not undergone the scientific excavation methods recognised today. While these early collections may not have adhered to modern archaeological standards, they played a pivotal role in safeguarding artefacts for future generations. Indeed, the actions of these collectors and their contributions to museums were instrumental in preserving valuable objects for study, allowing historians and archaeologists to appreciate and learn from them long after their original contexts had been compromised. As a result, the evolution of archaeological practices and the challenges surrounding the ethical collection of artefacts continue to unfold, emphasising the need for improved methods of heritage preservation and the importance of respecting the narratives of the cultures that produced these ancient relics. Today, the conversation around cultural heritage collection remains a vibrant and necessary discourse, urging a balance between appreciation and ethical responsibility in the stewardship of history.<sup>291</sup>

The use of cultural properties as a source of income for non-state armed groups became known in the early 1980s. Various factions, including drug trafficking syndicates and insurgent militia in Latin America, along with warlords operating in Africa and Afghanistan, engaged in the exchange of cultural artefacts for firearms and to facilitate money laundering activities. The widespread instability across different regions, marked by civil conflicts and intrastate wars in North Africa, South America, Southeast Asia, and the Middle East during the subsequent decades, fuelled the growth of this illicit market. This environment allowed regional smuggling networks to emerge and gain strength, capitalising not only on the trade of cultural heritage items but also on arms, narcotics, human trafficking, and other illegal contraband. In particular, networks that developed in the Middle East, North Africa, and Southeast Asia became increasingly proficient at exploiting the value of cultural assets, leveraging their status in the market to support a multifaceted criminal enterprise. As these networks expanded, they blurred the lines between cultural heritage and other illegal activities, highlighting the pervasive nature of this issue in global trade.

---

<sup>291</sup> R. Hixenbaugh, *The Current State of the Antiquities Trade: An Art Dealer's Perspective*, International Journal of Cultural Property, vol. 26, Cambridge University Press, Cambridge 2019, p. 230.

At the dawn of the 21st century, particularly after the year 2003 in Iraq, there was a significant surge in the availability of antiquities, encompassing both stolen items and those obtained through unauthorised excavations. This increase was largely a result of widespread looting that occurred during and after significant conflicts in the region. As the decade progressed, the emergence of the Islamic State of Iraq and the Levant (ISIL), known colloquially as Da'esh, alongside the ongoing activities of its affiliates throughout the Middle East and Africa, intensified the situation.

Since 2017, the Analytical and Sanctions Monitoring Team of the United Nations Security Council (UNSC) has been consistently issuing biannual reports detailing the terrorist and criminal endeavours of Al-Qaeda, ISIL (Da'esh), and their associated individuals and organisations. These reports contain a dedicated focus on cultural heritage, specifically emphasising the connections between smuggling operations and terrorism financing. In addition to Al-Qaeda and ISIL, other organisations, including Lebanon's Hezbollah and various rebel and terrorist groups operating in regions such as Cambodia, Colombia, Libya, Mali, Niger, and Somalia, have similarly amassed profits through the illicit trade of cultural artefacts. Despite the wealth of intelligence gathered about how these goods are used to finance terrorism, legal prosecution of these crimes has proven increasingly challenging. This difficulty arises from the lack of comprehensive data needed to accurately evaluate the prevalence, scale, and movement of these illegal transactions and their links to terrorist activities.<sup>292</sup>

In the context of the widespread destruction of cultural heritage sites and artefacts in the Middle East and North Africa (MENA) region following the Arab Spring, a persistent narrative has emerged linking the antiquities trade to terrorist financing. This association, however, is not backed by concrete evidence, despite extensive law enforcement efforts aimed at uncovering illegal antiquities from this region, no credible instances have surfaced showing that looted items have entered the market. Nonetheless, this unverified claim has gained significant traction in recent years. Numerous articles have been published connecting the trade of ancient artefacts to groups such as the Islamic State of Iraq and Syria (ISIS). Yet, remarkably, till 2016, there has not been a single verified case of an authentic ancient artefact with Syrian origins being intercepted at entry points in the United States or Europe, nor has any such piece been identified among the lots available for sale at auctions or offered by ancient art dealers.<sup>293</sup> Nonetheless, a

---

<sup>292</sup> United Nations Interregional Crime and Justice Research Institute, *Cultural Heritage Smuggling and the Nexus with Terrorism*, UNESCO 2024, pp. 8-9.

<sup>293</sup> T. Van Lit, *Cultural Property, War Crimes and Islamic State: Destruction, Plunder and Trafficking of Cultural Property and Heritage by Islamic State in Syria and Iraq - A War Crimes Perspective*, Dutch National Police, Central Investigation Unit, War Crimes Unit, Holand 2016, p. 49.

substantial number of scholars emphasize that empirical data regarding the involvement of organised crime in terrorist financing through cultural heritage crimes remains limited. In many instances, such information tends to be site-specific and anecdotal rather than comprehensive. When it comes to examining the connections between terrorist financing and cultural heritage crimes, it has been observed that much of the so-called "evidence" is characterised as relatively weak, primarily drawn from sensationalised media reports, interviews, and grey literature, including UN Security Council resolutions and INTERPOL reports. These sources often explicitly acknowledge the dearth of reliable data.

Moreover, while there is considerable evidence that various terrorist organisations systematically and deliberately destroy cultural heritage, including archaeological sites, the overall scale of looting, trafficking, and the financial resources generated from these unlawful activities remain ambiguous. The specific nature of terrorist groups' involvement in these enterprises is also not well-defined. For instance, numerous authors contend that ISIS/Da'esh did not consistently or comprehensively exploit the potential revenue from looting and trafficking in antiquities and cultural artifacts. Moreover, even if it were demonstrated that these activities occurred, there is insufficient evidence to generalise the situation regarding ISIS/Da'esh and conclude that such actions significantly contribute to the financial support of terrorist and armed non-state actors or to the prolongation of armed conflicts.<sup>294</sup>

Contrary to the prevalent media narrative suggesting that unscrupulous dealers and collectors are eagerly pursuing looted Near Eastern art, the reality is quite different. The extensive negative press surrounding the issue has actually discouraged many potential collectors from engaging with this market. Additionally, this trend is compounded by a broader critique of the antiquities trade, rooted in cultural imperialism and the understanding that many Western museums exhibit collections acquired under questionable legal circumstances from Indigenous peoples. As a result, the antiquities market today has become increasingly limited and caters to a dwindling group of collectors. The combination of heightened scrutiny, ethical concerns regarding the provenance of artefacts, and a general decline in public interest has led

---

<sup>294</sup> P.F. Cabana, *Exploring Overlaps of Cultural Property Crime with Organised Crime in EU Policy Documents*, European Journal on Criminal Policy and Research, Springer, Chaim 2024.

See also: M. Balcells, Art Crime as White-Collar Crime [in:] J.D. Kila, M. Balcells (eds.) *Cultural Property Crime. An Overview and Analysis of Contemporary Perspectives and Trends*, Brill, Leiden 2014, pp. 96-110; T. Bull, Methods of Profit. Rewards, Ransoms and Buy-backs: Knowing the Rules of Engagement [in:] A. Tompkins (ed.), *Art Crime and its Prevention*, Lund Humphries, Lund 2016; M.R.J Dehouck, *Balancing Markets, Morals and Law: The Fight to Regulate. Illicit Trafficking in Cultural Goods and the EU Regulations on the Import of Cultural Goods*, Art Antiquity and Law, vol.11, tom. 24, Institute of Art and Law, London 2019, p. 1-38; R. Pryor, *Report Identifies Art Market as a Target for Organised Crime*, The Art Newspaper, December 20 2023, <https://www.theartnewspaper.com/2023/04/07/art-market-organised-crime-target-report> [available on: 16.11.2025].

to a significant contraction of this once-thriving sector. In this landscape, awareness of the complexities surrounding cultural heritage and the need for responsible stewardship is more important than ever, prompting a critical reevaluation of how we engage with and protect our shared past.<sup>295</sup>

A pertinent case study for examining the dynamics of the illegal antiquities trade is represented by the corpus of Apulian vases. Recently, this comprehensive collection has been meticulously surveyed by archaeologist Rick Elia from Boston University. Apulian vases serve as an invaluable metric for analysing the illicit trade in antiquities, primarily due to their exclusive production within a relatively confined region in Italy, specifically Apulia, known as Puglia today. These artefacts were not commercially distributed beyond this geographical area, which allows archaeologists to confidently assert that any known objects associated with this corpus have originated from archaeological contexts within that locale.

The extensive scholarly research conducted on these vases has resulted in readily accessible and thorough catalogues, facilitating further study. It has been established that a total of 13,718 Apulian vases are recognised by researchers. Alarmingly, only 753 of these (approximately 5.5%) were excavated through legal, professional archaeological practices. A closer examination of 250 Sotheby's auction sales conducted between 1960 and 1997 revealed that around 6,000 South Italian vases were sold, including 1,881 Apulian vases. Notably, none of these vases came with a published provenance. This absence of documented history strongly suggests that every Apulian vase sold at Sotheby's during this 37-year span could have been illegally excavated or illicitly exported from Italy. Elia's analysis further involved investigating the outcomes of legal excavations, uncovering a striking statistic: on average, one vase was found for every nine tombs excavated. This correlation implies that the 12,965 unprovenanced vases (13,718 total minus 753 legally excavated) could likely be the result of the looting of over 100,000 tombs. Combating the widespread destruction of archaeological sites will hinge on establishing full transparency within the antiquities trade, enabling the construction of clear chains of ownership. This transparency is vital in distinguishing between licit and illicit materials, emphasising that these principles are equally critical in the trades related to ethnographic and paleontological materials. This case study exemplifies how the legal framework surrounding antiquities can sometimes obscure the reality that even legally marketed items may actually originate from illegal activities. Such findings illuminate the

---

<sup>295</sup> R. Hixenbaugh, *The Current State of the Antiquities Trade: An Art Dealer's Perspective*, International Journal of Cultural Property, vol. 26, Cambridge University Press, Cambridge 2019, pp. 227-228.

necessity of rigorous provenance checks and greater accountability in the antiquities trade to safeguard cultural heritage effectively.<sup>296</sup>

At present, there exists no comprehensive global analytical database that collates reports of theft, investigations, or seizures pertaining to archaeological heritage. The closest equivalent is Interpol's Stolen Works of Art database,<sup>297</sup> which is specifically designed to enable law enforcement and cultural heritage agencies to verify whether a particular artefact has been reported stolen in another jurisdiction. This operational framework mirrors the functionality of Interpol's databases for stolen vehicles, however, its primary focus is not on analytical assessment of trends or statistics, but rather on theft detection and recovery efforts.<sup>298</sup> In the context of archaeological heritage, the absence of a dedicated global database is particularly concerning. Archaeological artefacts, often irreplaceable representatives of a culture's history and identity, are frequently subjected to illicit trade and theft. Without a centralised, analytical resource that tracks these incidents, it becomes increasingly challenging for researchers, policymakers, and law enforcement agents to understand the scale and dynamics of cultural property crime that is often undermined and exaggerated.

Moreover, the establishment of a robust global database tailored specifically to archaeological heritage could usher in significant advancements in heritage protection. Such a repository would not only facilitate better tracking of stolen artefacts but also enable researchers and conservationists to study the effects of looting on archaeological contexts worldwide. Enhanced data collection and analysis will empower stakeholders, from governments to local communities, to address the challenges posed by cultural property crime more effectively and promote the sustainable management of archaeological artefacts.

Nevertheless, there exist substantial national general databases that offer critical insights into the dynamics of the cultural property market. The oldest and most extensive database of trafficked cultural property in the world is maintained by the specialised unit of the Italian Carabinieri known as the Command for the Protection of Cultural Heritage (*Comando Carabinieri Tutela Patrimonio Culturale, or Carabinieri TPC*), which has been operational since 1969. The Leonardo database, established in 1980, specifically focuses on "illegally removed cultural artefacts," and it has grown to encompass nearly 1.3 million stolen items. Remarkably, over two-thirds of the entries in this database include photographic

---

<sup>296</sup> N. Brodie, J. Dole, P. Watson, *Stealing History: The Illicit Trade in Cultural Material*, The McDonald Institute for Archaeological Research, Cambridge 2000, pp. 26-27.

<sup>297</sup> See: <https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>.

<sup>298</sup> Interpol, Assessing crimes against cultural property, Survey of Interpol Member Countries, Interpol, Lyon 2021.

documentation, which significantly aids in ongoing investigations. In addition to this, the TPC has registered information on more than eight million objects within its larger collection. If, during the investigative process, the TPC identifies evidence that a particular item was illegally excavated or has been confirmed as a fake or forgery, this pertinent information is updated within the database entry. The comprehensive nature of the Leonardo database not only serves law enforcement and cultural heritage professionals but also actively contributes to scholarly research and public awareness regarding the illicit antiquities trade.<sup>299</sup>

The data underscore a notable limitation of databases that focus exclusively on reported stolen artefacts. There is a clear distinction between the characteristics of items that are reported as stolen and those that the Carabinieri successfully recover. According to the Leonardo database, roughly 92 percent of annually reported stolen items come from private individuals or museums. This high percentage likely reflects a tendency for owners of high-value objects to be more proactive in reporting thefts. From 2015 to 2021, the Carabinieri identified 1,748 recovered items as forgeries or fakes. Notably, around 60 percent of the items recovered each year were determined to have been illegally excavated, whether within Italy or internationally. This information suggests that illegal excavation serves as a major contributor to the illicit artefact market, however, it may also indicate the specific areas of focus in the Carabinieri's investigative efforts.<sup>300</sup>

The market for ancient artefacts and artworks is perhaps the most criticised, closely monitored, and stringently regulated segment of the broader art and antiques industry. Despite its infamous reputation, it remains one of the least financially significant sectors within the art market. Historical data shows that sales of antiquities whether through public auctions, gallery transactions, art fairs, or online platforms have consistently failed to surpass \$300 million in any given year.<sup>301</sup> In stark contrast, the auction records set in March 2018 by notable houses such as Christie's and Sotheby's for impressionist and modern art collectively reached an

---

<sup>299</sup> False trades: uncovering the scale and scope of trafficking in cultural property, Knowledge gaps and future directions for research, Research and Trend Analysis Branch, United Nations Office on Drugs and Crime (UNODC), 2022, p. 17.

<sup>300</sup> False trades: uncovering the scale and scope of trafficking in cultural property, Knowledge gaps and future directions for research, Research and Trend Analysis Branch, United Nations Office on Drugs and Crime (UNODC), 2022, pp. 19- 21.

<sup>301</sup> The estimated value of the legal global trade in antiquities, as reported by the International Association of Dealers in Ancient Art (IADAA), is based on a comprehensive survey of its members, an analysis of auction results from 2013, and an evaluation of sales made by dealers operating physical locations during the same year. This figure does not account for minor online transactions or one-time private sales. Initially, the total was reported to be €130 million; however, the IADAA revised this estimate to €200 million to encompass all potential scenarios. This information comes from a personal communication between Randall Hixenbaugh with Vincent Geerling, the chairman of IADAA, in September 2014, See: R. Hixenbaugh, *The Current State of the Antiquities Trade: An Art Dealer's Perspective*, International Journal of Cultural Property, vol. 26, Cambridge University Press, Cambridge 2019, p. 227, footnote 1.

astonishing £347 million, translating to over \$400 million in just a single week of sales.<sup>302</sup> When compared to other avenues of the art market including contemporary art, modern pieces, collectible automobiles, jewellery, and various antiques and memorabilia the antiquities trade represents a fraction of the overall economic activity. Despite its relatively minor financial scale, there remains a strong sentiment among many critics that the entire business of handling antiquities is unethical and potentially illegal. This perspective is amplified by a dedicated group of detractors who argue vehemently against the collecting of these items, often citing concerns over provenance, looting, and the impact on source communities. As discussions surrounding the ethics of the antiquities trade continue to evolve, it becomes increasingly clear that the intersecting issues of cultural preservation, legal ownership, and moral responsibility must be addressed. The reputation of this market is further complicated by ongoing debates about the role of collectors and museums in the stewardship of these historical objects, as well as calls for greater transparency and accountability in the acquisition processes. In this context, the antiquities market finds itself at a crossroads, where financial insignificance and ethical dilemmas must be navigated to ensure that cultural heritage is preserved and respected for future generations.

What is indisputable is that the scale and intensity of looting have increased significantly with the advent of online marketplaces. The shift in demand has evolved from being primarily focused on wealthy collectors seeking rare and high-priced artefacts to a more widespread interest that includes middle-class consumers. These buyers, who may simply be perusing the Internet for a unique anniversary gift, often stumble upon a figurine or decorative piece without any awareness of its potentially illicit origins. This democratisation of the market poses serious challenges for heritage protection. The convenience of online shopping has made it easier for dubious vendors to market cultural artefacts to unsuspecting consumers, thereby expanding the buyer base beyond traditional elite collectors. Many online buyers may believe they are purchasing authentic and legally sourced items, unaware of the fact that these pieces could have been looted or illegally excavated. This trend not only fuels the demand for stolen artefacts but also creates a greater disconnect between the consumers and the implications of their purchases. As more people enter the market, the potential for illicit trafficking increases, leading to a higher risk of cultural heritage being lost forever in the shadows of commercial transactions.<sup>303</sup>

---

<sup>302</sup> M. Maneker, *The Middle Market Paused: London Contemporary Sales Analysis*, Art Market Monitor, 28 March 2019, <https://www.artmarketmonitor.com/2019/03/28/the-middle-market-paused-london-contemporary-sales-analysis/> [available on: 14.03.2025].

<sup>303</sup> M. Lostal, *Islamic State and the Illicit Trafficking of Cultural Property* [in:] N.B. Jørgensen, *The International Criminal Responsibility of War's Funders and Profiteers*, Cambridge University Press, Cambridge 2020 pp. 138-139.

## Minor conclusions 4

Attempting to provide the summary, ownership alone does not and should not grant the right to remove an object from legal circulation, even under the pretence of serving the public good. This statement should be particularly significant within the framework of *res extra commercium*, a legal concept designating certain objects as outside commercial trade due to their public importance. While some categories of property, such as archaeological heritage, may warrant special protection, the mere fact of ownership does not automatically place an item beyond commerce unless explicitly defined by law. In the realm of archaeological heritage, this distinction becomes crucial. Cultural artefacts and historical objects may be subject to state ownership claims, preservation laws, or export restrictions, but these limitations must arise from a clear legal mandate rather than the discretion of private owners or institutions.

A significant portion of cultural property, encompassing both movable and immovable assets, is under state ownership. However, a substantial amount is also held by various entities, including private individuals, trusts, non-profit associations, foundations, religious institutions, non-governmental organisations, and even commercial enterprises.<sup>304</sup> Recently, there has been a notable trend toward the privatisation of cultural heritage, raising important questions about the implications of such changes. While the privatisation movement may enhance the utility and management of certain cultural assets, it also introduces complexities regarding accessibility, preservation, and the cultural significance of these properties.

One of the primary concerns is determining the best methods to integrate privatisation concepts within the archaeological heritage sector. For instance, the shift toward privatisation must be balanced with the ethical considerations of protecting archaeological sites and artefacts that are vital to a nation's history and identity. It's crucial to explore how private ownership can coexist with public responsibility, ensuring that cultural heritage remains accessible to all and is preserved for future generations. In doing so, it will be important to establish clear policies that define ownership rights while also implementing stringent protections against illicit trade, destruction, and mismanagement. Engaging various stakeholders, including the public, local communities, and experts in archaeology and cultural heritage, can facilitate the development of frameworks that promote the sustainable management of cultural heritage in a privatised landscape. Ultimately, integrating these ideas into the archaeological heritage sector requires

---

<sup>304</sup> Examples of different ownership of heritage in Great Britain include the United Kingdom National Trust as a private institutional ownership; private ownership trusts looking after redundant churches as historic buildings: the Churches Conservation Trust (the United Kingdom), the Redundant Churches Trust (Scotland), and Förderkreis Alte Kirchen; English Heritage as an NGO.

careful consideration to safeguard the integrity and significance of cultural treasures while embracing new approaches to ownership and stewardship.<sup>305</sup>

The restrictions imposed on the art and antiquities market, specifically concerning archaeological findings, along with the constraints on permanent export, typically allowing only for temporary transfers, have contributed to a surge in activity within the black market for cultural artefacts. The inability to legally own archaeological heritage, particularly movable items, creates a compelling urge among collectors and traffickers to seek alternative, illicit means of acquiring these items. As a result, the black market for cultural goods has become one of the most profitable illegal industries, rivalling the trade in drugs, weapons, and counterfeit products. This underground trade operates outside the realms of legality and regulation, raising significant concerns regarding not only cultural preservation but also facilitating other criminal activities, including money laundering. The lucrative nature of this black market presents a dual challenge. Firstly, it jeopardises the integrity and availability of cultural heritage, as artefacts are often removed from their rightful contexts, depriving them of their historical significance. Secondly, the intertwining of cultural trafficking with money laundering operations amplifies the complexity of addressing these issues, as illicit funds generated from cultural sales can easily blend with legitimate financial systems.

Additionally, it is essential to recognise the challenges posed by the destruction and looting of cultural heritage sites, particularly archaeological sites, as well as the illegal excavation of cultural artefacts. Wartime conditions present a particularly acute threat to cultural heritage, with stark examples evident in Iraq, Afghanistan, and Syria.<sup>306</sup> Throughout history, unresolved issues have emerged from previous conflicts, such as art and monuments looted by the Nazis, war trophies acquired by Soviet Army, and cultural property pillaged during colonial occupations. The existence of counterfeit documentation regarding the provenance of these items, alongside murky ownership histories and falsified administrative papers, complicates the ability to investigate artefacts lacking a verified provenance. These pervasive issues significantly exacerbate the difficulty of protecting archaeological heritage. As a result, the preservation of cultural sites and items becomes an even more daunting challenge,

---

<sup>305</sup> See: A. Gerecka-Żołyńska, *Bezpieczeństwo Rynku Sztuki w Świetle Obowiązki Zasady Legalizmu* [The Security of the Art Market in the Light of the Principle of Legalism] [in:] A. Jagielska-Burduk, W. Szafranski (eds.) *Kultura w Praktyce. Zagadnienia Prawne. Tom 2: Wokół Problematyki Prawnej Zabytków i Rynku Sztuki* [Culture in Practice. Legal Issues. Volume 2: Legal Issues of Monuments and the Art Market], Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauki, Poznań 2013.

<sup>306</sup> UNESCO, *Call by UNESCO and Partners to Fight Against Illicit Trafficking of Afghan Cultural Property*, 26 October 2022, <https://www.unesco.org/en/articles/call-unesco-and-partners-fight-against-illicit-trafficking-afghan-cultural-property>; or UNESCO, *UNESCO Trains Professionals to Fight Against Illicit Trafficking of Ukrainian Cultural Property*, 20 January 2023, <https://articles.unesco.org/en/articles/unesco-trains-professionals-fight-against-illicit-trafficking-ukrainian-cultural-property> [both accessed: 17.03.2025].

necessitating urgent attention and comprehensive strategies to safeguard our shared human history and prevent further loss.

The challenges outlined above highlight the urgent need to reassess and potentially reform national laws governing archaeological heritage. This prompts a fundamental question: should archaeological heritage continue to be regarded as *res extra commercium*, despite arguments, thereby restricting its ownership and trade to protect it from commodification? Alternatively, could the regulatory framework surrounding cultural heritage protection benefit from a more liberal approach that encourages responsible engagement with these assets? Considering archaeological heritage as *res extra commercium* has traditionally been a protective measure, aiming to safeguard significant artefacts and sites from exploitation and ensure they remain in the public domain. This perspective reflects the understanding that such heritage is not merely an economic asset but a vital component of cultural identity and historical record. However, the implementation of overly stringent regulations can lead to unintended consequences, such as driving the trade underground or hindering legitimate scholarly research and public access to culture.

The common good is sometimes set against individual interests, as the needs of society take precedence over those of the individual. Such limitations are not only present in heritage protection laws but also in other legal regulations that restrict individual freedoms in the interest of social order and public safety. From a normative perspective, the concept of the common good aims to establish a proper and well-balanced relationship between the individual and society.<sup>307</sup> The key question is whether the institution of *res extra commercium*, and the resulting exclusion of certain objects from legal circulation, truly contributes to this balance.

Concluding, a more progressive legislative strategy could involve establishing clear guidelines that balance preservation with responsible utilisation. This might include creating frameworks that allow for the ethical trade and temporary exchange of archaeological items, ensuring that such activities are conducted transparently and with proper provenance. Furthermore, engaging local communities and stakeholders in heritage management decisions could foster a sense of ownership and stewardship, enhancing both cultural appreciation and sustainable practices. Ultimately, a nuanced approach is necessary, one that recognises the importance of protecting archaeological heritage while also considering the potential benefits of a more adaptive and inclusive set of laws. This would require ongoing dialogue among policymakers, cultural institutions, private owners and collectors, and the public to develop

---

<sup>307</sup> E. Kowalska, *Własność Zabytku a Dyskrecjonalna Władza Konserwatorska* [Ownership of a Monument and the Discretionary Power of Conservation Authorities], Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2018, p. 76.

solutions that respect the past and acknowledge the evolving landscape of cultural heritage in a globalised world.



## Chapter 5

### Discretionary authority of conservators in the protection of archaeological monuments

#### Introduction

The protection of archaeological monuments necessitates a careful balance between heritage preservation, property rights, and the public interest. Within this framework, conservators are vested with discretionary authority, enabling them to interpret and apply legal provisions on a case-by-case basis. Such discretion is essential for the effective safeguarding of historical artefacts and sites, but also raises concerns regarding the limits of their power, legal certainty, and potential conflicts with private ownership rights that would potentially lead to legal proceedings. Conservators possess the authority to classify objects as archaeological monuments, determine the necessity of protective measures, and regulate activities that may affect cultural heritage. Their powers extend to issuing permits for excavation, restoration, and research, as well as imposing conservation obligations on private owners.

The exercise of discretionary authority in this domain is not without controversy. The broad scope of conservators' decision-making power can result in inconsistent applications of the law, particularly where legal definitions lack precision. The determination of whether an object qualifies as an archaeological monument may depend on subjective assessments rather than objective legal criteria, leading to legal uncertainty for property owners, collectors, and researchers. Additionally, restrictions imposed in the interest of heritage protection may encroach upon private property rights, raising questions regarding the proportionality and fairness of such measures. The discovery of archaeological objects on private land, for instance, may subject owners to extensive regulatory constraints, including limitations on possession, transfer, and use, without necessarily providing clear mechanisms for compensation or redress.

This chapter explores the tension between public and private interests in the context of heritage protection that is further compounded by the absence of clear legal guidelines defining the boundaries of conservators' authority. The management of archaeological heritage presents numerous challenges, many of which stem from the growing volume of discoveries, regulatory burdens, and financial constraints. While the protection of cultural heritage is a fundamental objective, practical difficulties often arise in balancing conservation efforts with economic realities and private property rights.

This chapter begins by examining one of the primary concerns, which is the sheer volume of archaeological objects being unearthed through systematic excavations, rescue

archaeology, and amateur discoveries. The increasing number of finds, many of which consist of mass-produced artefacts with limited historical value, places a significant strain on museums and conservation institutions. The lack of adequate storage space has also become a pressing issue, as institutions are often legally required to preserve all discovered objects, even when their academic or cultural significance is minimal. This results in overcrowded repositories filled with items that may never be studied, exhibited, or utilised in any meaningful way. The chapter also explores the compounding issue of the limited social utility of many archaeological monuments and artefacts. While certain discoveries hold undeniable historical and cultural value, a vast number of objects remain largely irrelevant to public engagement or education. The indiscriminate classification of objects as archaeological heritage, regardless of their significance, contributes to an inefficient system in which resources are allocated to the protection of items that serve no practical function. The rigid application of heritage laws often prevents the responsible circulation or repurposing of such objects, further exacerbating storage and financial challenges. Finally, financial constraints pose another serious obstacle to the effective preservation of archaeological heritage. The costs associated with the conservation, restoration, and maintenance of artefacts and sites are substantial, yet public funding for these efforts is frequently insufficient. Many institutions responsible for heritage protection operate under budgetary limitations that prevent them from adequately caring for the objects under their stewardship. Without proper funding, the condition of many archaeological sites deteriorates, and significant finds remain untreated or inaccessible to the public.

Regulatory burdens on private investors further complicate the situation. Developers and property owners are often subjected to extensive legal obligations when archaeological discoveries are made on their land. Public officials, particularly conservators, impose strict requirements that can delay or even halt construction projects, leading to financial losses and legal disputes. The imposition of mandatory excavations, conservation work, and compliance with heritage protection regulations places a disproportionate burden on private individuals and businesses, who are often required to fund these efforts without sufficient state support. In many cases, these obligations are imposed without consideration of the economic impact on the affected parties, creating a system in which heritage protection is enforced at the expense of private investment and development.

By examining these dynamics, this chapter aims to provide a deeper understanding of how the discretionary authority of conservators is exercised in a manner that upholds both public interest and legal certainty. The establishment of clear statutory definitions, standardised procedural safeguards, and transparent decision-making criteria would enhance confidence in

the regulatory framework governing archaeological heritage. The legitimate aim of heritage protection must not result in arbitrary restrictions on ownership and commerce, but should instead reflect a well-balanced and proportionate legal approach that respects both conservation imperatives and the rights of individuals.

### **5.1. The discretion of the authorities**

Presently, there is an effort to shift, to varying degrees, the focus from the intrinsic value of heritage to the needs of society. Historically, heritage has been understood as an element of the past that necessitates special and separate consideration. The process of creating, interpreting, and protecting heritage is inextricably linked to societal awareness of the value of monuments and involves social dialogue. Actions taken in this regard should primarily target ordinary citizens, thereby enhancing their sense of community and promoting the concept of civil society, rather than being directed solely at the conservators or municipal authorities. The key to successful heritage protection lies in the consensus and collaboration of local communities. Some suggest that now is a stage of engaging in public discourse regarding the actual role that monuments should play in contemporary life.<sup>308</sup>

This evolving discourse reflects a broader understanding that heritage is not merely an artefact of history, but rather a living component of community identity and societal development. This shift towards societal needs implies a recognition that heritage is dynamic and should be contextualised within the realities of modern life. The active involvement of the public in heritage discourse fosters an inclusive environment where diverse perspectives can be acknowledged and valued. By facilitating dialogue among various stakeholders, including local residents, cultural practitioners, and policymakers, heritage can be perceived as a shared resource that contributes to social cohesion and community well-being. Moreover, the emphasis on community engagement underscores the necessity for participatory approaches in heritage management. Such methodologies can empower citizens, granting them a voice in the decision-making processes affecting their cultural environment. This not only enhances the relevance of heritage in contemporary society but also cultivates a sense of ownership and responsibility among community members. Ultimately, the transition toward prioritising societal needs in heritage discourse and management acknowledges that the preservation of cultural assets must

---

<sup>308</sup> J. Purchla, *Dziedzictwo Kulturowe a Kapitał Społeczny* [Cultural Heritage and Social capital] [in:] ed. A. Rottermund, *Dlaczego i Jak w Nowoczesny Sposób Chronić Dziedzictwo, Materiały Pokonferencyjne* [Why and How to Protect Heritage in a Modern Way, Conference Materials], Polski Komitet do spraw UNESCO, Warszawa 2014, pp. 21-26.

reflect and serve the dynamic nature of the communities they inhabit. This evolving perspective invites a rethinking of conservation strategies that align historical significance with present-day values, ensuring that heritage remains a vital and integral part of communal life.<sup>309</sup>

The discretionary power of local conservatory offices and city management is integral and unavoidable in the preservation and management of cultural and archaeological heritage. This authority encompasses the ability to interpret relevant regulations, determine the significance of heritage sites or objects, and enforce protective measures, all while navigating the complex interplay between public interest and private property rights. Local conservators are often endowed with substantial discretion under national and regional heritage laws, which enables them to classify sites or artefacts based on established criteria, including historical, aesthetic, or scientific value. This classification can lead to the establishment of protective statutes, zoning regulations, or recommendations for excavation and restoration. The exercise of discretionary power necessitates a careful balancing act between the collective interest of the public in preserving cultural heritage and the rights of private property owners. The discovery of archaeological sites on private land empowers conservators to impose restrictions on land use or development, which may come into conflict with property rights. Such tensions generate challenges, as private entities may perceive these restrictions as impediments to their economic interests. Hence, effective communication and negotiation between conservators and property owners are paramount for navigating these conflicts in a manner that respects both heritage protection mandates and private ownership rights.

The authority exercised by local conservatory offices is governed by a framework comprised of national statutes, local ordinances, and ethical guidelines promulgated by professional associations. Such frameworks aim to standardise decision-making processes, thereby enhancing transparency and justice in the application of the law. However, imprecision in legal definitions and procedural standards often leads to inconsistencies in the enforcement of regulations. Consequently, conservators are tasked with exercising their discretion judiciously, ensuring that decisions are well-founded and are defensible in potential legal challenges. Moreover, local conservatory offices serve as intermediaries between governmental bodies, the public, and heritage stakeholders, wherein their discretionary authority allows for the initiation of public engagement initiatives that elevate awareness and appreciation of local cultural heritage.<sup>310</sup> Collaborative efforts with community members, educational institutions,

---

<sup>309</sup> E. Kowalska, *Własność Zabytku a Dyskrecjonalna...*, pp. 269-271.

<sup>310</sup> M. Stępień, *Responsywna Administracja Publiczna* [Responsive Public Administration], Wydawnictwo Adama Marszałka, Toruń 2008.

and non-profit organisations facilitate the cultivation of a shared sense of responsibility for the preservation of archaeological sites and monuments. By means of public workshops, participatory excavations, and outreach programs, conservators can engender a community invested in its heritage, thereby enhancing the support needed for conservation initiatives.<sup>311</sup>

Despite the authority conferred upon them, local conservators contend with significant challenges in exercising their discretionary power, including financial constraints, bureaucratic hurdles, and the increasing incidence of archaeological discoveries. Decision-making regarding resource allocation for conservation must often occur within the confines of limited budgets, which can hinder effective preservation efforts. Furthermore, conservators must be prepared to substantiate their discretionary decisions in response to public scrutiny and potential legal confrontations. Optimising the exercise of discretionary authority may necessitate the adoption of innovative strategies by local conservatory offices, such as implementing advanced technology for documentation and archiving, improving public access to pertinent information regarding archaeological sites, and employing sustainable practices in conservation efforts. Additionally, fostering partnerships with the private sector may provide critical financial support and resources for the effective management of cultural heritage. Through these measures, local conservators can enhance their capacity to navigate the complex landscape of cultural and archaeological heritage, thus ensuring the preservation of invaluable cultural assets.

Polish Act of 2003 establishes the competencies of various regional conservation offices and the Minister responsible for culture and the protection of national heritage, outlining the procedures for actions in this domain. A critical observation, however, is that the substance of administrative decisions made by conservators remains largely unregulated by detailed normative legal frameworks, classifying these decisions under the category of administrative discretion. The powers exercised by these diverse conservatory offices enable significant encroachments upon individual rights, particularly impacting property rights. This overarching authority allows administrative bodies to impose restrictions and obligations on property owners when heritage assets are involved. While the underlying justification for such intrusions is the safeguarding of the common good and the commitment to preserving cultural values deemed worthy of protection, the actual exercise of this discretion can lead to inconsistencies and discrepancies across different conservation offices.

Given the variety of conservatory offices, each with its own regional mandates and interpretations of the law, the potential for divergent decision-making practices significantly

---

<sup>311</sup> See: M. Stępień, *Administrative Discretion in the Light of Theory of Representative Bureaucracy* [in:] L. Leszczyński, A. Szot (eds.) *Discretionary Power of Public Administration, Its Scope and Control*, Peter Lang, Frankfurt 2017, pp. 37-50.

increases. While some conservators may adopt a more community-oriented approach, focusing on public engagement and collaboration with stakeholders, others may lean towards stricter interpretations that emphasise the protective mandates of the law. This inconsistency can create uncertainty not only for property owners and stakeholders but also among the conservators themselves, leading to a patchwork of regulatory practices that may undermine the principles of fairness and uniformity in heritage protection. Moreover, the efficacy and appropriateness of decisions taken by conservators, driven by their considerable discretionary power, play a pivotal role in the context of heritage management. The varying levels of experience, community engagement, and philosophical approaches among different conservancy offices can result in widely differing interpretations of what constitutes appropriate protective measures. Consequently, the impact on property rights and community interests may vary significantly from one jurisdiction to another. To address these challenges, it is essential to promote dialogue and cooperation among the various conservatory offices to establish best practices and develop a more consistent framework for decision-making. Strengthening collaboration could involve sharing knowledge and experiences, thereby fostering a more unified approach to heritage protection that respects both the values of cultural conservation and the rights of individuals. Ultimately, while the discretion afforded to conservators is crucial for the nuanced handling of heritage protection, an emphasis on greater uniformity and accountability across different offices is vital to uphold the integrity of the administrative process and protect the interests of all stakeholders involved in the preservation of cultural heritage.

Decisions made by monument conservators hold considerable weight in the realm of property rights, particularly for owners of immovable properties designated as monuments, including sites of archaeological significance located on private terrain. The broad scope of discretion provided to conservators is generally accepted, but it hinges on the premise that their actions are seen as justifiable and grounded in an objective evaluation of both private and public interests. This balancing act, aiming to harmonise individual rights with communal values, presents significant challenges. Acknowledging the distinct characteristics of each monument raises questions about the efficacy of a standardised set of criteria for conservators' decision-making. Any systematic attempt to formalise material criteria could inadvertently produce negative repercussions, potentially constraining the flexibility essential for tailored evaluations that reflect the intricacies of each unique situation. Furthermore, the field of administrative law has begun to increasingly highlight the importance of safeguarding individual rights, emphasising the necessity of legal frameworks that protect personal freedoms and uphold rights against potential overreach by public authorities. This legal safeguard aims to define the scope

of permissible actions by public entities regarding personal rights, ensuring that such interventions are justified and proportionate within the context of heritage protection. Given these dynamics, it becomes crucial to investigate the mechanisms available for monitoring the boundaries of governmental intervention in the realm of heritage preservation. This scrutiny is especially pertinent when examining decisions made by conservators, particularly where the lack of clear and substantive justification for these decisions is evident. Establishing a robust framework for oversight would not only reinforce the accountability of conservators but also protect the rights of individuals whose properties are impacted by such decisions, thus fostering a more equitable approach to heritage management that remains sensitive to the rights of all stakeholders involved.<sup>312</sup>

## 5.2. Issues related to the definition of archaeological monuments

Archaeological artefacts encompass a broad and diverse array of items that represent a substantial aspect of cultural heritage, reflecting the myriad ways in which human beings have interacted with their environment, created tools, and built communities throughout history. This category is particularly expansive due to the definition set forth in the Act of 2003, article 3, which significantly contributes to the classification of what constitutes an archaeological artefact:

1) "monument" – either an immovable property or a movable object, along with their parts or collections, that is a work of human creation or related to human activity, serving as a testimony of a past era or event.

4) archaeological monument – an immovable monument that is a surface, underground, or underwater remnant of human existence and activity, composed of cultural layers and their associated artefacts or traces, or a movable monument that is such an artefact.<sup>313</sup>

Under this legal framework, an archaeological artefact can be defined as any object that has been fashioned by human hands or is directly related to human activity, irrespective of the time

---

<sup>312</sup> T. Bąkowski, *Aksjologia Materialnego Prawa Administracyjnego* [Axiology of Substantive Administrative Law] [in:] *Leksykon Prawa Administracyjnego Materialnego. 100 Podstawowych Pojęć* [Lexicon of Substantive Administrative Law. 100 Basic Concepts], ed. T. Bąkowski, K. Żukowski, Wydawnictwo C.H. Beck, Warszawa 2016, p. 7.

<sup>313</sup> Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and the Preservation of Monuments], *Dziennik Ustaw* 2024, uniform text, pos. 1292 with changes, art. 3, point 1 and 4.

period in which it originated. This suggests that artefacts from ancient civilisations, medieval periods, and even recent history can all be included, provided they meet the criteria outlined. Furthermore, the condition of the artefact, whether well-preserved or in a state of decay, does not affect its classification as archaeological heritage. This flexibility in definition allows for a more comprehensive understanding of cultural history, as even fragmentary or eroded objects can reveal significant insights into past societies. Moreover, the geographical context of these artefacts is critical. The emphasis on their presence above ground, below the surface, or within aquatic environments expands the scope of what may be considered archaeological heritage. For example, items discovered through excavation, such as pottery shards, tools, or burial goods, fall under this category, as do submerged artefacts, like shipwrecks or structures lost to rising waters.

This all-encompassing definition can also lead to practical implications in the fields of archaeology, cultural heritage law, and preservation. It underscores the importance of a holistic approach to heritage conservation that recognises the value of even minor or overlooked artefacts in broader historical narratives. This perspective encourages both professionals and the public to regard all aspects of human-made items as significant pieces of our collective history, fostering a greater appreciation for their protection. By recognising that "everything that is not airborne" can potentially qualify as an archaeological artefact, this definition challenges conservatory offices to reconsider their understanding of value and significance in cultural heritage. It invites further inquiry into how various artefacts connect to human narratives and the importance of preserving these connections for future generations.

In the process of determining whether an item qualifies as an archaeological artefact, specifically, a movable archaeological artefact, whose preservation serves the public interest, the guidelines set forth in article 51, paragraph 1<sup>314</sup> may provide valuable insights:

1. A one-time permit for the permanent export of an artefact abroad is required for artefacts classified in one of the following categories:
  - a) archaeological artefacts that are over 100 years old and are included in archaeological collections or have been acquired as a result of archaeological research or accidental discoveries

The records suggest that for an object to be deemed an archaeological artefact deserving of preservation for reasons of public interest, it must be over 100 years old. Should we accept this interpretation, it would logically follow that immovable archaeological heritage, defined by law

---

<sup>314</sup> Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and the Preservation of Monuments], Dziennik Ustaw 2024, uniform text, pos. 1292 with changes.

as the remnants of human existence and activity consisting of cultural layers, must also be over 100 years old, particularly since the movable artefacts found within these layers should meet the same age criterion. However, this restrictive chronological interpretation of the legal definition of archaeological artefacts is not typically employed in practice. On the contrary, there is a consistent trend towards the systematic expansion of territories recognised by archaeologists over the years.

The tendency for conservatory offices to adopt a broad definition of archaeological heritage, rather than a more restrictive one, raises substantial implications for the management, preservation, and appreciation of cultural artefacts. This expansive approach often entails classifying a wide array of items, sites, and materials as archaeological heritage, irrespective of their age or proven significance, thereby diluting the specificity and integrity associated with true archaeological artefacts. One primary consequence of this broad classification is the potential for resource misallocation. When a vast array of items is categorised as archaeological heritage, it challenges the prioritisation of conservation efforts, financial backing, and academic resources. Authorities may be compelled to allocate funds and resources to preserve items that lack significant archaeological value, thereby detracting from the preservation of genuinely remarkable artefacts that are crucial to understanding and interpreting human history. Moreover, this broad approach can lead to regulatory challenges that affect property rights and public perception. Property owners, businesses, and developers may find themselves unwittingly embroiled in lengthy bureaucratic processes when even minor discoveries are classified as archaeological heritage. This can foster resentment and resistance among stakeholders who may view the regulatory framework as overly intrusive and unresponsive to the practical realities of land use. Furthermore, the expansive definition of archaeological heritage may inadvertently undermine the educational and cultural value of archaeological research. When everything is deemed archaeological heritage, the distinction between significant scholarly artefacts and commonplace items can become blurred. This diminishes the public's ability to effectively perform activities entrusted to them.

An important matter is who should decide whether something is worthy of preservation due to public interest, and thus qualifies as a monument, including an archaeological artefact, or not. This was clearly defined in the Regulation of the President of the Republic of Poland of March 6, 1928, on the protection of monuments, where in article 1, besides the definition of monument was also given a specific organ responsible for this task:

Monument is any object, whether immovable or movable, characteristic of a certain era, possessing artistic, cultural, historical, archaeological, or paleontological value, as determined by a decree of the state authority, and thus deserving of preservation.<sup>315</sup>

Using the forms of heritage protection outlined in the current legislation as a basis, the designation of an artefact (including archaeological ones) is determined by the appropriate regional monument conservator. This is done either through the registration of the artefact (whether it is immovable property as in article 9 or a movable item as in article 10) in the official registry of monuments:

Article 9. 1. An immovable artefact is entered into the register based on a decision issued by the regional monument conservator, either ex officio or upon the request of the owner of the immovable artefact or the perpetual usufructuary of the land on which the immovable artefact is located.

Article 10. 1. A movable artefact is entered into the register based on a decision issued by the regional monument conservator at the request of the owner of the artefact.

or by including it in the local register of monuments. A decision may be made by the relevant local government authority (such as the mayor, town manager, or president) by including the object in the municipal register of monuments (article 22 of the Act).<sup>316</sup> For objects found accidentally or during construction and excavation activities, a separate decision is required to outline the appropriate handling of such objects or items (refer to articles 32 and 33 of the same Act) but the decision is made by the provincial conservatory office.

Following the legislation, the authority to designate an object as an archaeological artefact primarily resides with the regional monument conservator. This official, in conjunction with representatives from the relevant province, municipality, and county, is responsible for making the determination, however, such a designation occurs exclusively at the time the object is formally entered into the relevant register or record. In instances where an object is to be afforded "basic legal protection", which entails recognition merely as an archaeological artefact without formal registration, there is no specific individual appointed to ascertain whether the object satisfies the conditions of the legal definition. Consequently, this often leads to situations

---

<sup>315</sup> Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 6 marca 1928 r. o opiece nad zabytkami [Regulation of the President of the Republic of Poland of March 6, 1928, on the protection of monuments], Dziennik Ustaw 1928, no. 29, pos. 265 with changes.

<sup>316</sup> Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and the Preservation of Monuments], Dziennik Ustaw 2004, uniform text, pos. 1292 with changes, articles 21 and 22.

in which the archaeologist conducts this evaluation independently during excavation activities. This situation raises significant legal and ethical considerations. The lack of a designated authority for declaring an object as deserving of basic protection can lead to inconsistencies in the recognition and protection of archaeological heritage. Without a clearly established process or accountable individual to ensure that criteria are met, the potential for subjective interpretations increases. Moreover, the responsibility assumed by archaeologists in making these determinations during excavations underscores the importance of establishing well-defined legal standards and practices. Ideally, this would include clear guidelines on how to evaluate the archaeological significance of objects discovered. Such guidelines should involve standardised criteria that take into account the historical, cultural, and scientific significance of the artefacts.<sup>317</sup>

The issuance of an administrative decision primarily relies on a legal norm, however, in the context of heritage protection law, this norm typically serves as a formal foundation. It is only at the boundaries of the law that one should seek the substantive grounds for the decisions rendered by monument conservators. This raises an essential inquiry regarding the actual substantive (as opposed to merely formal) foundations for classifying an item as a heritage object, whether through its registration in the heritage register or via a straightforward recognition as such. The Act of 2003 grants monument conservators a considerable degree of discretion in their administrative decision-making. This discretion is informed by what is often referred to as "conservation theory," a framework established through practical experience in the field.<sup>318</sup> The inception of archaeological conservation theory in Poland represents a critical phase in the broader context of heritage management and cultural preservation. However, it is crucial to note that there is no singularly accepted conservation theory, rather, the number of theories is as diverse as the conservators and even archaeologists engaged in the practice.<sup>319</sup>

The distinction between legal norms and substantive grounds for recognition is significant. While legal norms dictate procedural requirements for decision-making, they may not adequately address the nuanced criteria that underlie the recognition of an object as a cultural heritage item. The 2003 Act empowers conservators with significant latitude in making

---

<sup>317</sup> See: M. Florek, *Między Teorią a Praktyką. Ochrona Dziedzictwa Archeologicznego z Perspektywy Praktyki Konserwatorskiej (na Przykładach Delegatury w Sandomierzu Wojewódzkiego Urzędu Ochrony Zabytków w Kielcach)* [Between Theory and Practice: The Protection of Archaeological Heritage from the Perspective of Conservation Practice (Based on Examples from the Sandomierz Delegation of the Regional Office for the Protection of Monuments in Kielce)], Raport archeologiczny NID, raport 10, NID, Warszawa 2015, pp. 233-261.

<sup>318</sup> E. Kowalska, *Własność Zabytku a Dyskrecjonalna...*, p. 293.

<sup>319</sup> K. Zeidler, O Znaczeniu i Roli Teorii Konserwatorskiej w Procesie Stosowania Prawa [On the Importance and Role of Conservation Theory in the Process of Applying Law] [in:] B. Szmygin (ed.) *Współczesne Problemy Teorii Konserwatorskiej w Polsce* [Contemporary Problems of Conservation Theory in Poland], Wydawnictwo Politechniki Lubelskiej, Warszawa-Lublin 2008, p. 177.

judgments, which is essential for addressing the diverse and dynamic nature of cultural heritage. This discretion allows conservators to exercise their professional judgment in situations where legal texts may fail to provide explicit guidance. The absence of a single, universal theory of conservation indicates the complexity of the field. Each conservator may adopt different theoretical frameworks based on their education, experience, and specific contexts of practice. This plurality can lead to variations in how heritage is identified, evaluated, and later protected.

Initially, the development of conservation theory and its codification in various documents has been significantly influenced by academic scholarship, a trend that persists today. Conservation theory is normativised in such a way that it encompasses a collection of statements that establish specific standards of practice. Consequently, these statements serve as guidelines intended to inform and shape the conduct of both conservators and archaeologists in their respective fields. This intertwined relationship between academic research and conservation practice highlights the importance of a rigorous theoretical foundation in the preservation of cultural heritage. Academic institutions and research initiatives contribute to the evolving understanding of conservation theory by exploring various methodologies, ethical considerations, and challenges faced by professionals in the field.<sup>320</sup> These theoretical frameworks not only provide a basis for effective conservation strategies but also promote dialogue among practitioners regarding the best practices for safeguarding cultural artefacts. It is challenging to anticipate that a local archaeologist would possess familiarity with theories or methodologies developed outside their working environment and educational background. This assertion underscores the gap that often exists between academic research and on-the-ground practice in archaeological conservation. Local archaeologists typically operate within specific geographical and institutional contexts that shape their training and professional experiences. Consequently, their engagement with broader theoretical frameworks may be limited if these frameworks are not integrated into their formal education or disseminated through accessible channels.

In Poland, a notable reference among archaeological doctrines is the Standards for Conducting Archaeological Research,<sup>321</sup> which addresses both non-invasive and invasive

---

<sup>320</sup> Pruszyński J. *Teoria prawa ochrony dziedzictwa kultury* [Theory of cultural heritage law], red. K. Zeidler, Wydawnictwo Uniwersytetu Gdańskiego-Wolters Kluwer-Narodowy Instytut Dziedzictwa, Warszawa 2025.

<sup>321</sup> A. Oniszczyk, Z. Misiuk, A. Makowska, J. Wrzosek, M. Sekuła (eds.), *Standardy Prowadzenia Badań Archeologicznych cz.1 Badania Nieinwazyjne Lądowe* [Standards for Conducting Archaeological Research, part 1. Non-invasive Land Research], Narodowy Instytut Dziedzictwa, Warszawa 2019; Z. Misiuk, J. Wrzosek, A. Oniszczyk, M. Sekuła, M. Sabaciński, K. Czajkowski (eds.), *Standardy Prowadzenia Badań Archeologicznych, cz.2 Badania Inwazyjne Lądowe* [Standards for Conducting Archaeological Research, part 2. Invasive Land Research], Narodowy Instytut Dziedzictwa, Warszawa 2019.

methods of investigation on land. These standards serve as a critical framework for guiding archaeologists in their methodological approaches, ensuring that research practices adhere to established guidelines that promote ethical and effective archaeological work. However, it is important to note that these standards primarily focus on research methodologies rather than addressing the complexities related to artefacts themselves. While the methodologies outlined in the standards provide valuable insights into how to conduct archaeological investigations, whether through survey techniques, excavation protocols, or data analysis, they do not specifically engage with questions concerning the preservation, significance, and interpretation of the artefacts that result from these studies.

It is important to acknowledge the existence of international documents characterised as "soft law," which are inherently non-binding in nature. This category comprises doctrinal documents that are defined by various charters, principles, or declarations, most of which have been established by ICOMOS (the International Council on Monuments and Sites). A notable example of such a document is the Charter for the Protection and Management of the Archaeological Heritage, issued in 1990 (chapter 2). The concept of soft law holds significant relevance in the realm of cultural heritage and archaeological preservation. Unlike binding legal instruments, soft law documents do not impose mandatory obligations on states or organisations, rather, they serve as guidelines that promote best practices and foster cooperation among stakeholders involved in heritage management. These documents often reflect the consensus of the international community regarding the principles of preserving and protecting cultural heritage, thereby influencing national policies and practices.

This complexity underscores the need for ongoing dialogue and standardisation among conservation practitioners to ensure that cultural heritage is effectively safeguarded while respecting both formal legal requirements and substantive cultural values. Ultimately, the interplay between legal norms and the substantive foundations of decisions made by monument conservators is a crucial aspect of heritage protection, and acknowledging the diversity of conservation theories is essential for developing an effective and cohesive approach to safeguarding cultural heritage in a manner that is both ethically responsible and legally sound.

### **5.3. The so-called mass archaeological monuments**

The selection of "mass" artefacts within archaeological research is a topic that generates considerable debate among professionals in the field. These artefacts, often defined as numerous objects that may lack individual significance but collectively hold historical and

cultural value, pose unique challenges regarding their treatment and management. One of the primary concerns surrounding the selection of mass artefacts is the philosophical question of what constitutes value in archaeology. On one hand, there are strong arguments for preserving all archaeological materials, no matter how seemingly minor or abundant. Proponents of this view argue that even objects with little intrinsic value can contribute to a broader understanding of human activity, societal behaviours, and cultural practices. Every artefact has the potential to provide invaluable contextual information when integrated with other finds from a site, as they may collectively illustrate patterns of trade, technology use, and daily life. Conversely, there are perspectives that emphasise a more pragmatic approach to archaeological research. Advocates for this view often highlight the limitations of available resources, including funding, storage, and conservation capabilities. In this context, they argue for the relativisation of artefact value, suggesting that not all objects warrant preservation in their original form. Instead, they propose focusing on high-quality documentation as a means of capturing the significance of the artefacts without necessitating their physical retention. This focus on documentation acknowledges that photographic records, detailed descriptions, and forensic analysis can provide insightful, accessible, and sustainable methods for preserving archaeological knowledge.<sup>322</sup>

Furthermore, the emphasis on documentation recognises the evolving nature of archaeological interpretation. Original perspectives on artefacts may shift over time based on new methodologies, technologies, and theoretical frameworks. As such, robust documentation practices allow for reevaluation and reinterpretation of artefacts in the future, leveraging advances in technology or changes in scholarly perspectives. The tension between these viewpoints highlights a fundamental challenge in archaeological practice: how to balance the desire for comprehensive material preservation with the realities of practical constraints. The debate ultimately revolves around the ethical implications of making decisions about which artefacts to preserve and which to document, raising questions about accountability and the role of archaeologists as stewards of cultural heritage. Ultimately, the discourse surrounding the selection of mass artefacts reflects broader themes in heritage management, where decisions must be made not just based on material characteristics, but also in light of societal values, historical narratives, and future learning potential. By acknowledging the complex interplay between preservation and documentation, the archaeological community can work toward more

---

<sup>322</sup> R. Karl, Every Sherd is Sacred. Compulsive Hoarding in Archaeology [in:] G. Sayeh, D. Henson, Y.F. Willumsen (eds.), *Managing the Archaeological Heritage: Public Archaeology in Europe*, Vest-Agder-Museet, Kristiansand 2015, pp. 24-37.

equitable and effective practices that honour both the artefacts themselves and the cultural stories they represent.

Some museums classify archaeological artefacts into subcategories, specifically designating some as "designated artefacts" and others as "mass artefacts." The term "designated artefact" can encompass a wide range of items, yet the distinction between what qualifies as a designated artefact versus a mass artefact is often both ambiguous and the subject of considerable debate. For example, a small fragment of a Neolithic vessel that features distinctive and unique decorative elements may be classified as a designated artefact due to its substantial scientific importance and potential contribution to our understanding of prehistoric cultures. This classification recognises the artefact's rarity and the information it could provide, not only about the material culture of the time but also about the social and artistic practices of the people who created it. Conversely, a flake made from imported banded flint could also be designated for its unique characteristics that distinguish it from more ubiquitous finds. In contrast, a flake derived from locally sourced flint is likely to be identified as a mass artefact, as such items are commonly found and do not exhibit the same level of uniqueness or significance. The responsibility for making these classifications typically falls to the head of the relevant department within the museum, who must carefully assess the incoming materials to make a determination regarding their status as either designated or mass artefacts. This often involves examining various factors, including scientific value, historical context, and the artefact's potential for contributing to scholarly research.<sup>323</sup>

Recognising the distinctions between designated and mass artefacts is critical for museums and researchers alike, yet it is falling out of scope of the legal acts. However, this classification system not only facilitates effective conservation strategies but also aids in the development of display practices that highlight the significance of specific artefacts. By emphasising designated artefacts in exhibitions, museums can enhance public understanding of cultural heritage and the complexities of archaeological interpretation. The process of categorising artefacts is an essential aspect of archaeological practice, fostering a deeper appreciation for the diverse forms of material culture and encouraging further inquiry into their historical significance. The dialogue surrounding these classifications continues to evolve as new discoveries are made and as our understanding of the past grows more nuanced. Therefore,

---

<sup>323</sup> Muzeum archeologiczne w Gdańsku, Załącznik 6a - do Zasad przygotowania oraz przekazywania materiałów archeologicznych do działów merytorycznych Muzeum Archeologicznego w Gdańsku, w celu włączenia materiałów do zbiorów Muzeum Archeologicznego w Gdańsku, [https://archeologia.pl/wp-content/uploads/2024/03/Zalacznik-6a-g-do-Zasad-przygotowania-oraz-przekazywania-materialow-archeologicznych-do-MAG\\_WYTYCZNE-DOT.-WARUNKOW-PRZYJECIA.pdf](https://archeologia.pl/wp-content/uploads/2024/03/Zalacznik-6a-g-do-Zasad-przygotowania-oraz-przekazywania-materialow-archeologicznych-do-MAG_WYTYCZNE-DOT.-WARUNKOW-PRZYJECIA.pdf) [available on:17.06.2025].

ongoing discussions among archaeologists, conservators, and museum professionals are vital to refining these classifications and enhancing the preservation and interpretation of our shared cultural heritage.

The absence of a clear definition for terms like "designated artefacts" and "mass artefacts" highlights a significant challenge within the archaeological community. While many museums employ these classifications to guide their practices, the lack of universally accepted definitions, specifically by the conservatory offices, can lead to confusion and inconsistency in their application. This ambiguity arises from several factors. Firstly, the terms can vary widely in interpretation, depending on the specific context and objectives of the institution, the materials in question, and the professional backgrounds of the individuals involved in the discussion. For example, what one archaeologist considers a designated artefact due to its unique attributes, another might deem merely an example of mass production based on its commonality. Moreover, the varying methodologies and theoretical frameworks employed by different archaeological institutions contribute to this lack of definition. Each institution may prioritise different aspects of an artefact, such as its aesthetic qualities, historical context, or scientific value, which further complicates efforts to establish a unified framework for classification. This fluidity can have practical implications. For institutions tasked with managing archaeological collections, the absence of a standardised definition can affect decisions regarding conservation, display, and interpretation. These decisions hinge on how artefacts are categorised, which in turn influences how the public engages with and understands archaeological heritage. Furthermore, the lack of clear definitions can hinder research collaboration and knowledge sharing among institutions and professionals. When artefacts are categorised differently across various platforms and reports, it becomes difficult to draw coherent conclusions or conduct comparative analyses, thereby limiting the collective understanding of archaeological findings.

Mass artefacts, while often significant in the context of archaeological research, may not even qualify for protection under legal definitions of monuments. This distinction raises important questions about the status and treatment of such objects within the framework of cultural heritage preservation. Unlike monuments or designated artefacts, which are typically recognised for their historical, artistic, or scientific value and thus protected by laws and regulations, mass artefacts often lack the same level of recognition. These objects are usually numerous and may be characterised by their commonality or everyday use, making them less likely to be classified as monuments deserving of legal protection, specifically the social interest in preserving such objects.

Currently, the legal framework in Poland does not provide a specific model or comprehensive set of guidelines for formulating archaeological research programs and therefore the process of collecting archaeological artefacts. This absence creates a degree of ambiguity and variability in how research projects are designed and executed. In contrast, the British archaeological sector offers established guidelines that provide clear and practical recommendations. For instance, these guidelines emphasise the importance of involving archaeologists who possess the necessary qualifications and experience during the development of research projects. The existence of such structured guidance in the UK facilitates a more standardised approach to archaeological research, ensuring that projects are not only methodologically sound but also adhere to ethical and professional standards.<sup>324</sup>

It is essential that all personnel involved in the extraction, conservation, packaging, and analysis of archaeological materials are knowledgeable about the established methods for processing and storing these items. Clear guidelines for the collection and disposal of materials should be firmly aligned with specific goals, ensuring that all subcontractors fully understand and adhere to these protocols. This clarity fosters effective collaboration, promotes consistency in practices, and ultimately enhances the quality and reliability of the archaeological work being conducted.

While acknowledging that these objects may contain certain information, there is an argument that the retention of mass artefacts may not be necessary for future archaeological research. Given that mass artefacts, often numerous and similar in nature, do not typically provide unique insights when considered in isolation, retaining every single item may not be justified. Instead, the focus should be on preserving artefacts that offer distinctive historical, cultural, or scientific value. As methodologies enhance, it is likely that more efficient ways to document and analyse information related to mass objects will be developed. Detailed documentation, such as photographs, descriptions, and contextual data, can serve to capture the essential information these objects convey without necessitating their physical retention. As Raimund Karl notices:

“Interestingly – and comparable to the selective inability of hoarders to discard – we see this necessity only if we think of objects as archaeological finds: the same Roman coin is of little interest to us if it has been held in a collection for the last 500 years; but if recently found in the ground, it becomes a priceless archaeological treasure. And here you say it is all about context: if there is to be a development on a bombed out 19th century building, every fragment of its former content and decoration apparently

---

<sup>324</sup> See: Standard and guidance for the collection, documentation, conservation and research of archaeological materials. The Chartered Institute for Archaeologists (incorporated by Royal Charter), Reading 2014, point 3.

(at least according to heritage legislation in most German countries and Austria) becomes a priceless archaeological find – while the dilapidated 19th century building on the next plot is an eyesore which we would happily condemn without seeing any need to accession anything of it into the same archaeological archive (though built heritage managers might want to protect it as a historic building). It thus is not so much context, which in the dilapidated building is much better preserved than in the ruined one – but rather that it has been excavated which apparently makes it into a priceless archaeological treasure that must be kept indefinitely.”<sup>325</sup>

And later such mass objects may impose problems of storage, social utility and conservation.

### **5.3.1. Storage and conservation of mass archaeological artefacts**

The challenge of adequately storing movable archaeological artefacts remains a significant concern. This issue is among the most critical, if not the foremost, challenges faced in national conservation initiatives dedicated to the protection of archaeological heritage. The current state of affairs is troubling, and if meaningful changes are not implemented, the situation is likely to worsen. A comprehensive assessment reveals a lack of effective management systems, insufficient legal frameworks, and a shortage of appropriate storage facilities, all of which are necessary for the proper preservation of archaeological artefacts. This predicament is not confined to specific regions, rather, it is a nationwide issue that affects the integrity of heritage.

Furthermore, this topic is far from being a recent development, it has been a persistent problem that has been neglected for decades, often relegated to the background as organisations and institutions have focused on more immediate concerns. The failure to address the necessity for adequate storage solutions can lead to the deterioration of valuable artefacts, compromising both their physical condition and the historical knowledge they represent.<sup>326</sup>

Many museums are increasingly grappling with the challenge of managing the vast volume and scope of archaeological projects that generate extensive archives. The rise of developed archaeology has significantly accelerated the rate at which archaeological materials are produced. It has become commonplace for local museums to be expected to accept the full range of outputs from these projects. Following the 2003 Act article 35, paragraph 3:

---

<sup>325</sup> R. Karl, *Every Sherd is Sacred...*, p. 29.

<sup>326</sup> M. Bugaj, *Magazyny Archeologiczne w Polsce- Kwestia Przechowywania Zabytków Archeologicznych, Czyli Rzecz o Stajniach Augiasza i Kilka Przykładów Dobrych Praktyk* [Archaeological Warehouses in Poland - the Issue of Storing Archaeological Monuments, i.e. the Augean Stables and some Examples of Good Practices], *Raport archeologiczny, Raport 13, Narodowy Instytut Dziedzictwa, Warszawa 2018*, p. 155.

The storage location for archaeological artefacts that have been discovered, found accidentally, collected or obtained as a result of searches mentioned in Article 36b, paragraph 1, or acquired through archaeological research, is determined by the regional monument conservator. This is done by transferring them, through a decision, as a deposit to a museum or another organisational unit with its consent.<sup>327</sup>

In addition to museums, other organisations may also receive archaeological artefacts on deposit. Educational institutions are categorised as organisational units, and as such, even though they do not possess museum status, they are nonetheless permitted to store artefacts obtained from archaeological research. This provision acknowledges the valuable role that universities and other educational entities play in the field of archaeology and heritage preservation. The ability to house archaeological artefacts facilitates a number of important functions and also poses problems. By leveraging academic research and expertise, cultural heritage organisations can implement best practices in conservation and preservation. Additionally, educational institutions can benefit from partnerships that provide them with access to training, resources, and networks that enhance their ability to care for archaeological collections. However, it is also essential to stress that educational institutions must also adhere to strict ethical standards and legal regulations when it comes to managing and storing archaeological artefacts, as they are usually not prepared for this, as it is not their primary function. Proper documentation, provenance verification, and adherence to national and international guidelines are critical in ensuring that artefacts are managed responsibly, preserving their historical value while also respecting the rights of the communities and cultures they represent, which is often difficult to maintain.

This can include not only documentary records, drawings, and photographs but also a wide array of artefacts and remnants from industrial and environmental contexts. In fact, some excavations yield hundreds of boxes filled with material, posing substantial logistical challenges for museums. As these archives expand, many museums are finding it increasingly difficult to find sufficient space and resources to integrate this burgeoning collection into their existing frameworks.<sup>328</sup> Museums and other units are on the verge of completely exhausting available storage space and plan to initiate a reorganisation project, which is anticipated to create some additional space in the archaeology racks, albeit not significantly. Initial

---

<sup>327</sup> The new wording of paragraph 1 in article 35 will come into effect on July 1, 2027 (Journal of Laws of 2023, item 1904, of 2024, item 647, and of 2025, item 537).

<sup>328</sup> K. Baxter, *Museums Need National Support to Tackle Archaeological Storage issue*, Museum journal, Museums Association, <https://www.museumsassociation.org/museums-journal/opinion/2023/05/museums-need-national-support-to-tackle-archaeological-storage-issue/#> [available on: 18.06.2025].

discussions have commenced regarding the possibility of temporarily halting the acceptance of new archives while they address the issue and work toward finding viable solutions for the future.<sup>329</sup> The influx of archaeological material raises important questions about curation and prioritisation. Museums must consider how to manage a diverse array of collections while ensuring that they maintain high standards of preservation and public access. Furthermore, the expectation that local museums will absorb all archaeological findings places significant strain on their resources, often leading to tough decisions about what can and cannot be kept.

To provide a clearer picture, it is important to specify that the archaeological artefacts under discussion predominantly comprise commonly found fragments of pottery. However, the collection also encompasses a variety of other materials, such as glass shards, stone and metal artefacts, remnants of human and animal bones, slags, and pieces of daub. These artefacts are representative of a broad chronological range, spanning from the Stone Age to nearly contemporary periods, highlighting the rich diversity of material culture over time. According to the Central Statistical Office in Poland, as reported in 2018, archaeological artefacts represent the most substantial category within the overall classification of artefacts, accounting for more than 22,6% of the national collections housed in museums, the number that is only arising in comparison to previous years.<sup>330</sup> Yet, at the same time, the number of visitors of archaeological museums is one of the smallest, as it is just 1,8% for the year 2023.<sup>331</sup>

This statistic underscores the significance of archaeological artefacts in the broader context of the country's cultural heritage. A particularly notable characteristic of these artefacts is their sheer abundance. Every year, the discovery of archaeological materials continues to grow, driven by ongoing excavations and development-led archaeology. As urbanisation and construction projects progress, large numbers of archaeological finds are unearthed, contributing to an ever-expanding database of artefacts that reflect human activities and societies throughout history. This increase in volume poses both opportunities and challenges for researchers, conservationists, and museums. On one hand, it enriches the understanding of past human behaviour and cultural developments, providing invaluable resources for academic study. On the other hand, the growing number of artefacts raises concerns regarding storage, management, and preservation. As institutions struggle to accommodate these incoming

---

<sup>329</sup> G. Boyle, N. Booth, A. Rawden, *Museums Collecting Archaeology (England), report year 3: November 2018*, Historic England, Society for Museum Archaeology, England 2018, p. 1.

<sup>330</sup> Główny urząd statystyczny, Kultura w 2018, <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/kultura-w-2018-roku,20,2.html> [available on: 18.06.2025].

<sup>331</sup> Główny urząd statystyczny, Kultura i dziedzictwo narodowe w 2023, <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/kultura-i-dziedzictwo-narodowe-w-2023-roku,2,21.html> [available on: 18.06.2025].

collections, they must navigate the complexities of prioritising which items to retain based on their significance, as well as ensuring appropriate conditions for their conservation.

Museums and other units must fulfil certain criteria to keep archaeological artefacts in deposit. According to the 2003 Act article 35, paragraph 4:

4. The transfer of archaeological artefacts to a museum or another organisational unit may occur when that unit provides:

- 1) their permanent storage;
- 2) the completion of inventory and appropriate conservation work; and
- 3) access to these artefacts for scientific purposes.

Achieving the conditions necessary for transferring archaeological artefacts, particularly mass objects, presents challenges that render it often impossible. The stipulations outlined, such as ensuring permanent storage, completing appropriate inventory and conservation work, are simply difficult to fulfil in the case of mass artefacts. Mass objects are typically numerous and often very similar in nature, which complicates their management and storage. When dealing with a large quantity of items, ensuring their permanent and secure storage also becomes a logistical challenge.

Many museums and institutions face space constraints, accommodating hundreds or even thousands of similar artefacts can overwhelm existing facilities, making it difficult to meet proper storage requirements. Moreover, the sheer volume of mass objects complicates the inventory process. Each item must be catalogued, assessed, and assigned a unique identifier, which requires significant time, resources and staff that may not be available. This administrative burden becomes even more pronounced when institutions are expected to manage other artefacts of greater significance alongside these mass finds. While higher-value artefacts may warrant detailed conservation efforts, mass objects often receive less attention, which can lead to inadequate preservation approaches. The risks of deterioration are compounded when artefacts are not regularly monitored or maintained due to resource limitations or a lack of prioritisation.

Also providing access to mass objects for scientific research can be extremely impractical. If the infrastructure for viewing or studying these items is not in place, or if they are stored in locations that are not easily accessible, opportunities for scholarly engagement become severely limited or completely unavailable. This creates a cycle where mass objects are sidelined, as they neither contribute significantly to museum displays nor stimulate public interest in a meaningful way.

Determining the appropriate course of action for archaeological objects that are deemed extraneous presents a considerable challenge that requires substantial courage from professionals in the field. Several potential strategies exist for managing these items. One possibility is to dispose of them by backfilling following an initial evaluation conducted in the field. This practice is, however, dependable on the archaeologist, who is making a sole decision without any consultation with the conservatory offices. Alternatively, and controversially, these items could be distributed to interested members of the public or returned to the landowner or finder. An additional approach might involve placing these items in storage containers for burial, allowing for their potential retrieval at a later date if needed.

Another innovative option would be to implement automated systems for digitising these finds. This would enable the creation of comprehensive electronic records while allowing for the physical destruction of the originals. However, it is important to acknowledge that this solution would merely transfer the problem of industrial accumulation from the physical realm to a virtual one, which may not adequately address the underlying issues. Similar considerations apply to the vast number of redundant artefacts that are already housed within archaeological archives.

These objects could also be sold on the international antiquities market, provided that proper proof of provenance is established. Such sales could generate additional revenue for the archaeological community, enhancing the resources available for the preservation of truly significant items and potentially mitigating the impact of the illicit antiquities trade. On the other hand, discarding these artefacts as refuse poses its own set of challenges, including the financial implications of disposal.

A significant issue is the difficulty in refraining from classifying every object as a monument, which becomes legally protected, leading to the creation of mass artefacts. During archaeological research, searches for artefacts, or accidental discoveries, the volume of collected archaeological artefacts is immense. Among these, there are individual artefacts that hold significant scientific, historical, or artistic value, while the majority are mass artefacts lacking distinctive characteristics that are necessary to become a monument. These mass artefacts do not make it to museum exhibitions, instead, they are merely stored in museum warehouses. Catalogues are not created for them, nor are they individually inventoried. Often, artefacts from scientific studies conducted by universities end up in university storage facilities. This challenge stems from the tendency within archaeology to recognise and assign value to a wide variety of items discovered during excavations. This inclination can contribute to the categorisation of numerous common objects as artefacts, resulting in the accumulation of mass

artefacts that may not hold unique significance. By critically evaluating the criteria for designation as an artefact, the archaeological community can better manage collections, prioritise conservation efforts, and ensure that genuinely significant items receive the attention they deserve.

Ultimately, the management of surplus archaeological materials necessitates thoughtful decision-making and a commitment to ethical practices. The field must engage in an open dialogue to discuss the implications of various strategies and strive for solutions that respect the integrity of cultural heritage while addressing the practical realities of storage and preservation. By doing so, stakeholders can ensure that important artefacts are preserved for future generations while effectively managing the challenges posed by excess materials.

### **5.3.2. Social utility of mass archaeological monuments**

Much like the larger heritage sector, archaeology must increasingly highlight its importance to society. This necessity spans across its various facets: as a scholarly discipline, a professional practice, and a segment of the heritage industry. The discipline must demonstrate how its findings and methodologies contribute not just to academic knowledge but also to cultural identity, community engagement, and economic development. By effectively communicating its societal value, archaeology can foster greater public support and interest, ensuring its continued relevance and support in the face of challenges.<sup>332</sup>

The research conducted by the NEARCH survey in 2015 indicated that as many as 25% of Polish respondents and 27% of individuals within the European Union expressed a past interest in pursuing studies in archaeology. In terms of interest regarding exhibitions, a significant majority demonstrated an enhanced enthusiasm for ancient history and prehistory, with 28% in Poland and 36% across the European Union reflecting this interest. Furthermore, awareness and familiarity with the largest archaeological museums in Poland stand at a high level, approximately 70-80%. However, when asked about the likelihood of visiting such institutions, the majority indicated a negative response. An important aspect of the survey addressed societal perceptions of archaeology. A vast majority concurred that archaeology serves a useful purpose, with 92% of respondents in Poland and 90% across the European Union affirming this assertion. Additionally, respondents recognised archaeology as possessing substantial value, with 92% in Poland and 91% in the EU endorsing this view. However, many

---

<sup>332</sup> H. Williams, Introduction: Public Archaeology as Arts of Engagement [in:] H. Williams, C. Putney, A. Ezzeldin (eds.) *Public Archaeology as Arts of Engagement*, Archaeopress publishing ltd, Oxford 2019, pp. 1-13.

people do not typically associate archaeology with insights that pertain to their personal history or cultural heritage. These findings highlight a contrast between interest in archaeology and actual engagement with archaeological institutions. While there is a broad recognition of the importance and value of archaeology among the public, as evidenced by the high percentages endorsing its utility and worth, this does not translate into a corresponding likelihood of visitation. This discrepancy underscores the need for enhanced outreach and educational initiatives by archaeological institutions to bridge the gap between public interest and participation, thereby fostering greater community involvement and appreciation for cultural heritage.<sup>333</sup>

However, the NEARCH survey reveals that a limited number of European citizens connect archaeology with social and economic values. Specifically, only 8% believe that archaeology aids in identity formation, and just 6% perceive it as contributing to local sustainable development. Furthermore, only 4% regard archaeology as enhancing quality of life, and the same percentage considers it a form of leisure activity. These findings suggest a disconnect between the public's perception of archaeology and its potential societal impact. The low figures show a significant opportunity for educational and outreach initiatives within the archaeological community to better communicate the relevance of archaeology to contemporary social issues. By demonstrating how archaeology can contribute to identity building, sustainable practices, and overall community well-being, practitioners may engage more individuals and foster a greater appreciation for the discipline's role in society.<sup>334</sup>

Sustainable cultural engagement is centred on strategies and practices that ensure the preservation and appreciation of cultural heritage while actively involving communities, stakeholders, and the public in meaningful interactions. This concept highlights the importance of a holistic approach that considers social, economic, and environmental factors to create a long-lasting impact on cultural preservation and community development. At the core of sustainable cultural engagement is the active participation of local communities, which fosters a sense of ownership and responsibility toward cultural heritage. By involving community members in archaeological digs, conservation efforts, and educational programs, they can share their knowledge, stories, and traditions, enriching the preservation process. Raising public awareness about the significance of cultural heritage is essential for promoting sustainable

---

<sup>333</sup> G. Tully, *Community Archaeology: General Methods and Standards of Practice, Public Archaeology*, vol. 6, no. 3, Taylor and Francis, 2007, pp. 155-187. See: S. Thomas, *Community Archaeology* [in:] G. Moshenska, *Key Concepts in Public Archaeology*, University College London Press, London 2017, pp. 14-30.

<sup>334</sup> D. Martelli-Banégas, I. Panhard, T. Favré, *Image of a Archaeology in Poland- 2015*, Study report, general public, Harris interactive, NEARCH survey, [https://archaeologydataservice.ac.uk/catalogue/adsdata/arch-2749-1/dissemination/pdf/NEARCH\\_Image\\_of\\_archaeology\\_Poland\\_OK.pdf](https://archaeologydataservice.ac.uk/catalogue/adsdata/arch-2749-1/dissemination/pdf/NEARCH_Image_of_archaeology_Poland_OK.pdf) [available on:16.06.2025].

engagement. Educational initiatives such as workshops and events serve to inform people about their local heritage, its importance, and the challenges it faces. This deeper understanding encourages responsible stewardship and community advocacy for preservation efforts.<sup>335</sup>

Collaboration across sectors, such as government, academia, non-governmental organisations, and the private sector, is critical for sustainable cultural engagement. By bringing together diverse resources, expertise, and best practices, stakeholders can develop innovative solutions for conservation challenges, ultimately enhancing the effectiveness of engagement initiatives. Creating economic models that support cultural heritage can also contribute to sustainability. Opportunities in eco-tourism, cultural festivals, and artisanal markets celebrating local crafts can benefit communities financially while ensuring the preservation of their cultural identity. Moreover, sustainable engagement must remain resilient and adaptable to the changing dynamics of culture and society. As communities evolve, the approaches to engagement should also adapt to new challenges, advancements in technology, and shifting community needs, necessitating regular assessments of program effectiveness. Utilising modern technology in preserving cultural heritage can also lead to sustainable practices. Techniques such as digital archiving, 3D modelling, and virtual reality can document and display cultural heritage in ways that safeguard physical artefacts while providing broader access for public engagement.<sup>336</sup>

The presence of mass archaeological artefacts in various locales presents an opportunity for fostering public awareness and appreciation of cultural heritage<sup>337</sup> that currently is stocked in magazines without any perspectives. These artefacts, although regarded as lacking individual significance, hence lack of legal premises to be recognised as a monument, hold collective value that can be leveraged to enhance societal engagement with the past. By facilitating the trade of these mass artefacts and allowing for private ownership, stakeholders can create avenues for education and discourse, ultimately enriching the public's understanding of archaeological heritage that is not at the top.

Encouraging the trade of mass archaeological artefacts, provided that it adheres to ethical and legal standards, can serve to demystify the discipline of archaeology and stimulate interest among the general populace. By introducing the possibility of private ownership of such artefacts, individuals can develop a personal connection to the archaeological narrative,

---

<sup>335</sup> M. Pawleta, *Archeologia Odpowiedzialna Społecznie. Działania z Zakresu Public i Community Archaeology w Polsce* [Socially Responsible Archaeology. Public and Community Archaeology Activities in Poland], *Folia Praehistorica Posaniensia*, t.XXV, Wydział Archeologii Uniwersytet Adama Mickiewicza w Poznaniu, Poznań 2020, pp. 169-190.

<sup>336</sup> See: A. Llewellyn, *Delivering Public Benefit from Archaeology- Factsheet*, CIFA, Chartered Institute of Archaeologists, 2020; *Korzyści Społeczne Płynące z Badań Archeologicznych* [The Social Benefits of Archaeological research], Narodowy Instytut Dziedzictwa, Warszawa 2022.

<sup>337</sup> See: N. Merriman, *Public Archaeology*, Routledge, London 2004.

which may lead to greater investment in the protection and appreciation of cultural heritage. This engagement is particularly significant as it allows for a more inclusive understanding of archaeology, one that does not solely reside within the confines of museums but extends into everyday life. However, it is crucial to navigate the implications of *res extra commercium*, which pertains to objects that are considered outside the realm of commerce due to their cultural, historical, or legal significance. While many mass artefacts may not possess characteristics that restrict them from trade, it is essential that any transactions involving these items respect their context and provenance. Effective protocols must be put in place to ensure that the trade of mass artefacts does not undermine the integrity of archaeological sites or the ethical standards governing cultural heritage.

### **Minor conclusions 5**

Attempting to provide a summary, the considerable discretionary power wielded by conservatory offices in designating items as archaeological heritage raises significant implications within the realm of cultural heritage management. These offices have the authority to determine the classification of artefacts, assess their historical and cultural significance, and implement protective measures accordingly. This flexibility allows conservators to tailor their decisions to the specific contexts of each find, facilitating effective preservation of the archaeological record. However, this extensive discretion also presents challenges, particularly in terms of consistency and clarity. The subjective nature of determining what constitutes archaeological heritage can lead to variable applications of the criteria, resulting in uncertainty for stakeholders, including property owners, collectors, and researchers. Furthermore, the classification of certain items as archaeological heritage may impose restrictions on ownership and use, potentially infringing upon individual property rights and giving rise to legal conflicts.

The issue of mass artefacts presents significant challenges in the realms of storage, conservation, and social utility within the field of archaeology. Mass artefacts, which are often numerous and lack individual significance, can overwhelm storage capacities in museums and archaeological institutions. As large quantities of similar items are excavated, these artefacts may not be prioritised for conservation, leading to inadequate preservation efforts and risks of deterioration. From a conservation perspective, the sheer volume of mass artefacts makes it challenging to allocate sufficient resources for their proper management.

Many institutions struggle with space constraints, making it difficult to provide the necessary conditions for effective storage and long-term preservation. Because mass artefacts often do not hold the same historical, artistic or cultural value as monuments should, they

shouldn't always be granted same legal protection. In terms of social utility, the failure to effectively engage with mass artefacts diminishes their potential contribution to public understanding and appreciation of cultural heritage. When these artefacts are relegated to storage and not displayed or made accessible, they miss the opportunity to inform and educate the public about past human activities and societal developments. This disconnect can lead to missed opportunities for fostering interest in archaeology and enhancing community connections to cultural heritage that is already low.

Archaeological artefacts are generally deposited in the warehouses of archaeological institutes or museums, following a decision made by the regional monument conservator. However, without the legal establishment of a museum, these artefacts cannot be transferred into the ownership of the institutes, as ownership is exclusively conferred to museums and not to universities or other organisational entities. In instances where an organisational unit holds archaeological artefacts on deposit from research activities and seeks to transfer them to a museum, it is necessary to issue a new decision formalising the transfer of these artefacts from the organisational unit to the academic museum. This transfer is crucial for the museum to assume ownership legally. However, it should be noted that such transfers are not commonly encountered in practice. The distinction in ownership and management responsibility can lead to challenges in the conservation and accessibility of these artefacts. Universities may possess valuable finds yet lack the resources or framework to ensure their proper preservation and public engagement. Conversely, museums, which are better equipped for the long-term care and exhibition of artefacts, may miss out on significant pieces simply because they are not closely affiliated with the universities conducting the research.

In cases where artefacts are not classified as *res extra commercium*, selling these items can be a viable option, provided that the relevant laws and ethical considerations are followed. By ensuring that surplus artefacts are not categorised as protected items,<sup>338</sup> institutions can effectively engage with the public, generate revenue, and alleviate storage issues while respecting the legal frameworks that govern archaeological materials. Additionally, museums can utilise the concept of *res extra commercium* to reinforce their commitment to ethical practices. By transparently communicating the criteria used to determine the status of artefacts, including how they distinguish between items that may be sold and those that must be preserved, museums can build trust with the public while promoting an understanding of the complexities involved in archaeological heritage retention and management.

---

<sup>338</sup> See in contrast: L. Smith, *Uses of Heritage*, Routledge, London-New York 2006.

The proposal to sell mass artefacts can be viewed as a beneficial strategy for several reasons. It addresses both the practical challenges of managing surplus archaeological materials and the broader objectives of public engagement and education. First and foremost, the sale of mass artefacts can generate additional revenue for museums and archaeological projects. Many institutions face financial constraints and struggle to maintain their collections, develop exhibits, and fund educational programs. By selling surplus or less significant artefacts, provided they are accompanied by verified provenance, museums can create a new income stream. This financial support can be reinvested into more critical preservation efforts and programs that protect truly significant archaeological heritage, ensuring that the most important artefacts receive the care and attention they deserve.

Additionally, giving away selected mass artefacts can enhance experiences and foster a deeper connection to archaeological heritage. When people receive an artefact, even a small or common piece, it can stimulate interest and curiosity in archaeology, prompting them to learn more about the history and culture associated with the objects. Such tangible connections can enrich their overall experience, turning passive observation into active engagement. Furthermore, it can encourage individuals to appreciate the cultural narratives these artefacts embody, fostering a sense of stewardship among the public. From an educational perspective, this practice can serve as an effective outreach tool. When mass artefacts are shared or sold, they can be accompanied by educational materials that provide context and information about their historical significance. This promotes a more comprehensive understanding of archaeological research and encourages dialogue about the importance of cultural heritage conservation.

Moreover, the decision to sell or distribute mass artefacts can alleviate storage issues faced by many museums. Current storage conditions often lead to overcrowding and, in some cases, improper preservation methods for artefacts that do not warrant long-term retention. By responsibly managing surplus materials, museums not only declutter their collections but also ensure that remaining artefacts can be stored under conditions conducive to their preservation. And finally, incorporating mass artefacts into the commercial aspects of museum operations establishes a model of sustainable cultural engagement. This approach can sensibly balance the ethical considerations of archaeological stewardship with contemporary economic realities. By focusing on the potential benefits of selling or distributing mass artefacts, museums can navigate the complexities of artefact management while fostering a more informed and engaged public.

Concluding, the challenges posed by mass artefacts highlight the need for a more strategic approach to their management. This may involve reconsidering which objects are deemed worthy of retention, improved documentation practices, and the development of innovative ways to engage with the public, thereby enhancing the overall utility and significance of archaeological collections. The prevailing state of archaeological research reveals that some archaeologists engage in the selection of artefacts based on subjective criteria, which are often shaped by immediate operational needs and financial considerations. However, the evaluation of objects intended for preservation ought to rely on substantive criteria that should be clearly defined and integrated into conservation doctrine, as well as into relevant legal statutes. This emphasis on establishing clear, objective criteria for artefact selection is crucial for fostering a consistent and equitable approach to archaeological preservation. By grounding decisions in substantive foundations, institutions can ensure that significant artefacts are duly recognised and preserved, thereby enhancing the integrity of cultural heritage management. This approach also promotes accountability in the decision-making process, reinforcing the importance of ethical stewardship in the field of archaeology.



## Chapter 6

### Models of protection of archaeological monuments in selected European countries

#### Introduction

The realm of archaeological heritage protection is characterised by a significant lack of uniformity in legal frameworks and policies among, e.g. European Union member states. The same situation is worldwide. Each country has developed its own unique approach addressing the complexities of ownership, preservation, and management of archaeological sites, often influenced by the historical, cultural, and social contexts of the country. This diversity reflects differing national priorities regarding cultural heritage, ranging from a strong emphasis on collective state ownership to a more liberal stance favouring individual property rights. As a result, there is no singular legal system governing archaeological heritage, leading to a mosaic of regulations that can vary widely from one jurisdiction to another. Some states prioritise the preservation of cultural property as a public good, reflecting a belief that heritage belongs to the entire community and must be safeguarded for future generations. Others adopt a more individualised approach that allows for private ownership and commercialisation of archaeological finds, provided that certain reporting and protective measures are adhered to.

The need to compare various national systems is essential to understanding the further strengths and weaknesses of different models in protecting archaeological heritage. By examining the legal frameworks of select countries, such as England, which exemplifies a liberal model, Italy, which embodies a conservative approach, and Germany, representing a balanced middle ground, stakeholders can gain valuable insights into effective practices for heritage preservation. Such comparisons can inform policy development, foster international collaboration, and ultimately enhance the broader objectives of cultural heritage protection throughout Europe. Through this analytical lens, it becomes evident that a more comprehensive understanding of the diverse strategies employed across nations can contribute to the formulation of best practices adaptable to the challenges faced in safeguarding archaeological heritage.

The protection of archaeological monuments is of paramount importance to the preservation of cultural heritage and historical identity in Europe. This chapter explores the various models of safeguarding archaeological sites, focusing specifically on the frameworks established in three European countries: Italy, England and Germany. Each of these nations has

devised distinct legal paradigms to manage ownership and conservation, reflecting differing philosophical approaches to heritage protection.

This chapter begins by examining Italy ownership over archeological heritage law, as a conservative model that prioritises collective ownership of archaeological heritage. The Italian legal system asserts that cultural property is fundamentally the property of the state, thereby restricting private ownership and emphasising the role of the state as the principal custodian of archaeological sites. This approach seeks to ensure that Italy's rich historical legacy remains accessible to the public and safeguarded from commercial exploitation. Further, in England, the liberal model emphasises individual ownership rights alongside state interests. The legal framework permits private ownership of archaeological finds while imposing reporting obligations designed to protect significant heritage assets. As a result, there is a dynamic interplay between private enterprise and public responsibility in the stewardship of cultural property. The final chosen model, German, presents a hybrid model, striking a historical balance between individual rights and state intervention. The German legal framework allowed for private ownership of archaeological finds while concurrently recognising the state's authority to regulate and protect cultural heritage. This middle-ground approach fosters collaboration among private landowners, governmental authorities, and cultural institutions, facilitating a comprehensive strategy for the preservation and management of archaeological monuments.

The selection of Italy, England and Germany for this comparative analysis of archaeological heritage protection is particularly pertinent given the distinct legal frameworks each nation embodies, as well as their varying historical contexts and approaches to cultural preservation yet being within one continent. By examining the ownership rights and protective measures in these three diverse legal contexts, this analysis aims to provide a nuanced understanding of how different European jurisdictions approach the vital task of safeguarding their archaeological heritage. Ultimately, this comparative study will highlight the strengths and weaknesses of each model, offering insights into the broader implications for heritage conservation, which fundamentally influences the trade of archaeological assets.

### **6.1. The conservative model: protection of archaeological monuments in Italy**

Italy possesses one of the most extensive and influential systems of cultural heritage protection in the world, reflecting the country's extraordinary concentration of historical monuments, archaeological sites, and artistic works. Italian cultural heritage law is deeply rooted in the idea

that cultural property constitutes a fundamental public interest and an essential component of national identity. As a result, the legal framework governing cultural heritage in Italy is highly protective, state-centred, and characterised by strong regulatory control over both public and private actors. The constitutional foundations of cultural heritage protection in Italy are laid down in article 9 of the Italian Constitution,<sup>339</sup> which explicitly mandates the Republic to safeguard the landscape and the historical and artistic heritage of the nation. This provision elevates cultural heritage protection to the level of a constitutional value, placing it alongside fundamental principles such as education, research, and social development. Unlike many legal systems where heritage protection is derived from ordinary legislation, in Italy it enjoys direct constitutional recognition, shaping the interpretation and application of all subsequent laws in this field.

The initial comprehensive legal framework<sup>340</sup> for the protection of cultural heritage in Italy was established by the Italian Parliament with the approval of Law no. 364 in 1909.<sup>341</sup> This legislation laid the groundwork for safeguarding the nation's cultural assets, marking a significant milestone in the country's commitment to heritage preservation. It established core principles for the preservation and regulation of movable and immovable items of historical, archaeological, or artistic interest. The law was instrumental in defining a public interest in cultural property that took precedence over absolute private property rights, a significant shift from previous liberal ideologies. Its main provisions included a general principle that cultural property owned by the state, other public bodies, or legal persons could not be sold or transferred out of public ownership, and that all archaeological findings automatically became public property.<sup>342</sup>

However, during the Fascist era, this pioneering law was subsequently replaced by Law no. 1497 in 1939,<sup>343</sup> which introduced new regulations that reflected the prevailing political

---

<sup>339</sup> Constitution of the Italian Republic, 22nd December 1947, article 9, English version published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication, [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) [available on: 23.03.2025].

<sup>340</sup> The legal framework governing cultural heritage in Italy has deep historical roots. Scholars assert that one of the earliest pieces of legislation aimed at regulating the exportation of cultural artefacts originated from a decree issued on October 24, 1602, by Ferdinando I de 'Medici, the Grand Duke of Tuscany. In this decree, the Tuscan ruler mandated that any export of artworks by deceased artists from the Grand Duchy required an export license, to be obtained from the Academy of the Arts of Drawing (Accademia del Disegno). The decree specifically identified 18 eminent artists, including renowned figures such as Leonardo da Vinci, Michelangelo Buonarroti, Raphael, and Correggio, whose works were prohibited from leaving the territory of the Grand Duchy; see: IBA Art, Cultural Institutions and Heritage Law Committee, Art Law: Restrictions on the export of cultural property and artwork- report, International Bar Associations, 2020, p. 68.

<sup>341</sup> Law no. 364 of 20th June 1909 by the Italian Parliament.

<sup>342</sup> Article 15 of Law no. 364 of 20th June 1909 by the Italian Parliament, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1909-06-20:364@originale>.

<sup>343</sup> Law no. 1497 of 29 June 1939 by the Italian Parliament.

climate of that time. The responsibility for the management and protection of architectural, artistic, historical, and archaeological heritage was firmly vested in the state, specifically through the Ministry of Cultural and Environmental Affairs. This framework underscores the notion that the state is the ultimate owner of these cultural assets, tasked with the duty to safeguard them for the benefit of society. The principles of law support a system where the direction and coordination of heritage preservation are predominantly under state control. This emphasis on state ownership reflects a commitment to maintaining a unified approach to cultural heritage, highlighting the important role these assets play in shaping national identity and historical context. As the steward of this heritage, the Ministry is entrusted with establishing policies and regulatory frameworks that not only ensure effective preservation but also promote public engagement and awareness. By centralising authority in this manner, the state affirmed its dedication to protecting its rich cultural legacy, ensuring that these treasures are preserved for future generations.<sup>344</sup> Law no. 1497 remained in effect until it was abrogated by Decree 490 in 1999,<sup>345</sup> which sought to modernise and reform the legal landscape surrounding cultural heritage protection in Italy. This transition paved the way for a renewed focus on cultural preservation in the context of contemporary values and needs.

Fifteen years later, on January 22, 2004, the Italian Parliament further advanced the framework for cultural heritage management by approving Legislative Decree no. 42,<sup>346</sup> which is now recognised as the current Cultural Heritage Code. This updated code consolidates previous legislation and incorporates broader principles aimed at enhancing the protection and promotion of Italy's rich cultural heritage, reflecting a modern understanding of cultural significance and the necessity for robust legal safeguards. Through this legislative evolution, Italy affirms its dedication to preserving its unique cultural identity and historical legacy for future generations. Italian cultural legislation is characterised by a strict conservative system that emphasises the protection and preservation of cultural heritage as a hallmark of national identity. This legislative approach is manifested through a comprehensive framework designed to safeguard archaeological and historical assets, reflecting the deep-rooted belief that cultural heritage is a collective asset that must be meticulously preserved for future generations. Key

---

<sup>344</sup> G. Di Geso, *Organization of the Services of Preservation, Cataloguing and Professional Training, Nessun Futuro Senza Passato. 6th ICOMOS General Assembly and International Symposium. Atti, ICOMOS 6th General Assembly: No Past, no Future*, ICOMOS, Rome 1981, p. 606.

<sup>345</sup> Legislative Decree 490 from 29th October 1999, Italy, published in the Gazzetta Ufficiale della Repubblica Italiana (Official Law Gazette of Italy) on December 27th 1999.

<sup>346</sup> Legislative Decree no. 42 of 22 January 2004 (Codice dei beni culturali e del paesaggio), Gazzetta uff.: 24/02/2004, no. 45, – further: Code of Cultural Heritage and Landscape.

aspects of this conservative system include the assertion of state ownership over cultural heritage, particularly archaeological finds and historical monuments.

### **6.1.1. Regulations concerning archaeological monuments**

According to the provisions set forth in article 91 of the currently binding law<sup>347</sup> in Italy regarding archaeological heritage, any objects defined as cultural property in article 10, where archaeological heritage is mentioned as well, regardless of how or by whom they are found, whether located underground or beneath the seabeds, are automatically the property of the state. This legislation recognises the intrinsic value of these artefacts, asserting that they are of national importance and should be preserved as part of the collective cultural heritage. When such objects are discovered, their classification as either movable or immovable determines their designation within governmental assets. Specifically, movable cultural properties become part of the government's inventory, while immovable assets are classified as inalienable property as articulated in articles 822 and 826 of the Italian Civil Code.<sup>348</sup> These articles enshrine the idea that certain cultural properties, once recognised as archaeological, cannot be transferred, thereby ensuring their perpetual protection and public accessibility.

Italian law categorises state-owned archaeological heritage as *res extra commercium*, effectively placing these assets beyond the sphere of commercial trade and rendering them immune to private ownership, sale, or transfer. This foundational principle is articulated within article 54 of the Code of Cultural Heritage and Landscape and is further supported by article 822 of the Italian Civil Code, which defines what constitutes the public domain. Article 54 stipulates:

The following cultural properties belonging to the State cannot be alienated:

- a) buildings and areas of archaeological interest;
- b) buildings recognised as national monuments by measures having the force of law;
- c) the collections of museums, picture galleries, art galleries and libraries;
- d) archives.

Together, these legal provisions affirm the inalienable nature of such cultural assets and ensure their perpetual allocation for public benefit. The Italian judiciary rigorously enforces this status,

---

<sup>347</sup> Legislative Decree no. 42 of 22 January 2004 (Codice dei beni culturali e del paesaggio), Gazzetta Uff.: 24/02/2004, no. 45, articles 10 and 91.

<sup>348</sup> The Italian Civil Code (Codice Civile) enacted by Royal Decree no. 262 on March 16th 1942.

consistently rejecting attempts to privatise archaeological artefacts through claims of long-term possession or other means.<sup>349</sup> This legal framework prioritises the collective cultural heritage of the nation over individual property rights, reinforcing the idea that these assets belong to the public domain. The inalienability doctrine enshrined in article 54 of the Code of Cultural Heritage and Landscape explicitly protects cultural heritage from actions such as seizure, forced sale, or expropriation, thereby ensuring that these treasures remain under the state's protective oversight, or *tutela*.

When archaeological finds are discovered on private land, the landowner does not retain any proprietary rights over the artefacts themselves. Instead, ownership is immediately conferred on the state upon discovery, underscoring the primacy of public interests in safeguarding cultural heritage. This legal framework has evolved from foundational legislation, such as Law no. 364/1909, which initially established the principle of public dominion over all archaeological discoveries. Over time, this framework has been refined and reinforced through subsequent regulations and codes. A key aspect of these protections is the immunity of cultural heritage from *usucapio*, or adverse possession. Italian jurisprudence, including rulings from the Council of State, has consistently upheld this principle, confirming that even decades of uninterrupted private holding cannot extinguish the state's title to these assets. Due to their *res extra commercium* status, archaeological properties are excluded from the provisions of acquisitive prescription as outlined in article 822 of the Civil Code. In practice, any export, commercialisation, or transfer of archaeological items necessitates prior authorisation from the Ministry of Culture, which also retains preemptive purchase rights under article 60 of the CBC. Violations of this framework result in severe criminal penalties, thereby further solidifying the non-privatisable nature of Italy's archaeological heritage and emphasising the government's unwavering commitment to protect and preserve the nation's cultural legacy for future generations.

The uncovering of a cultural asset, particularly in the realm of archaeological discoveries, initiates a specific legal framework as outlined in articles 91–96 of the Code of Cultural Heritage and Landscape. When a private individual discovers an object deemed to hold cultural significance whether through excavation, construction activities, or by chance they are legally required to promptly report the finding to the relevant authorities, including the Ministry

---

<sup>349</sup> See: Order by Corte di Cassazione in Rome, Second Civil Section, of 23rd May 2023, no. 14105, <https://www.dirittoegiustizia.it/#/documentDetail/10471504> [available on: 24.03.2025]; Order by Corte di Cassazione in Rome, Second Civil Section, of 18th July 2025, no. 14313, <https://www.studiostajanogarella.it/beniculturali-e-opere-pubbliche-limiti-allapplicazione-automatica-della-tutela-in-caso-di-esproprio-di-immobili-privati/> [available on: 24.03.2025].

of Culture and the local Superintendence for Cultural Heritage. The law clearly stipulates that failure to report such discoveries may result in criminal charges and administrative penalties, thereby underscoring the state's paramount right to cultural assets. Upon reporting a discovery, the state automatically takes ownership of the asset, provided it meets criteria for archaeological or historical significance. As a result, the finder does not gain any property rights to the item, however, they may be entitled to a monetary reward or a percentage of the item's assessed value, as determined by the Ministry of Culture in specific circumstances. When discovery occurs on private land, the landowner may also be eligible for compensation, although the asset itself is always subject to state ownership and oversight.<sup>350</sup>

However, the Italian Ministry of Culture has released a potentially transformative statement<sup>351</sup> in the wake of a court ruling, which challenges prevailing views on cultural heritage and patrimony while reaffirming the rights of private property owners. The statement fundamentally tackles the competing interests between private property rights and the Italian government's objective of safeguarding its cultural heritage, particularly regarding the complexities surrounding proof of ownership. It asserts that there should not be an automatic presumption of state ownership over cultural assets.

Laws such as the Code of Cultural Heritage and Landscape establish that cultural assets are inalienable and protected from private ownership or commercial exploitation. This framework enshrines the principle that the Italian state holds the primary responsibility for managing and preserving these assets, thereby prioritising public interest over private claims. The strict regulatory environment also extends to the processes of discovery, excavation, and trade. Archaeological findings must be reported to the authorities, and any unauthorised removal or trade of cultural objects is met with stringent penalties. The emphasis on regulatory oversight aims to prevent the loss of valuable heritage and to deter illicit activities associated with the trafficking of antiquities. Furthermore, the Italian legal system provides little room for exceptions to these rules, firmly entrenching the idea that cultural heritage is not merely a commodity to be bought or sold but a vital part of the nation's historical fabric.

Italy's designation of archaeological heritage as *res extra commercium* reflects a deliberate and intentional choice embedded within its legal framework, underscoring the nation's commitment to safeguarding cultural assets. Public values are also mentioned in article 2 of the Code of Cultural Heritage and Landscape:

---

<sup>350</sup> Chambers and Partners, Art & Cultural Property Law 2025, <https://practiceguides.chambers.com/practice-guides/art-cultural-property-law-2025/italy> [available on: 24.03.2025].

<sup>351</sup> Ministero della cultura, comunicato, <https://cultura.gov.it/comunicato/24864> [available on: 24.03.2025].

4. Cultural heritage property belonging to the government shall be designated for public enjoyment, compatibly with the needs of government use and on condition that no protection reasons to the contrary persist.

By employing the term *res extra commercium*, Italian law clearly communicates that certain cultural properties are not subject to the same market forces that govern private ownership and commercial transactions. This classification signifies that these assets are protected from private ownership, sale, or any form of alienation, reinforcing the notion that they are public goods inherently linked to the national identity and cultural heritage. This intentional inclusion serves several key purposes. Firstly, it establishes a robust legal foundation that emphasises the state's role as the guardian of cultural heritage, thereby prioritising collective interests over individual property rights. Secondly, it provides clarity in legal proceedings and public understanding regarding the treatment of cultural assets, ensuring that there is no assumption of private ownership over such items.

## **6.2. The liberal model: protection of archaeological monuments in England**

Cultural heritage law in England is characterised by a comparatively liberal, decentralised, and pragmatic approach, reflecting both the common law tradition and a strong emphasis on private property rights. Unlike legal systems that prioritise state ownership and centralised control, the English framework focuses on regulation, oversight, and cooperation with private actors rather than exclusive public ownership. A balance between conservation objectives, individual rights, and public access thus shapes cultural heritage protection in England. England has no single constitutional provision dedicated to protecting cultural heritage. Instead, heritage protection has developed through a combination of statutory instruments, common law principles, and administrative practice. The absence of constitutional entrenchment has resulted in a flexible and adaptive legal framework capable of responding to evolving social, economic, and cultural needs. Cultural heritage is protected not as an abstract national value, but through specific legal mechanisms addressing different categories of heritage assets.

The preservation of ancient edifices and archaeological sites in England and Wales commenced with the enactment of the Ancient Monuments Protection Act of 1882.<sup>352</sup> This landmark legislation identified and designated twenty-nine specific structures as worthy of protection, which primarily included various earthworks and stone circles, with Stonehenge

---

<sup>352</sup> Ancient Monuments Protection Act from 18th August 1882, 45 & 46 Victoria, ch. 73, §§ 2-4, 1882 England – further: the 1882 Act.

recognised as the most significant among them. The primary objective of the 1882 Act was to afford a degree of protection to certain historical sites and monuments scattered across Britain and Wales. However, despite its noble intentions, the Act, in its finalised form, proved inadequate in delivering effective protective measures for these sites. In many respects, it fell short of fulfilling its intended goals.

The journey toward the passage of the 1882 Act began in 1873, when Sir John Lubbock, the Member of Parliament for Maidstone, introduced "A Bill to Provide for the Preservation of Ancient National Monuments" in the House of Commons.<sup>353</sup> This legislative proposal was a response to the alarming rate of destruction facing antiquities, particularly those of Roman and prehistoric origin, which were being systematically dismantled for their stones or cleared away to make space for new housing developments. At that time, the overwhelming majority of the sites in question were privately owned and lacked legal protection, rendering them vulnerable to destruction and neglect. Ultimately, the Ancient Monuments Protection Act of 1882 marked a significant yet imperfect step toward recognising the importance of safeguarding the nation's heritage. While it aimed to preserve critical elements of England and Wales' rich historical landscape, the Act's limited powers highlighted the challenges inherent in legislative efforts to protect cultural heritage effectively. The Act served as a foundational moment, laying the groundwork for future endeavours in heritage preservation that have evolved significantly over the years that followed. Under the provisions of the 1882 Act as ultimately enacted, the government was granted limited authority in its efforts to safeguard ancient monuments. Specifically, it could engage in the acquisition of these sites solely through the purchase from private owners who were willing to sell. This acquisition process was contingent upon the Treasury's discretionary allocation of funds for such purposes, effectively limiting the government's ability to intervene in the preservation of heritage sites unless financial resources were made available. Thus, the legislation imposed significant constraints on governmental action, reducing its capacity to proactively protect and manage important archaeological and historical sites within the nation.

The scope of protection afforded to ancient monuments under the Ancient Monuments Protection Act of 1882 was significantly broadened with the enactment of the 1900 amendment of the Ancient Monuments Protection Act<sup>354</sup> to that legislation. The primary objective of this Amendment was to expand the protective measures to encompass not only prehistoric remains

---

<sup>353</sup> J. Lubbock (sir) et alia, *A Bill to Provide for the Preservation of Ancient National Monuments*, 1873, 36 Vict., Bill 5 (unenacted).

<sup>354</sup> Ancient Monuments Protection Act from 6th August 1900, 63 & 64 Victoria, ch. 34, 1900 England – further: the 1900 Amendment.

but also medieval structures. Furthermore, the Amendment introduced an expanded definition of the term monument, characterising it as any structure, erection, or monument of historic or architectural interest. Unlike the original 1882 Act, which had several exclusions, the 1900 Amendment stipulated that only occupied dwellings would be explicitly excluded from protective coverage. This broader definition and the consequent enhanced scope of protection endowed the Amendment with the potential to offer significantly greater safeguarding of cultural heritage than its predecessor. As a result, the 1900 Amendment represented an essential advancement in the legal framework governing the preservation of historical and architectural resources.

The 1900 Amendment represented a significant advancement in the legal framework for the protection of ancient monuments, reflecting a growing recognition of the need to safeguard cultural heritage. This legislation successfully expanded the scope of protection, allowing for the inclusion of medieval structures alongside prehistoric sites. However, it is important to acknowledge certain limitations within this framework. Similar to the original 1882 Act, the Amendment's protective measures applied primarily to those buildings and sites that the government recognised as sufficiently significant to warrant financial responsibility for their upkeep. While this limitation may seem restrictive, it also underscores a pragmatic approach on the part of the government. By focusing resources on the sites deemed most important, the government can ensure that adequate care and funding are directed where they will have the greatest impact. Furthermore, this framework acknowledges the challenges of managing public funds and emphasises the importance of prioritising significant cultural assets. The passage of the 1900 Amendment illustrated the commitment to enhancing heritage protection while also being mindful of financial realities. While there was no provision for compulsory acquisition of properties for preservation purposes, the legislation's focus on consensual agreements with private landowners reflects an understanding of the need for collaboration rather than confrontation. This cooperative spirit is essential in the realm of cultural heritage protection. Although the 1900 Amendment had its limitations, it marked an important step forward in the journey toward protecting Britain's rich cultural heritage. Acknowledging the complexities of funding and responsibility within the framework ensures that preservation efforts are sustainable and effective.

The legislative framework that ultimately empowered the government to compulsorily acquire property for the protection of monuments deemed of national importance was established in 1913 with the enactment of the Ancient Monuments Consolidation and

Amendment Act.<sup>355</sup> This pivotal legislation marked a significant evolution in safeguarding cultural heritage in the United Kingdom. Prior to this Act, the government's capacity to intervene in the preservation of important archaeological sites and historical monuments was severely constrained, relying primarily on voluntary agreements with private landowners and on limited financial resources. The inability to compel the purchase of properties meant that many significant sites were left vulnerable to neglect, development pressures, or degradation. The passage of the 1913 Act marked a transformative moment in heritage conservation, as it equipped the government with the authority to act decisively to protect national treasures that hold historical, cultural, and aesthetic value. By granting the government the power to purchase land compulsorily, the Act facilitated a more proactive approach to heritage protection, ensuring that sites of great significance could be preserved for future generations. Moreover, this legislation provided a more transparent legal framework for determining which monuments warranted such protections, thus enhancing the government's ability to prioritise conservation efforts effectively. The Act underscored the recognition of cultural heritage as a collective good, deserving of robust legal safeguards and public investment.<sup>356</sup>

The Ancient Monuments Consolidation and Amendment Act was amended in 1931, though these changes were not substantial. The amendment required owners of listed monuments to give three months' notice before demolishing or altering a scheduled ancient monument. It also mandated that all preservation orders, which needed parliamentary confirmation, be recorded in the Local Land Charges Registry. In 1933, another amendment streamlined the procedure for issuing protective orders, allowing the Minister of Works to issue interim preservation notices valid for twenty-one months. If a preservation order was not established by then, the notice would expire, thereby enhancing governmental authority in protecting heritage sites. Despite these improvements, public awareness of threats to national heirlooms remained limited, and the legislation did not effectively educate the public on the importance of preservation.<sup>357</sup> In the end, it was the Second World War that fully realised the educational effort regarding British public awareness that Sir John Lubbock had initiated over sixty years earlier. The destruction of Coventry Cathedral from aerial bombardment generated significant public concern about the preservation of historic sites.<sup>358</sup> The Historic Buildings and

---

<sup>355</sup> Ancient Monuments Consolidation and Amendment Act from 15th August 1913, 3 & 4 Geo. 5, ch. 32, 1913 England – further: the 1913 Amendment.

<sup>356</sup> A.D. Saunders, *A Century of Ancient Monument Legislation 1882-1982*, *The Antiquaries Journal*, vol. 63, issue 1, Cambridge University Press, Cambridge 1983, pp. 11-33.

<sup>357</sup> S. Halfin, *The Legal Protection of Cultural Property in Britain: Past, Present and Future*, *DePaul Journal of Art, Technology and Intellectual Property Law*, vol. 6, issue 1, DePaul University, Chicago 1995, p. 8.

<sup>358</sup> S. Halfin, *The Legal Protection of Cultural Property in Britain: Past, Present and Future*, *DePaul Journal of Art, Technology and Intellectual Property Law*, vol. 6, issue 1, DePaul University, Chicago 1995, p. 9.

Ancient Monuments Act of 1953<sup>359</sup> was enacted to provide state assistance for the preservation of significant cultural properties. This Act empowered the Minister of Works to grant financial support for the maintenance and repair of buildings of remarkable interest, as well as their contents, contingent upon the stipulation that public access to these locations remained restricted. Furthermore, the Act allowed the Minister to acquire sites directly or to facilitate local governments in their acquisition efforts. In the subsequent two decades, a series of regulatory measures were enacted, each featuring progressively detailed provisions that delineated the processes for safeguarding these sites.

Prior to 1979, the legislative framework in the United Kingdom did not specifically focus on archaeological preservation to the extent seen in later acts. While earlier legislation, such as the Ancient Monuments Consolidation and Amendment Act of 1913 and the Historic Buildings and Ancient Monuments Act of 1953, addressed the protection of notable sites and historic buildings, they lacked a comprehensive emphasis on archaeological heritage. It was not until 1979 that a more concerted effort was made to specifically safeguard archaeological sites, ushering in a legislative approach that recognised the unique importance of preserving the archaeological record for future generations. The protection of archaeological monuments was always a critical aspect of cultural heritage management, as it helps preserve historically significant sites and artefacts that provide insight into a nation's past.

In historical jurisdictions, approaches to heritage protection vary widely, reflecting differing philosophies regarding ownership and stewardship. Nowadays in England, the framework is characterised by a liberal model that seeks to balance individual property rights with the overarching need to preserve heritage. This model allows for private ownership of archaeological finds while ensuring that legal measures are in place to protect significant sites. Legal statutes, such as the Ancient Monuments and Archaeological Areas Act 1979<sup>360</sup> and the Treasure Act 1996,<sup>361</sup> lay the groundwork for identifying and managing archaeological resources, enabling individuals to participate actively in the preservation process. Furthermore, initiatives like the Portable Antiquities Scheme (PAS) enhance public participation by encouraging the reporting of finds, facilitating proper documentation, and fostering a collective

---

<sup>359</sup> Historic Buildings and Ancient Monuments Act from 31st July 1953, 1 & 2 Eliz. 2, ch. 49, 1953 England.

<sup>360</sup> Ancient Monuments and Archaeological Areas Act 1979 from 4th April 1979, An Act to consolidate and amend the law relating to ancient monuments; to make provision for the investigation, preservation and recording of matters of archaeological or historical interest and (in connection therewith) for the regulation of operations or activities affecting such matters; to provide for the recovery of grants under section 10 of the Town and Country Planning (Amendment) Act 1972 or under section 4 of the Historic Buildings and Ancient Monuments Act 1953 in certain circumstances; and to provide for grants by the Secretary of State to the Architectural Heritage Fund, 1979 England and Wales.

<sup>361</sup> Treasure Act 1996 from 4th July 1996, An Act to abolish treasure trove and to make fresh provision in relation to treasure, 1996 England and Wales.

awareness of the importance of cultural heritage. This participatory approach helps to cultivate a sense of shared responsibility among individuals and communities regarding the stewardship of archaeological resources. While the liberal model presents many advantages, such as empowering private owners to protect and preserve finds, it also faces challenges, including potential disparities in preservation practices and risks associated with the commercialisation of artefacts. Consequently, ongoing evaluation and adaptation of regulatory frameworks remain essential to ensure adequate cultural heritage protection. The landscape of archaeological monument protection is complex and multifaceted, necessitating careful consideration of ownership rights, legal frameworks, and community involvement in the stewardship of cultural heritage.

### **6.2.1. Regulations concerning archaeological monuments**

Under the current law, archaeological objects, with the exception of those classified as Treasure (defined below) that belong to the Crown,<sup>362</sup> typically belong to the landowner. Archaeologists usually enter into agreements with landowners to ensure that any objects discovered are designated for inclusion in public collections, such as museums. However, many metal detectorists and some other finders often prefer to retain their discoveries, whether for personal collections or for resale. Landowners may wish to examine the objects before making decisions regarding future ownership, and any written agreement between the landowner and the finder should clearly delineate the ownership rights of the finds. It is advisable that all archaeological discoveries, excluding those obtained within the context of organised archaeological projects (which should be documented separately), be reported to the Portable Antiquities Scheme.<sup>363</sup> The Finds Liaison Officers associated with this scheme can assist in determining whether a local museum may be interested in acquiring any of the items that have been discovered.

In accordance with the stipulations outlined in the Treasure Act 1996,<sup>364</sup> individuals who discover items that may potentially be classified as Treasure are legally obligated to report such finds to the coroner within a period of fourteen days from the date of discovery. This

---

<sup>362</sup> Treasure Act 1996 from 4th July 1996, An Act to abolish treasure trove and to make fresh provision in relation to treasure, 1996 England, Chapter 24, point 4.

<sup>363</sup> See: The British Museum, Amgueddfa Cymru (eds.), *Advice For Finders of Archaeological Objects and Treasure*, <https://finds.org.uk/documents/file/pa-and-t-leaflet.pdf> [available on: 23.03.2025]; Department for Culture, Media and Sport (ed.), *Treasure Act 1996: Code of Practice (3rd Revision,)* Presented to Parliament pursuant to section 11 of the Treasure Act 1996, 2023, [https://finds.org.uk/documents/treasure\\_act.pdf](https://finds.org.uk/documents/treasure_act.pdf) [available on: 23.03.2025].

<sup>364</sup> Treasure Act 1996 from 4th July 1996, An Act to abolish treasure trove and to make fresh provision in relation to treasure, 1996 England, Chapter 24.

obligation serves to protect cultural heritage and ensure the appropriate management of significant archaeological finds. It is customary for finders to fulfil this reporting requirement by engaging with their local Finds Liaison Officer, who is part of the Portable Antiquities Scheme (PAS). These officers are specifically trained and designated to assist finders in the proper reporting process and are authorised to take possession of the discovered item to facilitate further investigation. Once the find has been duly reported and a museum expresses interest in acquiring the artefact, a coroner's inquest is subsequently convened. This inquest serves the purpose of determining whether the item qualifies as Treasure under the established criteria set forth in the Treasure Act. The inquest process is critical, as it allows for an official examination of the circumstances surrounding the discovery, including the nature of the artefact and its potential historical or archaeological significance.

The following categories of finds are defined as Treasure under the Act:

- Any object (other than a coin) that is at least 10% (by weight of metal) gold or silver and that it is at least 300 years old. Prehistoric objects will be Treasure if any part of it is gold or silver;
- Any group of two or more metallic objects of any composition of prehistoric date that come from the same find;
- All coins from the same find provided they are at least 300 years old when found. If the coins contain less than 10% gold or silver there must be at least ten of them;
- Any object, whatever it is made of, that is found in the same place as, or had previously been together with, another object that is Treasure;
- Any object that would previously have been Treasure Trove, but does not fall within the specific categories given above, i.e. objects that are less than 300 years old, made substantially of gold or silver, and that have been deliberately hidden with the intention of recovery and whose owners or heirs are unknown.<sup>365</sup>

The items listed above are classified as Treasure under the Act, provided they were discovered after 24 September 1997, or, in the case of category 2, if they were found after 1 January 2003. If an object is discovered on or after 30 July 2023, it may be classified as potentially qualifying as Treasure even if it does not conform to the previously established criteria. To be considered as such, the find must be composed at least partially of metal, be a minimum of 200 years old,

---

<sup>365</sup> Treasure Act 1996 from 4th July 1996, An Act to abolish treasure trove and to make fresh provision in relation to treasure, 1996 England, Chapter 24, point 1.

and offer exceptional insights into an aspect of national or regional history, archaeology, or culture. This exceptional significance can derive from any one or more of the following factors:

- Its rarity as a representative example of its type within the United Kingdom indicating that it stands out due to its unique characteristics or craftsmanship.
- The geographical location, region, or specific part of the United Kingdom in which the find was located, which may lend additional historical context or significance to the item.
- Its direct association with a notable individual or significant event, thereby enriching its historical narrative and cultural value.

Additionally, an object may also qualify as Treasure even if it does not independently provide significant insights. If, at the time of discovery, it is part of a collection of objects that, when considered together, yield exceptional insights into historical or cultural aspects, it may be classified as a Treasure in conjunction with those other items. This understanding emphasises the importance of context and the interconnected nature of archaeological finds in enriching our comprehension of history and culture.

With the exception of items classified as Treasure, finders are under no legal obligation to report their discoveries, although human remains must be reported to the police.<sup>366</sup> Additionally, there may be requirements to record archaeological finds as part of any agri-environment stewardship agreements associated with the land.<sup>367</sup> Regardless of statutory obligations, all archaeological finds provide valuable insights into how people lived, worked, and died in the past. Since its establishment in 1997, the Portable Antiquities Scheme has operated as a national initiative, employing a network of archaeologists known as Finds Liaison Officers whose role is to record archaeological objects discovered by the public. Finds Liaison Officers are keen to examine archaeological items reported by the public. To ensure a thorough record, which includes descriptions, photographs, weights, and measurements, they may need to temporarily borrow these items. A receipt is always issued for all finds submitted for recording. They emphasise the importance of capturing precise findspot information, specifically the exact location where an item was found, to assist with this, many metal detectorists and individuals searching for archaeological artefacts utilise handheld Global Positioning System (GPS) devices. Following the recording process, the find is usually returned

---

<sup>366</sup> Portable Antiquities Scheme, Guidance for Landowners, Occupiers and Tenant Farmers in England and Wales, Metal-detecting, Field-walking and Searching for Archaeological Objects: guidance for landowners, occupiers and tenant farmers in England and Wales, <https://finds.org.uk/getinvolved/guides/guidancelandowners> [available on 23.03.2025].

<sup>367</sup> Historic England, Metal detecting on agri- environment land, <https://historicengland.org.uk/advice/caring-for-heritage/rural-heritage/metal-detecting-agri-environment-land/> [available on 23.03.2025].

to the individual who submitted it. The primary aim of the Portable Antiquities Scheme is to make information about documented finds widely available for educational and research purposes, while also protecting personal details and archaeological sites from potential harm. The Scheme's online database publishes details of finds, but specific findspot locations are not more precisely designated than a four-figure National Grid Reference, which indicates the location within a one-kilometre square. The most sensitive find locations are not disclosed with this level of accuracy. The Portable Antiquities Scheme shares this data with third parties, including Historic Environment Records, which serve as key local databases maintained by various local authorities, as well as other statutory bodies and researchers. All parties accessing this information must comply with the same conditions established by the Scheme for the publication of data online.<sup>368</sup>

In 2006, English Heritage commissioned Oxford Archaeology to investigate the extent of illegal searches and the removal of antiquities from archaeological sites. The 2009 Nighthawking Survey engaged with over 400 heritage organisations and stakeholders across the UK, Northern Ireland, and the Crown Dependencies, which include the Isle of Man, Jersey, and Guernsey. The survey aimed to gather evidence on the prevalence of nighthawking (the practice of illegally searching for archaeological artefacts at night) and to lay the groundwork for measures to counter it. Between 1995 and 2008, a total of 240 sites were reported to be impacted by nighthawking, with 88 of these being Scheduled Monuments. The reported incidents of nighthawking on Scheduled Monuments have declined from 1.3% to 0.41% since the last survey conducted in 1995. Additionally, 152 non-scheduled sites were also affected, a category that was not assessed in the 1995 survey. The findings indicate that approximately 3-6% of archaeological excavations have experienced raids, although the number of archaeological units that reported incidents of nighthawking decreased from 37 out of 50 in 1995 to 15 out of 54 in 2007. In that year, 19 units provided responses, reporting a total of 35 affected sites.<sup>369</sup>

Although reports and studies indicate that the illicit trade in artefacts and the illicit excavation of archaeological sites pose a substantial threat to the preservation of cultural heritage, there has been insufficient notification or public acknowledgement of these problems

---

<sup>368</sup> Portable Antiquities Scheme, *Guidance for Landowners, Occupiers and Tenant Farmers in England and Wales, Metal-detecting, Field-walking and Searching for Archaeological Objects: guidance for landowners, occupiers and tenant farmers in England and Wales*, <https://finds.org.uk/getinvolved/guides/guidancelandowners> [available on: 23.03.2025].

<sup>369</sup> Oxford Archaeology, *Nighthawking Survey, 2009*, <https://eprints.oxfordarchaeology.com/5832/1/Night-Hawking-Survey.pdf> [available on: 23.03.2025].

by government authorities, with the mainly nightawking.<sup>370</sup> Despite the recognised need for stronger measures to combat illegal trafficking, there appears to be little initiative on the part of the government to tighten existing laws or implement new regulations aimed specifically at addressing these activities. Government responses have largely focused on awareness campaigns and educational initiatives rather than on legislative reform.<sup>371</sup>

In England, a significant number of archaeological objects can be owned privately, excluding those classified as Treasure. According to the legal framework established under the Treasure Act 1996, finds deemed Treasure are subject to specific reporting requirements and ownership regulations, typically resulting in their designation as state property. However, for items that do not meet the criteria for Treasure, private ownership is permissible. The ability for individuals to own archaeological objects fosters not only personal collections but also opens avenues for the trading of archaeological heritage. Private collectors, metal detectorists, and hobbyists are allowed to retain and sell artefacts, provided these items are not classified as protected or significant under existing legislation. This aspect of ownership generates a market for archaeological heritage, allowing for the circulation of artefacts among collectors, dealers, and institutions that may wish to acquire them for educational or display purposes. Concerns about the potential for unregulated trade lead to the commodification of cultural heritage, as well as the risk of valuable historical insights being lost, necessitate ongoing dialogue regarding the management of privately owned archaeological finds. To address these issues, the Portable Antiquities Scheme encourages reporting and documenting archaeological discoveries, which not only reinforces the importance of collective heritage but also helps ensure that significant finds are recognised and preserved for public benefit. Through this initiative, private ownership and trade of archaeological objects can coexist with efforts to protect and honour the rich tapestry of England's cultural heritage.

### **6.3. The conservative-liberal model: protection of archaeological monuments in Germany**

Historically, Germany has maintained a legal framework for the protection of monuments, however, this framework has never taken the form of a single, comprehensive national

---

<sup>370</sup> United Kingdom of Great Britain and Northern Ireland, National report on the implementation of the convention on the means of prohibiting and preventing the illicit import, export and transfer of the ownership of cultural property, reporting period: 2015-2018, <https://unesdoc.unesco.org/ark:/48223/pf0000387679/PDF/387679eng.pdf.multi> [available on: 23.03.2025].

<sup>371</sup> See: Countryside Stewardship, <https://www.gov.uk/guidance/countryside-stewardship-manual>; Code of Practice for Responsible Metal Detecting 2017; Portable Antiquities Scheme, <https://finds.org.uk/getinvolved/guides/codeofpractice>.

monuments act. Instead, the protection of cultural heritage developed incrementally and primarily at the regional level. During the nineteenth and early twentieth centuries, several German states enacted early monument protection laws. Prussia played a leading role with the enactment of the Law for the Protection of Monuments of 1902,<sup>372</sup> which is regarded as one of the earliest modern monument protection statutes in Europe. This legislation provided legal protection for historic buildings, works of art, and archaeological remains. Other German states, including Bavaria, Baden, and Saxony,<sup>373</sup> subsequently adopted comparable laws, establishing a decentralised but increasingly professional system of monument preservation.

In the period of the Weimar Republic responsibility for monument protection remained vested in the individual states (*Länder*). Although no national monuments law was introduced, institutional structures such as monument registers, heritage inventories, and state conservation authorities were further developed and consolidated. Under the National Socialist regime monument protection continued without the adoption of a dedicated national monuments act. The Reich Nature Protection Act of 1935<sup>374</sup> incorporated provisions relevant to the protection of cultural landscapes, archaeological sites, and historically significant features. While heritage protection during this period was frequently subordinated to ideological objectives, legal mechanisms for the preservation of monuments formally remained in place.

Following the Second World War, monument protection in both the Federal Republic of Germany and the German Democratic Republic continued to operate without a federal monuments acts. In West Germany, the individual states enacted their own monument protection laws primarily between the 1950s and 1970s. In East Germany, monument protection was administered through a centralised system, which was later replaced by state-level legislation after German reunification.<sup>375</sup>

At present, cultural heritage law in Germany is characterised by a federal, decentralised structure that reflects the constitutional organisation of the German state and its strong emphasis on regional autonomy. Unlike unitary systems with a single comprehensive heritage code, Germany regulates cultural heritage primarily at the level of the *Länder*. This results in a pluralistic legal landscape in which the core principles of heritage protection are broadly shared, but their concrete implementation varies significantly across jurisdictions. German cultural

---

<sup>372</sup> Prussia, Gesetz betreffend den Schutz von Denkmalen from 1902.

<sup>373</sup> On March 10, 1909, Saxony passed its first law on the protection of historical monuments, the Gesetz gegen Verunstaltung von Stadt und Land [*Law Against the Disfigurement of Town and Country*] (*VuG*).

<sup>374</sup> Reichsnaturschutzgesetz, Law for the Protection of Monuments from 16 July 1902 (Hess, Reg. Bl. P. 275).

<sup>375</sup> See: J. Pruszyński, *Ochrona Prawna Zabytków w Republice Federalnej Niemiec* [*Legal Protection of Monuments in the Federal Republic of Germany*], Wydawnictwo Przedsiębiorstwa Państwowego Pracowni Konserwacji Zabytków, Warszawa 1992.

heritage law thus represents a regulatory model that combines public interest protection with respect for private property and subsidiarity.

The constitutional foundation for cultural heritage protection in Germany is indirect but robust. The Basic Law (*Grundgesetz*)<sup>376</sup> does not explicitly refer to cultural heritage, however, several constitutional principles provide the legal basis for its protection. These include the protection of property under article 14, which allows ownership to be limited in the public interest, as well as the cultural sovereignty (*Kulturhoheit*) of the *Länder*,<sup>377</sup> which grants them primary responsibility for cultural matters. Additionally, the state's obligation to protect the natural foundations of life and cultural assets for future generations further supports heritage conservation efforts. At the legislative level, each Land has enacted its own *Denkmalschutzgesetz* (monument protection act),<sup>378</sup> governing the identification, protection, conservation, and use of cultural monuments. Despite differences in terminology and structure, these laws share common features: broad definitions of cultural monuments, encompassing architectural, artistic, archaeological, and technical heritage, systems of listing or designation,

---

<sup>376</sup> Basic Law for the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*) in the consolidated version published in the Federal Law Gazette Part III, Classification Number 100-1, as last amended by article 1 of the Law of 22 March 2025 (Federal Law Gazette 2025 I no. 94).

<sup>377</sup> Basic Law for the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*) in the consolidated version published in the Federal Law Gazette Part III, Classification Number 100-1, as last amended by article 1 of the Law of 22 March 2025 (Federal Law Gazette 2025 I no. 94), article 23.

<sup>378</sup> Monument Protection Acts in each 16 lands:

In Baden-Württemberg: Gesetz zum Schutz der Kulturdenkmale (*Denkmalschutzgesetz – DSchG*), originally enacted 25 May 1971; later re-promulgated 6 December 1983 (GVBl. S. 797);

In Bavaria (Bayern) :Gesetz zum Schutz und zur Pflege der Denkmäler (*Bayerisches Denkmalschutzgesetz – BayDSchG*), originally enacted 25 June 1973; current consolidated version often cited from 27 July 2009;

In Berlin: Gesetz zum Schutz von Denkmalen in Berlin (*Denkmalschutzgesetz Berlin – DSchG Bln*), enacted 24 April 1995;

In Brandenburg: Gesetz über den Schutz und die Pflege der Denkmale im Land Brandenburg (*Brandenburgisches In Denkmalschutzgesetz – BbgDSchG*), enacted 24 May 2004;

In Bremen: Gesetz zur Pflege und zum Schutz der Kulturdenkmäler (*Bremisches Denkmalschutzgesetz – DSchG*), enacted 27 May 1975, with later amendments;

In Hamburg: *Denkmalschutzgesetz (DSchG)*, enacted 3 December 1973;

In Hesse (Hessen): *Hessisches Denkmalschutzgesetz (HDSchG)*, enacted 28 November 2016, in force 6 December 2016;

In Mecklenburg-West Pomerania (Mecklenburg-Vorpommern): *Denkmalschutzgesetz (DSchG M-V)*, enacted 6 January 1998, with later amendments;

In Lower Saxony (Niedersachsen): *Niedersächsisches Denkmalschutzgesetz (NDSchG)*, enacted 30 May 1978;

In North Rhine-Westphalia (Nordrhein-Westfalen): Gesetz zum Schutz und zur Pflege der Denkmäler im Lande In Nordrhein-Westfalen (*Denkmalschutzgesetz – DSchG NRW*), enacted 11 March 1980;

In Rhineland-Palatinate (Rheinland-Pfalz): *Denkmalschutzgesetz (DSchG)*, enacted 23 March 1978; in force 1 May 1978;

In Saarland: *Saarländisches Denkmalschutzgesetz (SDschG)*, enacted 19 May 2004;

In Saxony (Sachsen): Gesetz zum Schutz und zur Pflege der Kulturdenkmale im Freistaat Sachsen (*Sächsisches In Denkmalschutzgesetz – SächsDSchG*), enacted 3 March 1993, with later amendments;

In Saxony-Anhalt (Sachsen-Anhalt): *Denkmalschutzgesetz des Landes Sachsen-Anhalt*, enacted 21 October 1991;

In Schleswig-Holstein: Gesetz zum Schutz der Denkmale (*Denkmalschutzgesetz – DSchG SH* 2015), enacted 30 December 2014;

Thuringia (Thüringen): *Thüringer Gesetz zur Pflege und zum Schutz der Kulturdenkmale (Thüringer Denkmalschutzgesetz – ThürDSchG)*, enacted 14 April 2004.

and extensive regulatory controls over alteration, excavation, and destruction. Archaeological heritage is typically included as a distinct category within these monument protection laws.

### 6.3.1. Regulations concerning archaeological monuments

The regulation of archaeological heritage in Germany reflects the federal structure of the state, resulting in significant differences between the individual Länder with regard to ownership regimes and the legal status of archaeological finds. While all German states recognise archaeological heritage as a public interest requiring protection, they diverge markedly in how they balance this interest against private property rights. This divergence is particularly evident when comparing Länder that apply a comprehensive state ownership regime to those that continue to allow private ownership of archaeological finds under regulated conditions. The examples of Saxony-Anhalt and Lower Saxony illustrate these contrasting approaches.

Saxony-Anhalt represents a strongly state-centred model of archaeological heritage protection. The applicable legal framework is the *Denkmalschutzgesetz des Landes Sachsen-Anhalt* of 21 October 1991,<sup>379</sup> which places archaeological monuments (*Bodendenkmale*) under strict public-law protection. Archaeological sites located in the ground are regarded as cultural monuments whose disturbance, excavation, or alteration requires prior authorisation from the competent heritage authorities. The protection regime is designed not only to preserve physical remains but also to safeguard the scientific context in which they are found. Responsibility for archaeological oversight lies primarily with the State Office for Heritage Management and Archaeology, which exercises both administrative and scientific control over excavations and finds.

The Sachsen-Anhalt Act does not explicitly incorporate the notion of items outside of commerce, which could mean they can be traded with. The absence of such a legal term suggests that the prohibition on trade involving archaeological heritage is not directly addressed by this doctrine. Without directly stating this restriction, the legal framework places emphasis on the protection and conservation of cultural heritage, rather than categorically prohibiting its trade. This means that while the law focuses on safeguarding archaeological assets, it does not, by invoking this legal principle, automatically bar them from private transactions or commercial exchanges. Consequently, the absence of a specific prohibition signal in the law implies that although there are measures in place to preserve and protect cultural heritage, trading may not

---

<sup>379</sup> *Denkmalschutzgesetz des Landes Sachsen-Anhalt* of 21 October 1991, GVBl. LSA 1991, 368, corr. 1992, p. 310, <https://www.gesetze-im-internet.de/gg/BJNR000010949.html> [available on: 23.03.2025] – further: the Sachsen-Anhalt Act.

be outright disallowed under this legislation. Thus, it is essential to consult additional regulations and legal interpretations to fully understand the restrictions and allowances concerning the trade of archaeological heritage in the region.

A defining feature of the Saxony-Anhalt system is the application of a statutory *Schatzregal* (treasure trove rule). Under this regime, archaeological finds of particular significance, as well as objects discovered during authorised excavations or within designated protection areas, become the property of the Land upon discovery. This transfer of ownership occurs by operation of law, irrespective of land ownership or the identity of the finder. According to section 12 of this Act, movable cultural artefacts that lack an identifiable owner, or have been concealed for such an extended period that ownership cannot be established, automatically become the property of the state upon their discovery. This applies if the items are found during state-led investigations, within archaeological protection zones, or if they possess significant scientific value. Individuals who comply with the obligation to surrender these artefacts may receive a monetary reward, determined by the scientific importance of the find.

Although finders are generally entitled to financial compensation or a finder's reward, they do not acquire ownership of the objects themselves. This approach reflects the view that archaeological artefacts constitute an integral part of the collective cultural heritage and should therefore be held in public ownership to ensure their preservation, scientific evaluation, and, where appropriate, public display. Private possession of newly discovered archaeological objects is thus largely excluded, reinforcing a model of centralised public stewardship.

The vast majority of German Länder have implemented *Schatzregal* provisions within their respective monument protection legislation, which override the civil-law default and confer immediate ownership of significant archaeological finds to the state. These provisions are intended to safeguard cultural heritage, ensuring that objects of historical, scientific, or cultural significance are preserved within public institutions rather than dispersed into private hands. Consequently, private ownership of archaeological heritage is generally precluded in German states.

Bavaria historically represented an exception within this framework. Prior to the 2023 legislative amendments, Bavarian law adhered more closely to the civil-law treasure rule, allowing finders and landowners to retain shared ownership of archaeological objects, provided statutory reporting and preservation requirements were observed. This approach rendered Bavaria an outlier in the German federal system, where most *Länder* had already implemented state-centred ownership models for archaeological finds. During a meeting on August 2, 2022,

the government resolved to implement a regulation granting the state ownership of all discovered treasures within its borders. The proposed draft indicates: "In recent years, there has been a substantial rise in illegal excavations using metal detectors, which exploit this legal gap, resulting in considerable losses of Bavaria's archaeological heritage."<sup>380</sup> The legislative reform of the Bavarian Monument Protection Act, effective 1 July 2023, introduced a formal *Schatzregal* rule, codified in article 9.

According to article 9(1), movable archaeological monuments or parts thereof that are ownerless or have been concealed for such a period that the original owner cannot be determined become the property of the Free State of Bavaria upon discovery and must be handed over to the State Office for the Preservation of Monuments without delay. Article 9 further establishes mechanisms for compensating the landowner (art. 9(2)) and for rewarding the discoverer who is not the landowner (art. 9(3)), while also specifying conditions under which these claims lapse (Art. 9(4)). Additionally, article 9(5) provides for the transfer of ownership to municipal authorities, provided that proper archiving and professional storage of all excavation finds is ensured, in which case claims for compensation or reward no longer apply. These provisions apply to discoveries made both before and after the law's effective date (art. 9(6)).<sup>381</sup>

Consequently, archaeological objects of recognised historical or cultural value in Bavaria and, more broadly, throughout Germany are no longer subject to private ownership. Even in Bavaria, where private ownership was historically possible, state ownership is now automatically conferred upon discovery, with limited exceptions for market-value thresholds, procedural compliance, and municipal transfers. This legal framework prioritises public interest and heritage preservation while simultaneously recognising the contributions of landowners and finders through structured compensation and reward mechanisms.

Historically, the approach to ownership of archaeological heritage varied considerably across the German *Länder*, reflecting differences in regional legal traditions and attitudes toward private property. In the early to mid-twentieth century, several *Länder* adhered closely to the civil-law framework codified in § 984 German Civil Code,<sup>382</sup> which permitted the

---

<sup>380</sup> Denkmalschutz „Denkmäler schützen, Energiepotenziale nützen und Kommunen unterstützen“: Ministerrat beschließt Neuerungen im Bayerischen Denkmalschutzgesetz, 2022, <https://www.stmwk.bayern.de/allgemein/meldung/6892/wir-bringen-klimaschutz-und-denkmalschutz-zusammen-neuerungen-im-bayerischen-denkmalschutzgesetz.html> [available on: 23.03.2025].

<sup>381</sup> Bavarian Monument Protection Act (Gesetz zum Schutz und zur Pflege der Denkmäler) in the consolidated version published in the Bavarian Law Collection (BayRS 2242-1-WK), which was last amended by Section 13 Paragraph 3 of the Act of December 23, 2024 (GVBl. p. 619), <https://www.gesetze-bayern.de/Content/Document/BayDSchG-9> [available on: 23.03.2025].

<sup>382</sup> Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515).

division of ownerless or hidden finds between the landowner and the finder. Under this regime, significant archaeological discoveries could remain in private hands, provided that reporting and preservation obligations were fulfilled. This approach effectively allowed private individuals and landowners to retain ownership of objects of archaeological interest, creating a more liberal environment for private stewardship of cultural heritage.

Certain states, such as Bavaria and Hesse, exemplified this liberal approach. In these Länder, the civil-law treasure trove rules operated with relatively limited state intervention, allowing landowners and finders to benefit materially from their discoveries. While statutory obligations required reporting to authorities and adherence to basic preservation standards, the state generally did not claim automatic ownership over archaeological finds. This legal framework reflected a historical balance between protecting cultural heritage and respecting private property rights, in contrast to other Länder that had adopted early *Schatzregel* provisions, whereby all significant finds were vested in state ownership immediately upon discovery.

Over time, however, most German Länder shifted toward stricter regulatory models. By the late twentieth and early twenty-first centuries, Länder such as Baden-Württemberg, Saxony, and North Rhine-Westphalia had enacted comprehensive *Schatzregel* provisions in their monument protection laws, effectively nationalising archaeological finds and limiting private ownership to trivial or low-value discoveries. This historical divergence illustrates the tension within Germany between regional legal traditions that prioritised private rights and the emerging consensus on the public ownership of archaeological heritage. The evolution of these laws underscores the increasing prioritisation of cultural preservation over private gain, while highlighting that, until very recently, some Länder provided a legal framework that allowed private ownership of significant archaeological objects.

## **Minor conclusions 6**

Attempting to provide a summary, the strengths and weaknesses of different ownership rights frameworks for archaeological heritage can significantly shape how cultural assets are preserved and managed, though the model of ownership itself does not inherently determine the strength of protection afforded to these sites. There is a lack of research supporting such a thesis that would make one system more preferable than the other. Public ownership, typically under state control, provides a robust mechanism for comprehensive protection measures, ensuring that archaeological sites are preserved for future generations. Governments are well-

positioned to allocate the necessary resources for excavation, research, and maintenance, thereby facilitating broader public access and enhancing educational opportunities and cultural engagement. Moreover, state oversight promotes sustainable management practices that account for the long-term impacts of tourism, development, and environmental change. In contrast, private ownership offers distinct advantages, fostering a vested interest in the preservation of archaeological finds among individuals or private entities. This interest may result in diligent care and maintenance of these assets. Additionally, private owners often possess the ability to mobilise financial resources more swiftly than public bodies, enabling rapid restoration or conservation efforts. They can also encourage innovative approaches to the exhibition and utilisation of archaeological resources, integrating these finds into tourism and educational initiatives.

Despite these benefits, both public and private ownership models present inherent challenges. In the realm of public ownership, one significant drawback is that state management may face bureaucratic inefficiencies, potentially delaying conservation initiatives and complicating decision-making. Budgetary constraints can further limit the extent to which governmental bodies protect and maintain archaeological sites. On the other hand, private ownership carries risks of exploitation, where the commercialisation and commodification of archaeological finds may compromise their integrity and cultural significance. Individual owners may lack the requisite expertise to ensure the appropriate preservation of artefacts, leading to neglect or mismanagement. This model may also restrict public access to archaeological sites and finds, diminishing educational and cultural opportunities.

Mixed ownership models aim to balance the interests of private owners with the necessity for public protection, but they can also exacerbate conflicts of interest when private objectives do not align with public preservation goals. Moreover, the complex legal frameworks associated with mixed ownership may pose difficulties for effective navigation by both private owners and governmental authorities. Ultimately, while different ownership models impact the connections individuals and communities forge with archaeological heritage, the strength of the protective measures in place relies more on the legal frameworks, cultural values, and societal priorities that underpin these systems. As such, the commitment to preserving archaeological heritage for future generations should remain a primary objective, regardless of the specific ownership rights model adopted.

In recent decades, Italian cultural heritage law has gradually incorporated elements aimed at enhancing public access, economic sustainability, and cooperation with private actors. The concept of *valorizzazione*, the enhancement and promotion of cultural heritage, has gained

prominence alongside traditional preservation (*tutela*). This has led to increased use of public-private partnerships, concessions, and management agreements, particularly for museums and heritage sites. Nevertheless, such initiatives operate within a tightly controlled legal framework, ensuring that economic use does not undermine conservation or public access. Institutionally, heritage protection in England is supported by a network of public bodies, most notably Historic England, which provides expert advice, maintains heritage registers, and supports conservation initiatives. However, operational responsibility for heritage protection is widely dispersed among local planning authorities, private owners, charitable trusts, and non-governmental organisations. This decentralisation reinforces the cooperative nature of the English model, in which heritage protection is seen as a shared responsibility rather than an exclusive state function. Germany occupies an intermediate and historically variable position. For much of the twentieth century, certain *Länder* such as Bavaria and Hesse followed a more liberal civil-law approach, allowing finders and landowners to retain shared ownership of archaeological finds under the civil code, subject to reporting obligations. Other *Länder*, however, had long adopted *Schatzregal* provisions, vesting ownership of significant finds in the state and reflecting a conservative, heritage-centred approach. The recent amendment of the Bavarian monument protection act in 2023 represents a shift toward the conservative model, aligning Bavaria with other German *Länder* by granting state ownership of movable archaeological monuments upon discovery while providing structured compensation and reward mechanisms. Consequently, Germany's legal landscape demonstrates a historical tension between liberal and conservative approaches, with recent reforms signalling a trend toward stronger state control over archaeological heritage.

Comparatively, these three systems illustrate a spectrum of legal philosophies. England embodies liberalism, emphasising private rights and incentives for disclosure. Italy exemplifies conservatism, prioritising state control and the protection of public heritage. Germany demonstrates a hybrid evolution: historically alternating between liberal and conservative approaches depending on the Land, it is now consolidating toward a more conservative framework in line with public interest and preservation priorities. Across these contexts, the management of archaeological heritage involves balancing the protection of cultural and scientific values with recognition of private property and individual contributions, though the emphasis and mechanisms for achieving this balance differ significantly by jurisdiction.

An important dimension in evaluating the effectiveness of archaeological heritage laws is their relationship with illegal searches and the illicit trade in artefacts. Legal frameworks that vest ownership of archaeological finds in the state do not automatically prevent unauthorised

excavations or trafficking, nor do liberal systems necessarily encourage them. Evidence from England and Germany illustrates this complex interaction between statutory ownership, enforcement, and market incentives.

In England, despite the liberal orientation of the Treasure Act 1996 and related common law principles, which allow private ownership of finds under specific conditions, there has been a notable decrease in illegal searches over recent decades. This decline can be attributed to the combination of clearly defined reporting requirements, rewards for lawful disclosures, and active engagement of metal detectorists and landowners in heritage preservation programs. By aligning private incentives with public interests, the English system encourages voluntary compliance and professional reporting, reducing the incidence of clandestine excavations and curbing the flow of artefacts into illegal markets. Consequently, the liberal framework demonstrates that public or state interests in heritage protection can be effectively advanced without strict expropriation of private findings, as long as legal incentives and monitoring structures are properly designed.

In contrast, Germany presents a different pattern. Although most *Länder*, including Bavaria since 2023, confer state ownership of archaeological finds under *Schatzregal* provisions, there has been an observed increase in illegal searches and the trafficking of artefacts. This trend may partly reflect the fact that state ownership removes financial incentives for private finders, creating a situation in which some individuals are motivated to bypass legal channels to retain or sell discovered objects illicitly. Enforcement challenges, coupled with the high market value of certain artefacts, further exacerbate the problem. Germany's experience suggests that public ownership alone does not eliminate illicit excavation or trafficking, and that the design of legal incentives, rewards, and effective monitoring is critical to ensuring compliance.

Italy represents a more conservative model, where archaeological finds are automatically vested in the state, reflecting the constitutional principle that cultural heritage belongs to the public. Despite the strict state ownership and rigorous legal penalties for illegal excavations, Italy has historically faced challenges with unauthorised digs and trafficking, particularly in regions with high tourist interest or valuable antiquities. However, the combination of strict enforcement, centralised monitoring, and cultural emphasis on heritage preservation has generally limited the scale of illegal activity compared to Germany. Italy's experience illustrates that while strict state control can reduce the incidence of illicit excavations, its effectiveness depends heavily on enforcement capacity and the integration of cultural and social norms that promote compliance.

These contrasting cases underscore a broader principle: the legal allocation of ownership, whether liberal or conservative does not, in isolation, determine compliance or the prevalence of illegal activity. Rather, it is the combination of legal incentives, enforcement capacity, cultural attitudes toward heritage, and integration of stakeholders (such as finders, landowners, and municipalities) that shapes the effectiveness of archaeological heritage protection. England illustrates how a liberal, incentive-based system can reduce illegal activity, while Germany demonstrates that strict public ownership without sufficiently motivating stakeholders may inadvertently contribute to noncompliance and the growth of illicit markets.

This prevailing assumption that state ownership of archaeological heritage is inherently superior to alternative ownership models, particularly with regard to the effectiveness of protection and preservation, warrants critical reevaluation. There is a scarcity of compelling empirical evidence demonstrating that state ownership consistently yields better outcomes in the safeguarding of archaeological sites. This lack of proof calls into question the efficacy of public ownership as a blanket solution for preserving cultural heritage. Given this context, it is essential to reconsider the philosophy underlying public ownership, especially concerning the engagement and interests of local communities and individuals. The traditional narrative often emphasises the state as the primary custodian of cultural resources, potentially sidelining the valuable contributions of private entities, local communities, and individuals to the preservation process. Moreover, there is a growing recognition that diverse ownership models can foster stronger connections between individuals and their cultural heritage. By reassessing the framework of public ownership, we can open the door to innovative approaches that prioritise collaboration between state authorities and private stakeholders. Such partnerships enhance the effectiveness of heritage protection and create opportunities for community involvement, thereby enriching the cultural landscape. In doing so, there must consider the unique historical and cultural contexts of various archaeological sites and recognise that a one-size-fits-all approach may not serve the best interests of society as a whole.

Concluding, a reevaluation of public ownership is essential not only to ensure the effective protection and management of archaeological heritage but also to empower communities to take an active role in the stewardship of their cultural assets. By fostering an inclusive framework that values both state and private contributions to heritage preservation, we can better serve the public and enhance the collective appreciation and safeguarding of our shared cultural heritage for future generations.



## **Maior conclusions, or proposals *de lege ferenda* (between public and private rights)**

Attempting to provide the summary, in an effort to encapsulate, the key points effectively in this dissertation and to highlight and articulate the conclusions that arise in the concepts of *de lege lata*, which pertains to the existing cultural heritage laws currently in effect, as well as *de lege ferenda*, which focuses on the proposed laws and reforms that suggest how the legal landscape should evolve in the future regarding archaeological heritage and artefacts, postulates are raised.

The ownership of cultural heritage property plays a vital role in shaping societal identity and fostering a sense of community. Cultural goods, which include artefacts, artworks, architecture, and other elements that represent the history, values, and beliefs of a society, serve as tangible links to the past. When individuals and institutions own and protect these items, they inevitably participate in a collective narrative that enriches their understanding of their heritage. Owning cultural goods allows societies to preserve their history and pass it down through generations. The simple act of collecting and preserving artefacts not only safeguards cultural expression but also enhances educational opportunities for current and future members of the community. Museums, galleries, and cultural institutions play a crucial role in this dynamic, as they act as guardians of heritage, providing spaces where the public can engage with and learn about their own cultural history.

In recent years, there has been a notable increase in societal interest in collecting cultural heritage items.<sup>383</sup> This surge can be attributed to a growing recognition of the importance of preserving cultural identity in an increasingly globalised world. Communities are seeking to reclaim and celebrate their unique histories, often resulting in grassroots movements aimed at collecting and protecting local artefacts. The ownership of cultural heritage fosters a sense of pride and ownership among community members. When individuals are actively engaged in the preservation and appreciation of cultural goods, it cultivates a shared responsibility for safeguarding their heritage. This communal investment not only reinforces social bonds but also encourages broader participation in cultural events, exhibitions, and educational initiatives that celebrate local heritage.

---

<sup>383</sup> See: J. Hausner, A. Karwińska, J. Purchla (eds.), *Kultura a Rozwój* [Culture and Development], 2<sup>nd</sup> ed., Narodowe Centrum Kultury, Kraków 2017; L. Rennebog, C. Spaenjers, *Buying Beauty: On Prices and Returns in the Art Market*, Management Science, vol. 59, no. 1, Institute for Operations Research and Management Science, Maryland 2013; R. Kräussl, R. Logher, *Emerging Art Markets*, Emerging Markets Review, vol. 11, no. 4, Elsevier, Amsterdam 2010.

Property is regarded as a fundamental cornerstone of the civil law system, playing a crucial role in its overall framework. It functions as both a tool for the governance of the state's economic structure and the foundation for all economic activities and transactions. The significance of property extends beyond mere ownership, it embodies the rights and responsibilities associated with the use, enjoyment, and transfer of assets, which are essential for fostering economic stability and growth. In its capacity as an instrument for the superstructure of the state's economic system, property law shapes how resources are allocated, how businesses operate, and how wealth is generated and distributed within society. It creates a legal environment where individuals and entities can confidently engage in transactions, knowing that their rights will be protected. This assurance encourages investments, entrepreneurship, and innovation, which are vital for economic development.<sup>384</sup>

Conversely, property also represents the foundation of all economic exchanges. When individuals or entities possess property rights, they are empowered to buy, sell, lease, and otherwise utilise their assets as they see fit. This ability to freely engage in transactions is essential for a flourishing economy, as it facilitates the movement of goods, services, and capital. Given the pivotal role that property plays in both the economic and legal spheres, it is imperative to establish strong protections for property rights. Effective legal frameworks must be in place to safeguard ownership and address disputes, thereby ensuring that property can be used as intended without fear of arbitrary interference or infringement. A robust system of property protection also fosters social order, as it helps to delineate clear rights and responsibilities among individuals and entities.

The importance of property as a fundamental element of civil law cannot be overstated. It underpins the structures that govern economic activity while simultaneously granting individuals the rights necessary to participate in and benefit from these activities. Therefore, the development of comprehensive legal protections for property rights is essential to promote economic prosperity and ensure equitable resource distribution in society.

According to an article 140 of the Polish Civil Code:

Within the limits set by laws and principles of social coexistence, the owner may, to the exclusion of others, use the property in accordance with the social and economic purpose of their rights, particularly

---

<sup>384</sup> E. Gniewek [in:] T. Dybowski (ed.), *System Prawa Prywatnego, tom III: Prawo Rzeczowe* [System of Private Law, Volume III: Property Law], C.H. Beck, Warszawa 2007, pp. 482-483.

by deriving benefits and other income from the property. Within the same limits, the owner may dispose of the property.<sup>385</sup>

It highlights the rights of property owners to utilise and manage their assets within the constraints of applicable laws and the principles of social coexistence. In the context of archaeological heritage, this article raises important considerations regarding the ownership and management of monuments, which are predominantly owned by the State Treasury.

Archaeological heritage, including both movable and immovable artefacts, is regarded as a collective cultural resource that contributes significantly to the identity, history, and social fabric of a community or nation. As such, these resources are typically designated as public property, meaning they are held in trust by the State Treasury. This legal framework positions the state not merely as an owner in the traditional sense but also as a steward responsible for the preservation, protection, and promotion of cultural heritage for the benefit of all citizens. The State Treasury is obligated to exercise its ownership rights in a manner that aligns with the broader objectives of preserving archaeological heritage. This includes developing and implementing policies that ensure the conservation of monuments and the responsible management of archaeological sites. Consequently, the state must balance its rights as an owner with its duties to safeguard these cultural resources, making decisions that consider both the intrinsic value of the artefacts and the public interest.

However, the responsibility of the State Treasury extends beyond mere preservation, it involves actively facilitating public access, education, and engagement with archaeological heritage. By providing opportunities for the community to learn about and interact with these monuments, the state can foster a sense of ownership and pride among citizens. This communal engagement can enhance public appreciation for cultural heritage and encourage collective efforts to protect and maintain these invaluable resources. Furthermore, as the custodian of archaeological heritage, the State Treasury must navigate the complexities of balancing development, conservation, and public interest. For instance, when faced with construction projects or urban development that may impact archaeological sites, the state is tasked with making informed decisions that prioritise the preservation of cultural heritage while allowing for necessary economic growth.

Since not explicitly excluded in any Polish legal act, the State Treasury, as a *de lege lata* proposal, have to start exploring the area of trading of archaeological objects, as it should

---

<sup>385</sup> Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny [Act of 23 April 1964 Civil code], Dziennik Ustaw 2025 r. uniform text, pos.1071 with. changes.

start happening already, particularly mass artefacts that, e.g. do not hold unique historical significance, as a means to stimulate the economy while ensuring responsible and ethical practices. The central argument presented in this research endeavour emphasises the notion that the mere ownership of a property by an individual or entity does not, in itself, impose a fundamental limitation on the legal ability to transfer or circulate that property, except when such constraints are explicitly articulated within a legal document. This analysis focuses specifically on the ownership rights of the State Treasury regarding archaeological artefacts. The thesis advocates the idea that possessing property does not automatically equate to having an absolute barrier against its transfer in legal contexts. This assertion highlights a more expansive legal doctrine: the differentiation between ownership itself and the various rights that accompany such ownership. In essence, while ownership entails a degree of control and the inherent right to utilise the property, it is crucial to understand that unless overt legal restrictions are defined and documented within a contract, statute, or another formal legal instrument, the owner may lack the unilateral authority to obstruct the potential transfer of that property to another party. This speaks to a vital distinction in property law, underlining the importance of clearly defined legal frameworks that delineate the parameters of ownership and the extent of rights that flow from it.

Engaging in such trade could provide vital financial resources for preservation efforts, public education programs, and enhanced community engagement with cultural heritage. To facilitate this trading process, the State Treasury could implement a regulated framework that ensures all transactions adhere to legal and ethical standards. This framework would involve a thorough assessment of the artefacts to confirm their provenance and ensure they do not fall under protective legislation like *res extra commercium*, which restricts the sale of culturally significant items. In practice, the State Treasury could designate certain mass artefacts for sale or exchange in national or international markets. By doing so, it could generate revenue that could be reinvested into the conservation of more significant archaeological sites and artefacts. This would not only enable the state to manage its resources effectively but also provide funds for education initiatives that raise awareness about the importance of preserving cultural heritage.

Moreover, pursuing managed trade can serve as a means to undermine the illicit antiquities market. By creating legitimate avenues for the transfer of mass artefacts, the State Treasury could reduce the demand for illegally sourced items while also ensuring that the historical context of sold artefacts is respected and preserved. Additionally, collaborating with museums, universities, and international cultural organisations could help establish partnerships

that both facilitate trade and amplify the educational value of these artefacts. Such collaborations might involve joint exhibitions or research projects that highlight the significance of the items being traded, fostering a broader appreciation for cultural heritage.

For centuries, the notion of trading archaeological heritage has often been associated with the black market, characterised by a lack of oversight and regulation. This illegal trade has resulted in widespread looting, loss of context, and destruction of invaluable cultural resources, ultimately severing the connection between artefacts and their historical significance. Such activities have not only compromised academic research but have also undermined public trust in cultural heritage institutions tasked with protecting these treasures. However, the conversation surrounding the trade of archaeological heritage is evolving. By recognising the potential for regulated trade in mass artefacts, stakeholders can effectively address the historical issues associated with the black market.

The question of ownership of archaeological heritage, whether vested in the State Treasury or held by private individuals or finders, has significant implications for the management, protection, and ethical stewardship of cultural resources. However, a notable lack of interrelatedness exists between these ownership frameworks, particularly concerning the legal and ethical responsibilities associated with each. When ownership of archaeological artefacts is assigned to private individuals or finders, issues arise regarding the accountability and stewardship of these items. Unlike state-owned artefacts, which are governed by comprehensive legal protections aimed at safeguarding cultural heritage, privately owned items may despite being the subject to the same level of scrutiny, monitoring, or regulation, are treated with high suspicion. This distinction can lead to significant gaps in the preservation and documentation of artefacts, as private owners may not have the same level of trust in obligations to adhere to best practices in conservation and public accessibility. Furthermore, the lack of interconnectedness in the ownership of archaeological heritage can exacerbate the situation regarding the trade in looted artefacts and the black market. While it is widely understood that illicitly obtained items are often linked to broader trafficking networks, there is a concerning absence of empirical evidence that directly connects private ownership or the actions of finders to the proliferation of black market activities. The hypothesis of a direct link between private ownership and the black market may not be substantiated by comprehensive research, pointing to a need for a clearer understanding of how ownership impacts the dynamics of archaeological material trade. This disconnect highlights the critical importance of establishing robust legal frameworks that delineate the rights and responsibilities of private owners while simultaneously enhancing the protections for state-owned archaeological heritage. By fostering a more

integrated approach to ownership that emphasises collaboration between public entities and private stakeholders, policies can be developed that encourage responsible stewardship and accountability.

Moving forward, it is essential for policymakers to consider how to bridge the gap between ownership types in a manner that facilitates the protection of archaeological heritage. This may involve creating incentives for private owners to cooperate with state authorities, ensuring that all artefacts, regardless of ownership, are adequately documented and preserved. By effectively addressing the complexities surrounding ownership and the potential implications for the trade in archaeological artefacts, stakeholders can work together to mitigate the risks associated with looting and black market activities, thereby safeguarding cultural heritage for future generations.

The idea of allowing the full trade of archaeological heritage is a complex and nuanced topic that invites various perspectives, particularly regarding the preservation of cultural heritage versus the economic and educational benefits of such trade. Permitting the trade of all archaeological artefacts could foster a greater appreciation for history and culture among the general public and would not diminish the value of certain artefacts by distinguishing them into groups. It could also provide vital funding for archaeological excavations, museums, and heritage preservation initiatives. Individuals and institutions may gain the means to acquire pieces of archaeological significance that would otherwise remain in storage or be lost to time. However, it is understandable that the unrestricted trade of archaeological heritage presents significant challenges and resistance coming both from the public and public organs. This includes concerns about illicit trafficking, the potential for loss of context for artefacts, and the ethical implications of commodifying cultural heritage. Particularly significant items could be better retained on purpose in public institutions where they can contribute to collective memory and identity, be accessible to researchers and the public.

To strike a balance between these competing interests, it could be beneficial for states to establish a regulated framework that allows for the trade of at least lesser-valued artefacts. By setting parameters around which types of artefacts can be traded and ensuring that those deemed less significant or less culturally sensitive are available in the marketplace, states can encourage a vibrant trade that still respects the integrity of more significant archaeological finds. Such lesser-valued artefacts could be mass artefacts. Such a model promotes responsible engagement with our shared past while allowing individuals and institutions to participate in the exchange of heritage in a more manageable and ethically sound way.

Introducing the trade of archaeological heritage in a context of a wrongful doctrine of archaeological heritage as a *res extra commercium*, as a *de lege ferenda* proposal, necessitates a clear and comprehensive definition of what constitutes allowable artefacts for sale. Without such a definition, besides the lack of encouragement from the public organs, creates also the potential for misunderstandings, misuse, and exploitation. First, establishing criteria for what can be sold will help to promote responsible trade of archaeological materials. This includes determining distinctions between items of e.g. high cultural significance, which should be preserved in museums and public collections, and those of lesser value, which might be suitable for trade. Without these guidelines, there is a risk that valuable artefacts will be treated as commodities, leading to their loss of context and meaning.

In legal terms, mass artefacts could be defined as:

a substantial assemblage of similar items unearthed from a specific archaeological site or context, which are typically indicative of the cultural practices, daily activities, or technological developments of a particular historical group or era. These artefacts, which may include pottery, tools, or decorative elements produced or utilised in large quantities, are significant for understanding the social, economic, and technological facets of the culture from which they derive but are not necessary to preserve alone for this purpose and are allowed to be traded with.

Establishing a legal framework for the trade of e.g. lesser-valued artefacts can lead to better provenance research and improved practices that ensure responsible management. Through regulated trading, institutions can develop robust systems to verify the provenance of artefacts, thereby enhancing transparency and accountability. This fosters a culture of ethical practice, where both buyers and sellers are incentivised to adhere to established guidelines. Improved provenance research not only serves to protect the integrity of archaeological artefacts but also provides valuable information regarding their historical context, enhancing their significance within the larger narrative of cultural heritage. Moreover, by implementing structured trade practices, tools can be created to monitor and control the flow of archaeological materials. Digital databases and registries can facilitate the tracking of artefacts as they move through legal markets, providing a clear record of ownership and ensuring that items are not unlawfully acquired or sold. Such measures can effectively mitigate the risks associated with illegal trafficking and contribute to a more sustainable system of cultural heritage management. Legal and ethical trade also serves to bridge the gap between heritage and the public. By presenting archaeological artefacts in accessible formats, whether through exhibitions, educational programs, or even direct sales, institutions can cultivate greater public interest and

appreciation for cultural heritage. When individuals are able to engage with artefacts in meaningful ways, it fosters a deeper connection to history and promotes a shared sense of identity and responsibility toward preserving cultural resources. Transforming the narrative surrounding the trade of archaeological heritage from one of illicit activity to a model of regulated and ethical practice offers numerous benefits. It enhances provenance research, provides tools for controlling the trade process, and ultimately brings cultural heritage closer to the public, fostering a collective commitment to the stewardship of our shared history.

The conflict between public and private rights in the context of cultural heritage management is intricately linked to the philosophical discourse surrounding liberalism and communitarianism. Public rights generally encompass the collective interests of society, including access to cultural heritage and the preservation of collective memory. Governments and public entities are entrusted with the responsibility of safeguarding cultural assets to ensure their availability to the community and to protect them from exploitation. In this framework, the public interest is often regarded as paramount, necessitating regulations that govern the use and trade of cultural heritage. Conversely, private rights pertain to individual ownership and interests. In numerous instances, private property owners may possess artefacts or cultural sites of broader public significance. Such ownership can lead to conflicts, particularly when private interests impede public access or preservation efforts. For example, a developer seeking to construct on land housing archaeological sites may prioritise economic benefits over the cultural importance of those sites. This situation frequently results in tensions as various stakeholders negotiate the balance between the right to develop and the obligation to preserve.

The philosophical conflict between liberalism and communitarianism further informs this dynamic. Liberalism emphasises individual rights, personal freedoms, and autonomy, advocating for limited governmental interference. It upholds the principle that individuals should have the right to control their property and resources according to their discretion, even if such control may conflict with public preservation initiatives. In contrast, communitarianism places emphasis on community values, social responsibilities, and the interconnectedness of individuals within society. From this viewpoint, the preservation of cultural heritage is considered not only a communal obligation but also vital to the identity of society as a whole. Communitarians argue that individuals are shaped by their communities, and that safeguarding shared heritage is crucial for promoting social cohesion and a sense of belonging. Thus, they support policies that prioritise public interests and collective rights over strict adherence to private property rights. Navigating this complex conflict requires careful consideration and a balanced approach. Stakeholders, including policymakers, cultural heritage managers, and

community members, must engage in constructive dialogue to identify equitable solutions that respect both individual rights and collective interests. This may involve creating legal frameworks that ensure private owners receive fair compensation for participation in preservation initiatives, while simultaneously protecting public access to culturally significant artefacts and sites. Furthermore, involving communities in the decision-making process can help reconcile conflicting perspectives.

By engaging local populations in discussions regarding the significance of cultural heritage and the potential implications of development, stakeholders can work towards solutions that acknowledge both the value of individual rights and the importance of communal heritage. The interplay between public rights and private ownership, framed by the conflict between liberalism and communitarianism, presents complex challenges within the domain of cultural heritage management. Addressing this conflict necessitates a nuanced understanding of both individual and collective interests, with the aim of fostering a legal and ethical framework that promotes the responsible stewardship of cultural heritage for the benefit of both current and future generations.

Allowing private individuals to be owners of archaeological heritage can be reconciled with the conflict between liberalism and communitarianism, particularly when considering the potential benefits to cultural heritage as a whole. From a liberal perspective, recognising private ownership aligns with the belief in individual rights and freedoms, allowing individuals to derive personal value from artefacts that have significance to them. This can promote a sense of personal connection to history, stimulating interest and engagement in cultural heritage. On the communitarian side, the ownership of archaeological heritage by private individuals does not inherently undermine communal interests. When private owners possess artefacts, they can contribute positively to the preservation and awareness of cultural heritage. Private individuals may take proactive steps to care for their artefacts, providing safe storage, maintenance, and even sharing their collections publicly or through educational initiatives. This engagement can foster a deeper understanding among community members of the importance of archaeological heritage, thereby enhancing public appreciation and awareness. Furthermore, private ownership can facilitate access to cultural heritage that might otherwise be neglected or remain in storage. Individuals passionate about archaeology may choose to host exhibitions or educational programs, thereby bringing the artefacts into public view and making them available to a wider audience. This can create opportunities for community engagement and learning that align with the goals of both liberalism and communitarianism.

It is also essential to recognise that, through responsible ownership and ethical stewardship, private individuals can play a vital role in the broader preservation narrative. By adhering to guidelines regarding provenance and conservation, they can ensure that the artefacts they own continue to contribute to our collective understanding of history. Permitting individuals to own archaeological heritage does not necessarily create a conflict between liberalism and communitarianism. Instead, it can enrich the cultural landscape and foster greater public engagement with heritage, benefiting society as a whole. This dual ownership model can harness individual rights while simultaneously promoting the communal and cultural values inherent in archaeological heritage.

In examining the dynamics of private ownership of archaeological heritage, one can identify not only the traditional conflict between liberalism and communitarianism but also a new category of conflict that arises from these interactions: the conflict between conservation and commercialisation. This emerging tension centres on the differing priorities and values associated with archaeological heritage. On one side, conservation advocates emphasise the need to protect and preserve cultural artefacts for future generations. Their focus is on maintaining the integrity of archaeological sites and ensuring that artefacts are not commodified or mismanaged. They argue that when archaeological heritage is owned privately, there is a risk that it may be treated primarily as a financial asset rather than as a precious part of our collective cultural identity. Conversely, proponents of commercialisation argue that private ownership can lead to increased public engagement and awareness. They posit that when individuals own archaeological artefacts, they are more likely to invest time and resources into showcasing these items, sharing their historical significance, and potentially enhancing their preservation. This perspective holds that the economic value derived from archaeological heritage does not diminish its cultural significance, instead, it can provide the necessary funding for ongoing conservation efforts.

This dual perspective suggests that the interests of privatisation and conservation are not inherently at odds but can be harmonised to serve the broader goals of protecting cultural heritage. For instance, private owners can be encouraged to participate in conservation initiatives, share their collections with the public, and collaborate with museums and academic institutions. Such partnerships can create frameworks where the economic benefits of ownership also facilitate the stewardship of cultural heritage, promoting ethical practices and encouraging dialogue about the importance of preserving these artefacts. Moreover, the creation of regulations that govern the sale and transfer of archaeological materials can further bridge the gap between these conflicting interests. By ensuring that all transactions adhere to strict

legal and ethical standards, societies can safeguard against the potential pitfalls of commodification while still allowing for the benefits that private ownership can bring.

Further *de lege ferenda* proposal is the concept of stewardship as opposed to ownership rights in relation to archaeological heritage, which represents a transformative approach to managing and preserving cultural assets. Rather than focusing solely on ownership, which can lead to exclusive claims over artefacts and sites, stewardship emphasises the responsibility of individuals and institutions to care for, protect, and manage these resources for the benefit of society as a whole. Stewardship recognises that archaeological heritage is not merely a commodity but an integral part of our shared human history. This perspective encourages a collective sense of responsibility, promoting the idea that all stakeholders, whether they are private individuals, local communities, or public institutions, should engage in safeguarding these cultural assets. This inclusive approach can foster greater collaboration in the preservation and study of archaeological sites and artefacts.

Stewardship is fundamentally concerned with the responsible management and care of resources, encompassing various dimensions of ownership that transcend the identity of the actual owner. In this context, the act of possession involves holding or maintaining physical control over an asset, which may be exercised by the steward irrespective of the underlying ownership rights. The use of the asset entails its application in a manner that is beneficial, sustainable, and in accordance with its intended purpose, reflecting the steward's duty to optimise the resource. Additionally, administration involves the management and oversight of the asset, requiring decisions regarding its maintenance, improvement, and utilisation to ensure its condition and functionality are preserved. Conservation encompasses the obligation to safeguard the asset for future generations, fostering its integrity and utility, regardless of the titleholder. Accountability further establishes the responsibility of the steward to report on the condition and management of the asset, ensuring transparency and adherence to accepted practices, irrespective of whether the role is performed by an individual other than the titleholder.

In legal terms, stewardship of archaeological heritage could be defined as:

the responsible management and preservation of archaeological artefacts and sites by an individual or entity (the steward), who, while lacking legal ownership, exercises rights and obligations in relation to the property. This stewardship entails actual control (*corpus*) over the artefacts or sites, a recognised intention to manage and protect them (*animus*), and the possessory interest (*detentio*) to ensure their conservation and accessibility for current and future generations, with a primary focus on ethical practices and public benefit.

With stewardship as the guiding principle, the sale of archaeological heritage could still be permissible, but with regulations and ethical considerations. For example, within the stewardship could be applied the definition of mass artefacts deemed suitable for sale. This model encourages a regulated market, reducing the risk of looting and illicit trafficking by ensuring that only certain artefacts can enter the trade, accompanied by proper documentation and provenance. The objectives of the stewardship model are manifold, including the promotion of ethical management practices regarding archaeological artefacts, the fostering of collaborative partnerships among relevant entities, the enhancement of public access and educational opportunities concerning these artefacts, and the establishment of comprehensive guidelines delineating the rights and obligations of all parties involved.

The effective realisation of stewardship model necessitates the involvement of diverse stakeholders. Government agencies, such as cultural heritage departments and archaeological authorities, play a critical role in overseeing the preservation of cultural assets, enforcing pertinent laws, and supporting conservation efforts. Academic institutions, particularly universities and research entities, contribute valuable expertise in archaeology, conservation, and heritage management. Additionally, museums and galleries serve as custodians of archaeological collections, facilitating public engagement and educational endeavours. Non-governmental organisations dedicated to cultural preservation advocate for the protection of archaeological sites and artefacts, frequently collaborating with local communities to promote sustainable practices. Local populations, including Indigenous groups, must be actively engaged in decision-making processes regarding culturally significant artefacts, ensuring their perspectives and values are duly considered. Moreover, landowners and private collectors of archaeological materials are essential parties in the stewardship discourse, particularly concerning matters of access, preservation, and public involvement.

To effectively implement this stewardship model also certain organisational structures should also be established. For example, a Stewardship Council, comprising representatives from each stakeholder group, would function to oversee the stewardship framework, facilitate dialogue, and address conflicts that may arise. Additionally, advisory committees focusing on specific areas, such as conservation techniques and public outreach, would provide essential guidance to the Stewardship Council. Joint task forces could be created to address particular challenges, including the illicit trafficking of artefacts and the development of site protection strategies. Furthermore, establishing a stewardship framework could create opportunities for education and public engagement. By inviting individuals and communities to take an active

role in caring for archaeological heritage, the public becomes more invested in its preservation. This could lead to initiatives that promote awareness about the significance of these artefacts, thus enhancing their value beyond mere market worth. Shifting the focus from ownership rights to a stewardship model for archaeological heritage not only reflects a more ethical approach to cultural assets but also fosters meaningful responsibility and engagement among all stakeholders. This shift encourages the protection of our shared heritage while still allowing for the regulated trade of certain artefacts, ultimately benefiting society as a whole.

The ongoing challenge in balancing competing interests within the realm of archaeological heritage management is a significant legal and ethical concern. The state, as the primary guardian of cultural and archaeological assets, holds a fundamental responsibility to protect and preserve such heritage for the collective benefit of society. However, the rights of private owners must also be duly considered in this discourse, recognising that private ownership can play an integral role in the stewardship of archaeological artefacts. While there exists a pervasive assumption that private ownership may detract from the protection of archaeological heritage, the evidence to substantiate this claim remains limited. Studies have not conclusively demonstrated a correlation between private ownership and diminished safeguarding of archaeological resources. Consequently, it may be argued that permitting the trade and exercise of rights over privately owned archaeological heritage could enhance overall conservation efforts, provided that such activities are conducted within a robust legal framework that ensures compliance with preservation standards. A nuanced approach is necessary, one that reinforces the state's guardianship role while simultaneously acknowledging and incorporating the legitimate rights of private individuals.

This balance is vital to fostering a culture of conservation that respects both public interest and private ownership rights. The concept of *res extra commercium*, referring to items or resources that are considered outside the realm of private ownership and trade, is often invoked in legal discussions regarding the protection of archaeological heritage. However, applying this principle to archaeological artefacts is problematic and misleading. Labelling archaeological heritage as *res extra commercium* inaccurately implies that such items should be completely removed from economic consideration and private ownership, neglecting the important role that private individuals and entities can play in their preservation and stewardship. This classification can undermine the potential benefits of responsible private ownership, including the provision of funding for conservation efforts and the enhancement of public access through museums and educational programs. There is little compelling evidence to support the notion that private ownership inherently leads to less protection of archaeological

heritage. On the contrary, where well-regulated, private ownership can contribute positively to the sustainability and preservation of these resources. Furthermore, policies that overly restrict private ownership based on the notion of *res extra commercium* may inadvertently encourage illicit trade and the destruction of archaeological sites, as individuals may seek to circumvent legal restrictions. Instead, a framework that acknowledges the value of both public stewardship by the state and responsible private ownership will promote better outcomes for the protection and appreciation of archaeological heritage.

In the final conclusion, the application of the concept of *res extra commercium* in relation to archaeological heritage is fundamentally flawed and ultimately counterproductive. This classification inaccurately suggests that archaeological artefacts are to be excluded from commercial considerations and private ownership, which does not reflect the reality of their status as tangible assets. Rather, these artefacts should be understood as *res in usu commerciali*, recognising their inherent value and the potential benefits that can arise from thoughtful trade and responsible ownership.

## **Sources of law**

### **International law**

- Universal Declaration of Human Rights (adopted on 10 December 1948), General Assembly, United Nations, Paris, 1948
- Antarctica Treaty (adopted on 1 December 1959, entered into force 23 June 1961), 402 UNTS 71, 1959
- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (adopted in January 1967, entered into force October 1967), 610 UNTS 205, United Nations, 1966
- The Convention for the Protection of Human Rights and Fundamental Freedoms (adopted on 4 November 1950, entered into force 3 September 1953), ETS no. 5, Council of Europe, 1950, with amending protocols
- Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 240
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970, entered into force 24 April 1972) 823 UNTS 231
- Convention concerning the Protection of the World Cultural and Natural Heritage (adopted on 16 November 1972, entered into force 17 December 1975), 1037 UNTS 151
- United Nations Convention on the Law of the Sea (UNCLOS), (adopted on 10 December 1982, entered into force 16 November 1994, 21 ILM 1261, United Nations, 1982
- Convention for the Protection of the Architectural Heritage of Europe (adopted on 3 October 1985, entered into force 1 December 1987), European Treaty Series no. 121, Council of Europe, 1985
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (adopted 24 June 1995, entered into force 1 July 1998), 34 International Legal Materials 1322
- Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003, entered into force 20 April 2006) 2368 UNTS 1
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007), 2440 UNTS 311
- Convention on the Protection of Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009) 2562 UNTS 1
- Council of Europe Convention on Offences relating to Cultural Property (adopted on 3 May 2017, entered into force 1 April 2022), Council of Europe Treaty Series no. 221, Council of Europe, 2017

### **Soft Law**

- Recommendation on International Principles Applicable to Archaeological Excavations, UNESCO, New Delhi 1956
- Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites, Paris 1962
- International Charter for the Conservation and Restoration of Monuments and Sites, The Venice Charter, International Council on Monuments and Sites, 1964
- Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, adopted on 19 November 1968, UNESCO, 1968
- Charter for the Protection and Management of the Archaeological Heritage, prepared by the International Committee for the Management of Archaeological Heritage (ICAHM) and approved by the 9th General Assembly in Lausanne in 1990

- Nara Document on Authenticity, in Relation to the World Heritage Convention, held at Nara, Japan, from 1-6 November 1993
- Resolution adopted by the Human Rights Council on 30 September 2016, 33/20 Cultural rights and the protection of cultural heritage, Human Rights Council, 33 session, UN General Assembly, 2016
- Resolution adopted by the Human Rights Council on 31 March 2022, 49/7 Cultural rights and the protection of cultural heritage, Human Rights Council, 49 session, UN General Assembly, 2022

## **European law**

- European Convention on the Protection of the Archaeological Heritage, (adopted on 6 May 1969, entered into force 20 November 1970) European Treaty Series no. 66, Council of Europe, 1969
- European Convention on Offences relating to Cultural Property (opened for signature on 23 June 1985, never entered into force), European Treaty Series no. 119, Council of Europe, 1985
- European Convention on the Protection of the Archaeological Heritage (Revised) (adopted on 16 January 1992, entered into force 25 May 1995), European Treaty Series no. 143, Council of Europe, 1992
- Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) no. 1024/2012 (Recast), OJ L 159/1 of 28.05.2014
- Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 77 of 27.03.1993
- Council Regulation (EC) 116/2009 of 18 December 2008 on the export of cultural goods, OJ L39 of 10.02.2009

## **Domestic law**

### **Poland**

- Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 [The Constitution of the Republic of Poland of 2nd April 1997], Journal of Laws No 78, item 483, with changes
- Dekret Rady Regencyjnej z dnia 31 października 1918 r. O opiece nad zabytkami sztuki i kultury [The Decree of the Regency Council dated October 31, 1918, concerning the protection on art and cultural monuments], Dziennik Praw Państwa Polskiego 1918, uniform text, no. 16, pos. 36
- Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 6 marca 1928 r. o opiece nad zabytkami [Regulation of the President of the Republic of Poland of March 6, 1928, uniform text, on the protection of monuments], Dziennik Ustaw 1928, no. 29, pos. 265 with changes
- Ustawa z dnia 15 lutego 1962 r. o ochronie dóbr kultury i o muzeach [Act of February 15, 1962, on the Protection of Cultural Goods and Museums], Dziennik Ustaw 1962, uniform text, no. 10, pos. 48, with changes
- Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and the Preservation of Monuments], Dziennik Ustaw 2004, uniform text, pos. 1292 with changes
- Ustawa z dnia 21 listopada 1996 roku o muzeach [Act of 21 November 1996 on museums], Dziennik Ustaw 1996, uniform text, pos. 385
- Ustawa z dnia 25 maja 2017 r. o restytucji narodowych dóbr kultury [Act of 25 May 2017

- on the restitution of national cultural assets], Dziennik Ustaw 2019, uniform text, pos. 1591
- Ustawa z dnia 14 lipca 1961 r. o gospodarce terenami w miastach i osiedlach [Act of 14 July 1961 on land management in cities and settlements], Dziennik Ustaw 1961, uniform text, no 32, pos. 159, repealed 1 August 1985
- Ustawa z dnia 20 lutego 2015 r. o rzeczach znalezionych [Act of 20 February 2015 on found property], Dziennik Ustaw 2023, uniform text, pos. 501
- Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and the Preservation of Monuments], Dziennik Ustaw 2024, uniform text, pos. 1292, 1907 with changes

## **Italy**

- Constitution of the Italian Republic, 22nd December 1947, English version published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication
- The Italian Civil Code (Codice Civile) enacted by Royal Decree no. 262 on March 16<sup>th</sup> 1942
- Law no. 364 of 20 June 1909 by the Italian Parliament
- Law no. 1497 of 29 June 1939 by the Italian Parliament
- Legislative Decree 490 from 29th October 1999, Italy, published in the Gazzetta Ufficiale della Repubblica Italiana (Official Law Gazette of Italy) on December 27th 1999
- Legislative Decree no. 42 of 22 January 2004 (Codice dei beni culturali e del paesaggio), Gazzetta uff.: 24/02/2004, no. 45

## **England and Wales**

- Ancient Monuments Protection Act from 18th August 1882, 45 & 46 Victoria, ch. 73, §§ 2-4, 1882
- Ancient Monuments Protection Act from 6th August 1900, 63 & 64 Victoria, ch. 34, 1900
- Ancient Monuments Consolidation and Amendment Act from 15th August 1913, 3 & 4 Geo. 5, ch. 32, 1913
- Historic Buildings and Ancient Monuments Act from 31st July 1953, 1 & 2 Eliz. 2, ch. 49, 1953
- Treasure Act 1996 from 4th July 1996, An Act to abolish treasure trove and to make fresh provision in relation to treasure, 1996
- Ancient Monuments and Archaeological Areas Act 1979 from 4th April 1979, An Act to consolidate and amend the law relating to ancient monuments; to make provision for the investigation, preservation and recording of matters of archaeological or historical interest and (in connection therewith) for the regulation of operations or activities affecting such matters; to provide for the recovery of grants under section 10 of the Town and Country Planning (Amendment) Act 1972 or under section 4 of the Historic Buildings and Ancient Monuments Act 1953 in certain circumstances; and to provide for grants by the Secretary of State to the Architectural Heritage Fund, 1979

## **Germany**

- Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515)
- Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik

Deutschland) in the consolidated version published in the Federal Law Gazette Part III, Classification Number 100-1, as last amended by article 1 of the Law of 22 March 2025 (Federal Law Gazette 2025 I no. 94)

Gesetz zum Schutz und zur Pflege der Kulturdenkmale im Freistaat Sachsen (Sächsisches Gesetz betreffend den Schutz von Denkmalen (Prussian Law) from 1902

Reichsnaturschutzgesetz, Law for the Protection of Monuments from 16 July 1902 (Hess. Reg. Bl. p. 275)

Gesetz gegen Verunstaltung von Stadt und Land [Law Against the Disfigurement of Town and Country] (VuG) from 1909

Saarländisches Denkmalschutzgesetz (SDschG), enacted 19 May 2004

Gesetz zum Schutz und zur Pflege der Denkmäler (Bayerisches Denkmalschutzgesetz – BayDSchG), enacted 25 June 1973

Bavarian Monument Protection Act (Gesetz zum Schutz und zur Pflege der Denkmäler) in the consolidated version published in the Bavarian Law Collection (BayRS 2242-1-WK), which was last amended by Section 13 Paragraph 3 of the Act of December 23, 2024 (GVBl. p. 619)

Denkmalschutzgesetz (DSchG) in Hamburg originally dated 3 December 1973

Gesetz zur Pflege und zum Schutz der Kulturdenkmäler (Bremisches Denkmalschutzgesetz – DSchG), enacted 27 May 1975, with later amendments

Niedersächsisches Denkmalschutzgesetz (NDSchG), enacted 30 May 1978

Denkmalschutzgesetz in (Rheinland-Pfalz):(DSchG), enacted 23 March 1978; in force 1 May 1978

Gesetz zum Schutz und zur Pflege der Denkmäler im Lande Nordrhein-Westfalen (Denkmalschutzgesetz – DSchG NRW), enacted 11 March 1980

Gesetz zum Schutz der Kulturdenkmale (Denkmalschutzgesetz – DSchG), enacted 25 May 1971; later re-promulgated 6 December 1983 (GVBl. S. 797)

Denkmalschutzgesetz des Landes Sachsen-Anhalt, enacted 21 October 1991

Denkmalschutzgesetz des Landes Sachsen-Anhalt of 21 October 1991, GVBl. LSA 1991, 368, corr. 1992

Denkmalschutzgesetz – SächsDSchG), enacted 3 March 1993, with later amendments

Gesetz zum Schutz von Denkmalen in Berlin (Denkmalschutzgesetz Berlin – DSchG Bln), enacted 24 April 1995

Denkmalschutzgesetz in Mecklenburg-Vorpommern DSchG M-V), enacted 6 January 1998, with later amendments

Thüringer Gesetz zur Pflege und zum Schutz der Kulturdenkmale (Thüringer Denkmalschutzgesetz – ThürDSchG), enacted 14 April 2004

Gesetz über den Schutz und die Pflege der Denkmale im Land Brandenburg (Brandenburgisches Denkmalschutzgesetz – BbgDSchG), enacted 24 May 2004

Gesetz zum Schutz der Denkmale in Schleswig-Holstein (Denkmalschutzgesetz – DSchG SH 2015), enacted 30 December 2014

Hessisches Denkmalschutzgesetz (HDSchG), enacted 28 November 2016

### **Court decisions**

Judgement by European Court of Human Rights in the case *Beyler v. Italy* of 3rd January 2000, no. 33202/96

Decision by European Court of Human Rights in the case *Furst von Thurn und Taxis v. Germany* of 14th May 2013, no. 26367/10

Wyrok Trybunału Konstytucyjnego z dnia 8 października 2007 roku sygn. K 20/07, OTK-A 2007/9/102, Dziennik Ustaw 2007, no. 192, pos. 1394 [Judgment of Polish Constitutional Tribunal of 8 October 2007]

- Postanowienie Sądu Najwyższego z dnia 14 czerwca 2005 r., sygn. V CK 305/05, [Decision of the Supreme Court of June 14, 2005, no. V CK 305/05]
- Postanowienie Sądu Najwyższego z dnia 30 września 2021 r., sygn. V CSKP 110/21 [Decision of the Supreme Court of 30<sup>th</sup> September 2021, no. IV CSKP 110/21]
- Wyrok Sądu Okręgowego w Łodzi z dnia 3 kwietnia 2017, III Wydział Cywilny Odwoławczy, sygn. III Ca 1773/16 [Judgment of the District Court in Łódź of April 3rd 2017, III Civil Appeals Chamber, III no. Ca 1773/16]
- Order by Corte di Cassazione in Rome, Second Civil Section, of 23rd May 2023, no. 14105
- Order by Corte di Cassazione in Rome, Second Civil Section, of 18th July 2025, no. 14313

## Literature

- Anderson A., *The Way We Argue, A Study in the Cultures of Theory*, Princeton University Press, Princeton 2006
- Appian, *Roman History*, translated by H. White, vol. I, book 8
- Archaeology, Oxford English Dictionary, Online English Dictionary, [https://www.oed.com/dictionary/archaeology\\_n?tab=factsheet#40093593](https://www.oed.com/dictionary/archaeology_n?tab=factsheet#40093593)
- Archibald D., *Indigenous Cultural Heritage: Developing New Approaches and Best Practices for World Heritage Based on Indigenous Perspectives and Values, Proceeding, Recommendations, and Outcomes of the ICOMOS International Scientific Committee Conference and Forum on Indigenous Cultural Heritage, 2019, Protection of cultural heritage: New research, materials and technologies in the protection and conservation of historical monuments*, no.9, Polish National Committee of International Council on Monuments and Sites ICOMOS-POLAND, Warszawa 2020
- Bąkowski T., Aksjologia Materialnego Prawa Administracyjnego [Axiology of Substantive Administrative law] [in:] T. Bąkowski, K. Żukowski (eds.) *Leksykon Prawa Administracyjnego Materialnego. 100 Podstawowych Pojęć* [Lexicon of Substantive Administrative Law. 100 Basic Concepts], Wydawnictwo C.H. Beck, Warszawa 2016
- Bąkowski T., Żukowski K. (eds.) *Leksykon Prawa Administracyjnego Materialnego. 100 Podstawowych Pojęć* [Lexicon of Substantive Administrative Law. 100 Basic Concepts], Wydawnictwo C.H. Beck, Warszawa 2016
- Basedow J., Kono T. (eds.), *Legal Aspects of Globalisation: Conflicts of Laws, Internet, Capital Markets and Insolvency in a Global Economy*, Kluwer Law International B.V., London 2000
- Balcells M., Art Crime as White-Collar Crime [in:] J.D. Kila, M. Balcells (eds.) *Cultural Property Crime. An Overview and Analysis of Contemporary Perspectives and Trends*, Brill, Leiden 2014
- Barkan E., Bush R. (eds.) *Claiming the Stones; Naming the Bones - Cultural Property and the Negotiations of National and Ethnic Identity*, Getty Research Institute, Los Angeles 2002
- Baslar K., *The Concept of the Common Heritage of Mankind in International Law*, Martinus Nijhoff Publishers, The Hague-Boston-London 1998
- Bator P.M., *An Essay on the International Trade in Art*, Stanford Law Review, vol. 34, no. 2, Stanford Law School, Stanford 1982
- Bator P.M., *The International Trade in Art*, University of Chicago Press, Chicago 1983
- Ball T., Minogue K., *Liberalism*, Encyclopaedia Britannica, <https://www.britannica.com/topic/liberalism>
- Baxter K., *Museums need national support to tackle archaeological storage issue*, Museum journal, Museums Association, <https://www.museumsassociation.org/museum-journal/opinion/2023/05/museums-need-national-support-to-tackle-archaeological-storage-issue/#>

- Beitz C.R., *Human Rights as a Common Concern*, The American Science Review, vol. 95, no. 2, American Political Science Association, Cambridge University Press, Cambridge 2001
- Beitz C.R., *Political Theory and International Relations*, Princeton University Press, Princeton 1992
- Bell D., Communitarianism [in:] E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2008, <https://plato.stanford.edu/entries/communitarianism/>
- Blake J., *On Defining the Cultural Heritage*, The International and Comparative Law Quarterly, vol. 49, no. 1, Cambridge University Press, Cambridge 2000
- Bokova I., Address by Ms Irina Bokova, Director-General of UNESCO, on the occasion of the Information Meeting with the Executive Board, Paris 29 January 2013
- Boucher D., Kelly P. (eds.) *The Social Contracts from Hobbes to Rawls*, Routledge, London 1994
- Boyle G., Booth N., Rawden A., *Museums Collecting Archaeology (England), Report Year 3: November 2018*, Historic England, Society for Museum Archaeology, England 2018
- Brodie N., Dole J., Renfrew C. (eds.), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, McDonald Institute for Archaeological Research, Cambridge 2001
- Brodie N., Dole J., Watson P., *Stealing History: The Illicit Trade in Cultural Material*, The McDonald Institute for Archaeological Research, Cambridge 2000
- Brodie N., Tubb K.W., *Illicit Antiquities, The Theft of Culture and the Extinction of Archaeology*, Routledge, London 2002
- Brown C., *International Relations Theory, New Normative Approaches*, Columbia University Press, New York 1993
- Bugaj M., *Magazyny Archeologiczne w Polsce - Kwestia Przechowywania Zabytków Archeologicznych, czyli Rzecz o Stajniach Augiasza i kilka Przykładów Dobrych Praktyk* [Archaeological Warehouses in Poland – the Issue of Storing Archaeological Monuments, i.e. the Augean Stables and Some Examples of Good Practices], Raport archeologiczny, Raport 13, Narodowy Instytut Dziedzictwa, Warszawa 2018
- Bull T., Methods of Profit. Rewards, Ransoms and Buy-backs: Knowing the Rules of Engagement [in:] A. Tompkins (ed.), *Art Crime and its Prevention*, Lund Humphries, Lund 2016
- Bowling C., Pierson E., Ratte S., *The Common Concern of Humankind: A Potential Framework for a New International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas*, United Nations files, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/[https://www.un.org/depts/los/biodiversity/prepcom\\_files/BowlingPiersonandRatte\\_Common\\_Concern.pdf](https://www.un.org/depts/los/biodiversity/prepcom_files/BowlingPiersonandRatte_Common_Concern.pdf)
- Cabana P.F., *Exploring Overlaps of Cultural Property Crime with Organised Crime in EU Policy Documents*, European Journal on Criminal Policy and Research, Springer, Chaim 2024
- Caney S., *Liberalism and Communitarianism: A Misconceived Debate*, Political Studies, vol. 40, issue 2, Oxford University Press, Oxford 1992
- Carvalho A., Sanches B., da Silva R., Material Culture and Education in Archaeology [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014
- Carver M., *On Archaeological Value*, Antiquity, vol. 70, issue 267, Cambridge University Press, Cambridge 1996
- Chanaki A., Papatthanassiou A., *The Council of Europe Convention on Offences relating to Cultural Property eventually enters into force: A new tool to the arsenal of international criminal law responses to the trafficking of cultural property*, Blog of the European Journal of International Law, 2022, <https://www.ejiltalk.org/the-council-of-europe->

convention-on-offences-relating-to-cultural-property-eventually-enters-into-force-a-new-tool-to-the-arsenal-of-international-criminal-law-responses-to-the-trafficking-of-c/

- Charvet J., Kaczyńska-Nay E., *The Liberal Project and Human Rights, The Theory and Practice of a New World Order*, Cambridge University Press, Cambridge 2008
- Chechi A., *The Settlement of International Cultural Heritage Disputes, Cultural Heritage Law and Policy*, Oxford University Press, Oxford 2014
- Cogliati-Bantz V., Forrest C., *Consistent: The Convention on the Protection of the Underwater Cultural Heritage and the United Nations Convention on the Law of the Sea*, Cambridge Journal of International and Comparative Law, no. 2, Cambridge University Press, Cambridge 2013
- Comer D.C. (ed.), *Tourism and Archaeological Heritage Management at Petra: Driver to Development or Destruction*, Springer, New York 2012
- Comer D.C., Willems W.J.H., International Committee on Archaeological Heritage Management (ICAHM) (Conservation and Preservation) [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014
- Cuno J., *Who Owns Antiquity? Museums and the Battle over our Ancient Heritage*, Princeton University Press, Princeton-Oxford 2008
- Dehouck M.R.J., *Balancing Markets, Morals and Law: The Fight to Regulate. Illicit Trafficking in Cultural Goods and the EU Regulations on the Import of Cultural Goods*, Art Antiquity and Law, vol. 11, tom. 24, Institute of Art and Law, London 2019
- Desautels-Stein J., Imperium and Dominionium [in:] J. Desautels-Stein, *The Right to Exclude: A Critical Race Approach to Sovereignty, Borders, and International Law*, Oxford University Press, Oxford 2023
- Desautels-Stein J., *The Right to Exclude: A Critical Race Approach to Sovereignty, Borders, and International Law*, Oxford University Press, Oxford 2023
- Di Geso G., *Organization of the Services of Preservation, Cataloguing and Professional Training, Nessun Futuro Senza Passato. 6th ICOMOS General Assembly and International Symposium. Atti, ICOMOS 6th General Assembly: No Past, no Future*, ICOMOS, Rome 1981
- Drela M., *Własność Zabytków [Ownership of Monuments]*, C.H. BECK, Warszawa 2006
- Dromgoole S., *Underwater Cultural Heritage and International Law*, Cambridge University Press, Cambridge 2013
- Dworkin R., *Taking Rights Seriously*, Harvard University Press, Harvard 1977
- Etzioni A., *Communitarianism Revisited*, *Journal of Political Ideologies*, vol. 19, no. 3, Routledge, London 2014
- Explanatory Report to the Convention for the Protection of the Architectural Heritage of Europe, European Treaty Series no. 121, Council of Europe, 1985
- Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property, Council of Europe Treaty Series no. 221, Council of Europe, 2017
- Explanatory Report to the European Convention on the Protection of the Archaeological Heritage (Revised), European Treaty Series no. 143, Council of Europe, 1992
- Fagan B., *A Little History of Archaeology*, Yale University Press, CT: New Haven 2018
- Fischer N., *Critics fear Benin Bronzes could be privatised by royal heir*, DW, 2023, <https://www.dw.com/en/critics-fear-benin-bronzes-could-be-privatized-by-royal-heir/a-65550237>
- Florek M., *Między Teorią a Praktyką. Ochrona Dziedzictwa Archeologicznego z Perspektywy Praktyki Konserwatorskiej (na Przykładach Delegatury w Sandomierzu Wojewódzkiego Urzędu Ochrony Zabytków w Kielcach) [Between Theory and Practice: The Protection of Archaeological Heritage from the Perspective of Conservation Practice (Based on*

- Examples from the Sandomierz Delegation of the Regional Office for the Protection of Monuments in Kielce*], Raport archeologiczny NID, raport 10, NID, Warszawa 2015
- Fowler D.D., *Uses of the Past: Archaeology in the Service of the State*, American Antiquity, vol. 52, no. 2, Cambridge University Press, Cambridge 1987
- Franconi F., A Dynamic Evolution of Concept and Scope: From Cultural Property to Cultural Heritage [in:] A.A. Yusuf (ed.), *Standard Setting in UNESCO, vol. II: Conventions, Recommendations, Declarations and Charters Adopted by UNESCO*, UNESCO, Paris 2007
- Franconi F., *Beyond State Sovereignty: The protection of Cultural Heritage as a Shared Interest of Humanity*, Michigan Journal of International Law, vol. 25, University of Michigan, Michigan 2004
- Franconi F., Culture, Heritage and Human Rights: An introduction [in:] F. Franconi, M. Scheinin (eds.), *Cultural Human Rights*, Martinus Nijhoff Publishers, Leiden-Boston 2008
- Franconi F. (ed.), *The 1972 World Heritage Convention: a Commentary*, Oxford University Press, Oxford 2008
- Franconi F., Scheinin M. (eds.), *Cultural Human Rights*, Martinus Nijhoff Publishers, Leiden-Boston 2008
- Franconi F., Vrdoljak A.F. (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020
- Freeden M., Stears M., Liberalism [in:] M. Freedden, L.T. Sargent, M. Stears (eds.) *The Oxford Handbook of Political Ideologies*, Oxford University Press, Oxford 2013
- Freedden M., Sargent L.T., M. Stears (eds.) *The Oxford Handbook of Political Ideologies*, Oxford University Press, Oxford 2013
- Freeman S. (ed.) *J. Rawls, Lectures on the History of Political Philosophy*, The Belknap Press of Harvard University Press, Cambridge-Massachusetts-London 2008
- Frigo M., *Cultural Property v Cultural Heritage: A 'Battle of Concepts' in International Law?*, International Review of the Red Cross, vol. 86, no. 854, Cambridge University Press, Cambridge 2000
- Frigo M., *Model Provisions on State Ownership of Undiscovered Cultural Objects – Introduction*, Uniform Law Review, vol. 16, issue 4, UNIDROIT, Oxford University Press, Oxford 2011
- Frigo M., *The Implementation of of Directive 2014/60/EU and the Problems of the Compliance of Italian Legislation*, Santander Art and Culture Law Review, issue 2, Opole 2016
- Frowein J.A., Wolfrum R. (eds.), *Max Planck Yearbook of the United Nations Law*, vol. 6, Brill, Leiden 2002
- Funari P.P.A., *Arqueologia. São Paulo: Contexto*, vol. 13, Revista do Museu de Arqueologia e Etnologia, Sao Paulo 2003
- Gai, Institutiones or Institutes of Roman Law by Gaius, with a Translation and Commentary by the Late Edward Poste*, M.A. 4th ed., Revised and Enlarged by E.A. Whittuck, M.A. B.C.L, with a Historical Introduction by A.H.J. Greenidge, D.Littt, Clarendon Press, Oxford 1904
- Galla A. (ed.) *World Heritage, Benefits Beyond Borders*, Cambridge University Press, Cambridge 2012
- Gans C., Nationalism, Particularism and Cosmpolitanism [in:] C. Gans, *The Limits of Nationalism*, Cambridge University Press, Cambridge 2009
- Gans C., *The Limits of Nationalism*, Cambridge University Press, Cambridge 2009
- Garlicki L., Zubik M. (eds.), *Konstytucja Rzeczypospolitej Polskiej, Komentarz, Tom II, wyd. II*, [Constitution of the Republic of Poland, Commentary, vol. II, 2nd edition], Wydawnictwo Sejmowe, Warszawa 2016
- Garnett R.G., *Co-Operation and the Owenite Socialist Communities in Britain 1825-45*,

- University of Manchester Press, Manchester 1972
- Gerecka-Żołyńska A., *Bezpieczeństwo Rynku Sztuki w Świetle Obowiązywania Zasady Legalizmu* [The Security of the Art Market in the Light of the Principle of Legalism] [in:] A. Jagielska-Burduk, W. Szafranski (eds.) *Kultura w praktyce. Zagadnienia prawne. Tom 2: Wokół problematyki prawnej zabytków i rynku sztuki* [Culture in Practice. Legal Issues. Volume 2: Legal Issues of Monuments and the Art Market], Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauki, Poznań 2013
- Gerecka-Żołyńska A., *Karnoprawne Ograniczenia Poszukiwania Zabytków Archeologicznych jako Element Krajowego Systemu Ochrony Dziedzictwa Kulturowego (Uwagi Modelowe)* [Criminal Law Restrictions on the Search for Archaeological Artefacts as Part of National System of Cultural Heritage Protection (Model Remarks)], *Ruch prawniczy, ekonomiczny i socjologiczny*, zeszyt 4, Uniwersytet im. Adama Mickiewicza w Poznaniu, Poznań 2024
- Gerecka-Żołyńska A., *Ochrona zabytków w Polsce. Zbiór podstawowych aktów prawnych z krótkim komentarzem* [Monument Protection in Poland. A Collection of Basic Legal Acts with a Brief Commentary], Ośrodek Badania Rynku Sztuki Współczesnej, Poznań 2016
- Gerecka-Żołyńska A., *Pojęcie Podwodnego Dziedzictwa Kulturalnego z Perspektywy Ochrony Karnoprawnej* [The Notion of Underwater Cultural Heritage from the Penal Law Perspective] [in:] M. Jankowska, P. Gwoździwicz- Matan, P. Stec (eds.), *Własność intelektualna a dziedzictwo kulturowe* [Intellectual property and cultural heritage], Wydawnictwo Ius Publicum-Narodowy Instytut Dziedzictwa, Warszawa 2020
- Gerecka-Żołyńska A., *Restytucja dóbr kultury i dzieła sztuki* [Restitution of cultural goods and arts], *Ruch Prawniczy, ekonomiczny i socjologiczny*, zeszyt 2, Uniwersytet im. Adama Mickiewicza w Poznaniu, Poznań 1996
- Gerhardt D.R., *Law in the Shadows of Confederate Monuments*, *Michigan Journal of Race and Law*, vol. 27, Michigan 2021
- Gerstenblith P. *Theft and Illegal Excavations, Legal Principles for Protection of the Archaeological Heritage* [in:] F. Franconi, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020
- Gillman D., *The Idea of Cultural Heritage*, Institute of Art and Law, Leicester 2006
- Gniewek E. [in:] T. Dybowski (ed.) *System Prawa Prywatnego, tom III: Prawo Rzeczowe* [System of Private Law], Volume III: Property Law], C.H. Beck, Warszawa 2007
- Górka M., *Directive 2014/60/EU: a New Legal Framework for Ensuring the Return of Cultural Objects within European Union*, *Santander Art and Culture Law Review*, issue 2, Opole 2016
- Górny K., Górna A., *Dismantling Colonial Monuments in African Cities - an Example of Bissau. In an Empty Plinth Still a Monument?*, *Prace i Studia Geograficzne*, vol. 67.3, Uniwersytet Warszawski, Warszawa 2022
- Halfin S., *The Legal Protection of Cultural Property in Britain: Past, Present and Future*, *DePaul Journal of Art, Technology and Intellectual Property Law*, vol. 6, issue 1, DePaul University, Chicago 1995
- Hart S.M., Chilton E.S., *Digging and Destruction: Artefacts Collecting as Meaningful Social Practice*, *International Journal of Heritage Studies*, vol. 21, issue 4, Taylor and Francis, London 2015
- Hausner J., Karwińska A., Purchla J.(eds.), *Kultura a Rozwój [Culture and Development]*, 2<sup>nd</sup> ed., Narodowe Centrum Kultury, Kraków 2017
- Heath R.L. (ed.) *Encyclopedia of public relations*, Thousand Oaks, CA:Sage 2010
- Hixenbaugh R., *The Current State of the Antiquities Trade: An Art Dealer's Perspective*, *International Journal of Cultural Property*, vol. 26, Cambridge University Press, Cambridge 2019

- Hobhouse L.T., *Liberalism*, Williams and Norgate, London 1911 after M. Freeden, M. Stears, Liberalism [in:] M. Freeden, L.T. Sargent, M. Stears (eds.) *The Oxford Handbook of Political Ideologies*, Oxford University Press, Oxford 2013
- Hodder I., *Reading the Past: Current Approaches to Interpretation in Archaeology*, Cambridge University Press, Cambridge-New York-Melbourne 1999
- Hodder I., Shanks M., Alexandri A, Buchli V. et alia (eds.), *Interpreting Archaeology: Finding Meaning in the Past*, Routledge, Londyn-New York 1995
- Hoffman B.T., Introduction: Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy [in:] B.T. Hoffman (ed.) *Art and Cultural Heritage: Law, Policy and Practice*, Cambridge 2006
- Hoffman B.T. (ed.) *Art and Cultural Heritage: Law, Policy and Practice*, Cambridge 2006
- Hollowell J., McGill D., Archaeological Stewardship [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014
- IBA Art, Cultural Institutions and Heritage Law Committee, Art Law: Restrictions on the export of cultural property and artwork-report, International Bar Associations, 2020
- Ignatowicz J. (ed.), *System Prawa Cywilnego, Prawo Własności i Inne Prawa Rzeczowe* [System of Civil Law, Property Law, and Other Property Rights], vol. 2, Zakład Narodowy im. Ossolińskich, Wrocław-Warszawa-Kraków 1977
- Interpol, Assessing crimes against cultural property, Survey of Interpol Member Countries, Interpol, Lyon 2021
- Jagielska-Burduk A., *Cultural Heritage as a Legal Hybrid, Between Public and Private Law*, Springer, Chaim 2022
- Jagielska-Burduk A. (ed.), Szafranski W., Gawel Ł. *Mechanizmy Prawne Zarządzania Dziedzictwem Kultury* [Legal Mechanisms for Managing Cultural Heritage], Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk-Warszawa 2016
- Jakubowski A. (ed.), *Cultural Rights as Collective Rights: an International Perspective*, Brill, Leiden 2016
- Jankowska M., Gwoździwicz- Matan P., Stec P. (eds.), *Własność intelektualna a dziedzictwo kulturowe* [Intellectual property and cultural heritage], Wydawnictwo Ius Publicum-Narodowy Instytut Dziedzictwa, Warszawa 2020
- Jeziro J., Zagrobelny K. (eds.) *Wybrane zagadnienia polskiego prawa prywatnego, Księga pamiątkowa ku czci Doktora Józefa Kermis i Doktora Jerzego Strzebinczyka* [Selected Issues of Polish Private Law, Memorial Book in Honor of Dr. Józef Kermis and Dr. Jerzy Strzebinczyk], E-Wydawnictwo, Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2019
- Jokilehto J., *A History of Architectural Conservation*, Butterworth-Heinemann, Oxford 2002
- Jørgensen N.B., *The International Criminal Responsibility of war's Funders and Profiteers*, Cambridge University Press, Cambridge 2020
- Karl R., Every sherd is sacred. Compulsive hoarding in archaeology [in:] G. Sayeh, D. Henson, Y.F. Willumsen (eds.), *Managing the Archaeological Heritage: Public archaeology in Europe*, Vest-Agder-Museet, Kristiansand 2015
- Karmon D., *The Ruin of the Eternal City: Antiquity and Preservation in Renaissance Rome*, Oxford University Press, Oxford 2011
- Kleingeld P., Brown E., *Cosmopolitanism*, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/cosmopolitanism/>
- Kohl P.L., Fawcett C. (eds.), *Nationalism, Politics, and the Practice of Archaeology*, Cambridge University Press, Cambridge 1995
- Kono. T., *The Impact of uniform laws on the protection of cultural heritage and the*

- preservation of cultural heritage in the 21st century*, Martinus Nijhoff, Leiden-Boston 2010
- Kono T., *Progressive Development of International Law through UNESCO-focusing on the Field of Cultural Heritage*, Soochow Law Journal, vol. 6, no. 1, Taipei 2009
- Kono T., Recovery and Reconstruction of Cultural Heritage- the ICOMOS Matrix for Case Studies [in:] M. Marcinkowska, K. Zalańska (eds.), *The Challenges of World Heritage Recovery*, Narodowy Instytut Dziedzictwa, Warszawa 2019
- Kowalska E., *Własność Zabytku a Dyskrecjonalna Władza Konserwatorska* [Ownership of a Monument and the Discretionary Power of Conservation Authorities], Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2018
- Kowalski W., *Nabywanie Własności Dzieła Sztuki od Nieuprawnionego* [Acquisition of Ownership of a Work of Art from an Unauthorized Person], Zakamycze-Kraków 2004
- Kräussl R., Logher R., *Emerging Art Markets*, Emerging Markets Review, vol. 11, no. 4, Elsevier, Amsterdam 2010
- Lagrange E., Oeter S., Uerpmann-Witzack R. (eds.), *Cultural Heritage and International Law, Objects, Means and Ends of International Protection*, Springer, Switzerland 2018
- Lee D., Sources of Sovereignty: Roman Imperium and Dominium in Civilian Theories of Sovereignty, *Politics Antica*, Fascicolo 1, 2012
- Leonhard J., *Liberalismus: Zur Historischen Semantik eines Europäischen Deutungsmusters*, München-Oldenburg 2001
- Leper R., Communitarianism [in:] R.L. Heath (ed.) *Encyclopedia of public relations*, Thousand Oaks, CA:Sage 2010
- Leszczyński L., A. Szot (eds.) *Discretionary Power of Public Administration, Its Scope and Control*, Peter Lang, Frankfurt 2017
- Llewellyn A., *Delivering Public Benefit from Archaeology- Factsheet*, CIFA, Chartered Institute of Archeologist, 2020
- Locke J., *Second Treatise of Government*, 1690 (The project Gutenberg Ebook, digitised by D. Gowan)
- Lostal M., Islamic State and the Illicit Trafficking of Cultural Property [in:] N.B. Jørgensen, *The International Criminal Responsibility of war's Funders and Profiteers*, Cambridge University Press, Cambridge 2020
- Loulanski T., *Revising the Concept for Cultural Heritage: The Argument for a Functional Approach*, International Journal of Cultural Property, vol. 13, Cambridge University Press, Cambridge 2016
- Lubbock J. (sir) et alia, *A Bill to Provide for the Preservation of Ancient National Monuments*, 1873, 36 Vict., Bill 5 (unenacted)
- Lyons C.L., Objects and Identities: Claiming and Reclaiming the Past [in:] E. Barkan, R. Bush (eds.) *Claiming the Stones; Naming the Bones - Cultural Property and the Negotiations of National and Ethnic Identity*, Getty Research Institute, Los Angeles 2002
- MacIntyre A., *After Virtue, a Study in Moral Theory*, Duckworth-London 1981
- Macpherson C.B. (ed.), *J. Locke, Second Treatise of Government, 1690*, Hackett Publishing Co., Indianapolis 1980
- Maneker M., *The Middle Market Paused: London Contemporary Sales Analysis*, Art Market Monitor, 28 March 2019, <https://www.artmarketmonitor.com/2019/03/28/the-middle-market-paused-london-contemporary-sales-analysis>
- Marcinkowska M., Zalańska K. (eds.), *The Challenges of World Heritage Recovery*, Narodowy Instytut Dziedzictwa, Warszawa 2019
- Martelli-Banégas D., Panhard I., Favré T., *Image of archaeology in Poland- 2015, Study report, general public, Harris interactive, NEARCH survey*, [https://archaeologydataservice.ac.uk/catalogue/adsdata/arch-2749-1/dissemination/pdf/NEARCH\\_Image\\_of\\_archaeology\\_Poland\\_OK.pdf](https://archaeologydataservice.ac.uk/catalogue/adsdata/arch-2749-1/dissemination/pdf/NEARCH_Image_of_archaeology_Poland_OK.pdf)

- Merquior J.G., *Liberalism Old and New*, Twayne Publishers, Boston 1991
- Merriman N., *Public Archaeology*, Routledge, London 2004
- Merryman J.H. (ed.), *Imperialism, Art and Restitution*, Cambridge University Press, Cambridge-New York 2010
- Merryman J.H., *A Licit International Trade in Cultural Objects*, International Journal of Cultural Property, vol. 4, issue 1, Cambridge University Press, Cambridge 1995
- Merryman J.H., *Cultural Property Internationalism*, International Journal of Cultural Property, vol. 12, Cambridge University Press, Cambridge 2005
- Merryman J.H., *The Public Interest in Cultural Property*, California Law Review, vol. 77, no. 2, Berkeley 1998
- Meskill L., *A Future in Ruins, UNESCO, World Heritage, and the Dream of Peace*, Oxford University Press, Oxford 2018
- Messenger P.M. (ed.) *The Ethics of Collecting Cultural Property, Whose culture? Whose Property?*, 2nd ed. University of New Mexico Press, Albuquerque 2003
- Michalak A., Ginter A., *Ustawa o Ochronie Zabytków i Opiece nad Zabytkami, Komentarz* [Act on the Protection and the Preservation of the Monuments, Commentary], Wolters Kluwer, Warszawa 2016
- Misiuk Z., Wrzosek J., Oniszczyk A., Sekuła M., Sabaciński M., Czajkowski K. (eds.), *Standardy Prowadzenia Badań Archeologicznych, cz.2 Badania Inwazyjne Lądowe* [Standards for Conducting Archaeological Research, part 2. Invasive land Research], Narodowy Instytut Dziedzictwa, Warszawa 2019
- Monaco R., *Outlines for a Private Law Convention the International Protection of Cultural Property*, UNIDROIT, Study LXX- Doc. 2, Rome 1988
- Monteiro de Matos M., Cultural Identity and Self-Determination as Key Concepts in Concurring Legal Frameworks for the International Protection of the Rights of Indigenous Peoples [in:] E. Lagrange, S. Oeter, R. Uerpmann-Witzack (eds.), *Cultural Heritage and International Law, Objects, Means and Ends of International Protection*, Springer, Switzerland 2018
- Morawski L., *Filozofia Prawa* [Philosophy of Law], Towarzystwo Naukowe Organizacji i Kierowania „Dom Organizatora”, Toruń 2014
- Morawski L., *Główne Problemy Współczesnej Filozofii Prawa. Prawo w Toku Przemian* [The Main Problems of Contemporary Philosophy of Law. Law in the Process of Transformation], Warszawa 2000
- Morawski L., *Podstawy Filozofii Prawa* [Fundamentals of Philosophy of Law], Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, Toruń 2014
- Morawski L., *Prawo Jednostki a Dobro Wspólne. (Liberalizm a Komunitaryzm)* [Individual Rights and the Common Good. (Liberalism and Communitarianism)], Państwo i Prawo, vol. 11, Komitet Nauk Prawnych Polskiej Akademii Nauk, Warszawa 1998
- Morrice D., *The Liberal-Communitarian Debate in Contemporary Political Philosophy and its Significance for International Relations*, Review of International Studies, vol. 26, Cambridge University Press, Cambridge 2000
- Nakielska I., *Prawo do Własności w Świetle Europejskiej Konwencji Praw Człowieka* [The Right to Property in Light of the European Convention on Human Rights], Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2002
- Niedźwiedz M., *Obrót Dobrami Kultury w Unii Europejskiej* [Trade with Cultural Goods in European Union], Uniwersytet Jagielloński, Zakamycze 2000
- Nozick R., *Anarchy, State and Utopia*, Oxford University Press, Oxford 1974
- O'Connor D., *The Role of Cultural Heritage in Shaping Modern Identity: A Comparative Study of Eastern and Western Perspectives*, Journal of Education, Humanities and Social Research, vol. 1, George Brown Press, Hong Kong 2024
- O'Keefe P.J., *Commentary on the 1970 UNESCO Convention*, 2nd end., Builth WELLS,

- Institute of Art and Law, Wales 2007
- O'Keefe P.J., Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970) [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014
- O'Keefe P.J., *The European Convention on the Protection of the Archaeological Heritage*, Antiquity, vol. 67, issue 255, Cambridge University Press, Cambridge 1993
- O'Keefe P.J., Underwater Cultural Heritage [in:] F. Franconi, A. F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020
- O'Keefe P.J., *Using Unidroit to Avoid Cultural Heritage Disputes: Limitation Periods*, Willamette Journal of International Law and Dispute Resolution, vol. 14, no. 2, Willamette University College of Law, Salem 2006
- O'Keefe R., Péron C., Musayev T., Ferrari G., *Protection of Cultural Property. Military Manual*, UNESCO-International Institute of Humanitarian Law, Paris-Sanremo 2016
- O'Sullivan J., *Nationalism and Archaeology*, Cruithne Press, Glasgow 1996
- Obioha U., *Communitarian Understanding of Human Rights as a Basis for the Pursuit of Human Well-Being*, International Journal of Research in Art and Social Sciences, vol. 11, no. 2, University of Nigeria, Nsukka 2018
- Obłąk A., Rzeczy Wyłączone z Obrotu (Res Extra Commercium) w Polskim Porządku Prawnym [Items Excluded from Circulation (Res Extra Commercium) in the Polish Legal System] [in:] J. Jezioro, K. Zagrobelny (eds.) *Wybrane zagadnienia polskiego prawa prywatnego, Księga pamiątkowa ku czci Doktora Józefa Kermis i Doktora Jerzego Strzebinczyka* [Selected Issues of Polish Private Law, Memorial Book in Honor of Dr. Józef Kermis and Dr. Jerzy Strzebinczyk], E-Wydawnictwo, Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2019
- Oniszczyk A, Misiuk Z, Makowska A, Wrzosek J., Sekuła M.(eds.), *Standardy Prowadzenia Badań Archeologicznych cz.1 Badania Nieinwazyjne Lądowe* [Standards for Conducting Archaeological Research, Part 1. Non-Invasive land Research], Narodowy Instytut Dziedzictwa, Warszawa 2019
- Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO, Paris 1970
- Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, World Heritage Centre, WHC.13/01, 2013
- Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, World Heritage Centre, WHC.13/01, 2013
- Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage, adopted by Resolution 6/ MSP 4 and Resolution 8/ MSP 5, UNESCO
- Paczuski W., *Handel Dzielami Sztuki w Unii Europejskiej* [Art trade in European Union], Kantor Wydawniczy, Zakamycze 2005
- Pawleta M., *Archeologia Odpowiedzialna Społecznie. Działania z Zakresu Public i Community Archaeology w Polsce* [Socially Responsible Archaeology. Public and Community Archaeology Activities in Poland], Folia Praehistorica Posaniensia, t.XXV, Wydział Archeologii Uniwersytet Adama Mickiewicza w Poznaniu, Poznań 2020
- Piątkowski J.S., Komentarz [Commentary] [in:] J. Ignatowicz (ed.), *System Prawa Cywilnego, Prawo Własności i Inne Prawa Rzeczowe* [System of Civil Law, Property Law, and Other Property Rights], vol. 2, Zakład Narodowy im. Ossolińskich, Wrocław-Warszawa-Kraków 1977

- Piechowiak M., *Konstytucyjna Zasada Dobra Wspólnego - w Poszukiwaniu Kontekstu Interpretacji* [The Constitutional Principle of the Common Good – In Search of an Interpretative Context] [in:] W.J. Wołpiuk (ed.) *Dobro Wspólne. Problemy Konstytucyjnoprawne i Aksjologiczne* [The Common Good. Constitutional, Legal, and Axiological Problems], Wyższa Szkoła Zarządzania i Prawa im. Heleny Chodkowskiej w Warszawie, Warszawa 2008
- Pitblado B., *An Argument for Ethical, Proactive, Archaeologist - Artifact Collector Collaboration*, *American Antiquity*, vol. 79, Cambridge University Press, Cambridge 2014
- Price N.P.S., *Conservation on Excavations and the 1956 UNESCO Recommendations* [in:] N.P.S. Price (ed.) *Conservation on Archaeological Excavations, With Particular Reference to the Mediterranean Area*, ICCROM, Rome 1984
- Price N.P.S. (ed.) *Conservation on Archaeological Excavations, With Particular Reference to the Mediterranean Area*, ICCROM, Rome 1984
- Price N.P.S. (ed.), *Historical and Philosophical Issues in the Conservation of Cultural Heritage*, Getty Conservation Institute, Los Angeles 1996
- Prott L.V., O’Keefe P.J., *Law and the Cultural Heritage*, vol. 1, Professional Books, Oxford 1984
- Prott L.V., O’Keefe P.J., ‘*Cultural Heritage*’ or ‘*Cultural Property*’?, *International Journal of Cultural Property*, vol. 1, no. 2, Cambridge University Press, Cambridge 1992
- Pruszyński J., *Ochrona Prawna Zabytków w Republice Federalnej Niemiec* [Legal Protection of Monuments in the Federal Republic of Germany], Wydawnictwo Przedsiębiorstwa Państwowego Pracowni Konserwacji Zabytków, Warszawa 1992
- Pruszyński J., *Teoria prawa ochrony dziedzictwa kultury* [Theory of cultural heritage law], red. K. Zeidler, Wydawnictwo Uniwersytetu Gdańskiego-Wolters Kluwer-Narodowy Instytut Dziedzictwa, Warszawa 2025
- Pryor R., *Report Identifies Art Market as a Target for Organised Crime. The Art Newspaper, December 20 2023*, <https://www.theartnewspaper.com/2023/04/07/art-market-organised-crime-target-report>
- Purchla J., *Dziedzictwo Kulturowe a Kapitał Społeczny* [Cultural Heritage and Social Capital] [in:] A. Rottermund (ed.), *Dlaczego i Jak w Nowoczesny Sposób Chronić Dziedzictwo, Materiały Kokonferencyjne* [Why and How to Protect Heritage in a Modern Way, Conference Materials] Polski Komitet do spraw UNESCO, Warszawa 2014
- Putra I.D., Hitchcock M., *Pura Besakih: A World Heritage Site Contested, Indonesia and the Malay World* 33(96), *Indonesia and the Malay World*, Abingdon 2005
- Radcliffe J., *The UK’s Training and Awareness Programme* [in:] L. Rush (ed.) *Archaeology, Cultural Property, and the Military*, Boydell & Brewer, Woodbridge 2012
- Rawls J., *A Theory of Justice*, Oxford University Press, Oxford 1972
- Ray M., *The UNESCO Convention on Underwater Cultural Heritage and the International Law of the Sea* [in] J.A. Frowein, R. Wolfrum (eds.), *Max Planck Yearbook of the United Nations Law*, vol. 6, Brill, Leiden 2002
- Renfrew C., Bahn P. (eds.) *Archaeology, The Key Concepts*, Routledge, London-New York 2005
- Renfrew C., Bahn P., *Archaeology: Theory, Methods, Practice*, Thames and Hudson, London 2008
- Rennebog L., Spaenjers C., *Buying Beauty: On Prices and Returns in the Art Market*, *Management Science*, vol. 59, no. 1, Institute for Operations Research and Management Science, Maryland 2013
- Report by the Director-General on the Execution of the Programme Adopted by the General Conference, Paris, 15 March 2013, UNESCO

- Rush L. (ed.) *Archaeology, Cultural Property, and the Military*, Boydell & Brewer, Woodbridge 2012
- Rymaszewski B., *Polska Ochrona Zabytków* [Polish Protection of Monuments], Wydawnictwo Naukowe Scholar, Warszawa 2005
- Sandel M., *Liberalism and the Limits of Justice*, Cambridge University Press, Cambridge 1982
- Saunders A.D., *A Century of Ancient Monument Legislation 1882-1982*, The Antiquaries Journal, vol. 63, issue 1, Cambridge University Press, Cambridge 1983
- Sax J.L., *Legal Concepts of Cultural Property*, RBM: A Journal of Rare Books, Manuscripts, and Cultural Heritage, vol. 7, issue 1, Association of College and Research Libraries, California 2006
- Sax J.L., *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures*, The University of Michigan Press, Michigan 2001
- Sayah G., Henson D., Willumsen Y.F. (eds.), *Managing the Archaeological Heritage: Public archaeology in Europe*, Vest-Agder-Museet, Kristiansand 2015
- Schmidt L., *Architectural Conservation; An Introduction*, Westkreuz-Verlag, Bonn 2008
- Schneider M., *The Unidroit Convention on Cultural Property: State of Play and Prospects for the Future*, Uniform Law Review, vol. 2, issue 3, UNIDROIT, Oxford University Press, Oxford 1997
- Sevillano E.G., *Legitimate concerns, or neocolonialism? Germany expresses worry about the fate of the Benin Bronzes, following their restitution to Nigeria*, 2023, <https://english.elpais.com/international/2023-05-19/legitimate-concerns-or-neocolonialism-germany-expresses-worry-about-the-fate-of-the-benin-bronzes-following-their-restitution-to-nigeria.html>
- Shelton D., *Common Concern of Humankind*, Environmental Law and Policy, vol. 39, issue 2, Grassroot Institute, Canada 2009
- Sierpowska I., *Drogi Publiczne jako Kategoria Dobra Publicznego- Świetle Poglądów Doktryny i Rozwiązań Normatywnych* [Public Roads as a Category of Public Goods – in Light of Doctrinal Views and Normative Solutions], Studia Erasmiiana Wratislaviensia, no. 3, Uniwersytet Wrocławski-Koło Naukowe Doktryn Politycznych i Prawnych, Wrocław 2007
- Smith C. (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014
- Smith L., *Uses of heritage*, Routledge, London-New York 2006
- Sosenko K., *Komunitarianizm i Liberalizm. Uwagi w Związku z Prawami Człowieka* [Communitarianism and Liberalism. Comments in Relation to Human Rights], Prakseologia no. 158, t. 2, Instytut Filozofii i Socjologii Polskiej Akademii Nauk, Warszawa 2016
- Standard and guidance for the collection, documentation, conservation and research of archaeological materials. The Chartered Institute for Archaeologists (incorporated by Royal Charter), Reading 2014
- Stephen J.F., *Liberalism*, Cornhill Magazine, vol. V., Smith, Elder and Co., London 1862
- Stępień M., Administrative Discretion in the Light of Theory of Representative Bureaucracy [in:] L. Leszczyński, A. Szot (eds.) *Discretionary Power of Public Administration, Its Scope and Control*, Peter Lang, Frankfurt 2017
- Stępień M., Exploring New Avenues for Studying the Legal Culture: Drawing on Homi Bhabha's Theorization of "Culture" [in:] M. Stępień, J.B. Klakla. (eds.) *Law and Culture, Reconceptualisation and Case Studies*, Springer, Chaim 2022
- Stępień M., *Responsywna Administracja Publiczna* [Responsive Public Administration], Wydawnictwo Adama Marszałka, Toruń 2008
- Stępień M., Klakla J.B. (eds.) *Law and Culture, Reconceptualisation and Case Studies*, Springer, Chaim 2022

- Strati A., The Protection of the Underwater Cultural Heritage in International Legal Perspective [in:] *Archaeological Heritage: Current Trends in its Legal Protection (International Conference Athens, 26-27 November 1992)*, Martinus Nijhoff Publishers, The Hague-London-Boston 1995
- Szachułowicz J., *Własność Publiczna* [Public Ownership], Wydawnictwo Prawnicze, Warszawa 2000
- Szafrański W., Res Extra commercium [in]: A. Jagielska-Burduk (ed.), W. Szafrański, Ł. Gawęł *Mechanizmy Prawne Zarządzania Dziedzictwem Kultury* [Legal Mechanisms for Managing Cultural Heritage], Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk-Warszawa 2016
- Szafrański W., Lasik P., *Prawo Ochrony Dziedzictwa Kulturowego. Quo Vadis?* [Heritage Protection Law. Quo Vadis?], Santander Art and Culture Law Review, vol. 1, Opole 2021
- Szafrański W., Zalasńska K. (eds.), *Wokół Problematyki Prawnej Zabytków i Dzieł Sztuki* [Around the Legal Issues of Monuments and Works of art], vol. 3, Poznań 2009
- Szmygin B., *Światowe Dziedzictwo Kultury UNESCO - Charakterystyka, Metodologia, Zarządzanie* [UNESCO World Cultural Heritage - Characteristics, Methodology, Management], Polski Komitet Narodowy ICOMOS-Politechnika Lubelska, Warszawa-Lublin 2016
- Taylor C., Cross-Purposes: The Liberal-Communitarian Debate [in:] N. Rosenbaum (ed.), *Liberalism and the Moral Life*, Harvard University Press, Harvard 1989
- Taylor C., *The Malaise of Modernity*, House of Anansi Press, Toronto 1991
- Taylor R., Dominion vs. Imperium: Was Expropriation by Reason of Public Utility Possible under Roman Law? [in:] R. Taylor, *Public Needs and Private Pleasures, Water distribution, the Tiber River and the Urban Development of Ancient Rome*, *Studia Archaeologica*, no. 109, L'Erma di Bretschneider, Rome 2000
- Taylor R., *Public Needs and Private Pleasures, Water distribution, the Tiber River and the Urban Development of Ancient Rome*, *Studia Archaeologica*, no. 109, L'Erma di Bretschneider, Rome 2000
- The British Museum, Amgueddfa Cymru (eds.), *Advice for finders of archaeological objects and treasure*, <https://finds.org.uk/documents/file/pa-and-t-leaflet.pdf>
- Thomas R.M., Archaeological Resource Management: The Changing Role of the State [in:] C. Smith (ed.) *Encyclopedia of Global Archaeology*, Springer, New York 2014
- Thomas S., Community archaeology [in:] G. Moshenska, *Key Concepts in Public Archaeology*, University College London Press, London 2017
- A. Tompkins (ed.), *Art Crime and its Prevention*, Lund Humphries, Lund 2016
- Trigger B.G., *A History of Archaeological Thought*, Cambridge University Press, Cambridge 2014
- Trigger B.G., *Alternative Archaeologies: Nationalist, Colonialist, Imperialist*, *Man*, New Series, vol. 19, no 3, Royal Anthropological Institute of Great Britain and Ireland, London 1984
- Trzcziński J. (ed.), *Charakter i Struktura Norm Konstytucji* [The Nature and Structure of Constitutional Norms], Wydawnictwo Sejmowe, Warszawa 1997
- Trzcziński M., Definicja Zabytku Archeologicznego- Problemy i Kontrowersje wokół Stosowania Prawa [The Definition of an Archaeological Monument-Issues and Controversies in the Application of the Law] [in:] K. Zeidler (ed.) *Prawo ochrony zabytków [Cultural Heritage Law]*, Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Warszawa-Gdańsk 2014
- Tully G., *Community Archaeology: General Methods and Standards of Practice*, *Public Archaeology*, vol. 6, no. 3, Taylor and Francis, 2007

- UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, adopted on 32. General Conference, UNESCO, 2003
- UNESCO International Code of Ethics for Dealers in Cultural Property, 1999
- UNESCO-UNIDROIT, Expert Committee on States Ownership of Cultural Heritage, Model Provisions on State Ownership of Undiscovered Cultural Objects, Explanatory Report with model provisions and explanatory guidelines, 2011
- United Kingdom of Great Britain and Northern Ireland, National report on the implementation of the convention on the means of prohibiting and preventing the illicit import, export and transfer of the ownership of cultural property, reporting period: 2015-2018
- United Nations Interregional Crime and Justice Research Institute, *Cultural Heritage Smuggling and the Nexus with Terrorism*, UNESCO 2024
- United Nations Office on Drugs and Crime, False trades: uncovering the scale and scope of trafficking in cultural property, Knowledge gaps and future directions for research, Research and Trend Analysis Branch,(UNODC), 2022
- Van Lit T., *Cultural Property, War Crimes and Islamic State: Destruction, Plunder and Trafficking of Cultural Property and Heritage by Islamic State in Syria and Iraq - A War Crimes Perspective*, Dutch National Police, Central Investigation Unit, War Crimes Unit, Holand 2016
- Vitale K.D., *The War on Antiquities: United States Law and Foreign Cultural Property*, Notre Dame Law Review, vol. 84, issue 4, University of Notre Dame, Notre Dame 2009
- Vrdjolak A.F, Franconi F., Introduction [in:] F. Franconi, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020
- Vujnovic M., Kruckeberg D., Communitarianism [in:] R.L.Heath, W. Johansen (eds.) *The International Encyclopaedia of Strategic Communication*, John WILEY & Sons Inc., Hoboken-New Jersey 2018
- Walzer M., *Spheres of Justice*, Oxford University Press, 1983
- Wasilkowski J., *Zarys Prawa Rzeczowego* [Outline of Property Law], Państwowe Wydawnictwo Naukowe, Warszawa 1963
- Weller M., *Wem gehört der versteigerte Kandinsky?*, Legal Tribune Online, 28.12.2022, <https://www.lto.de/recht/hintergruende/h/auktionshaus-grisebach-versteigerung-kandinsky-gutgläubiger-erwerb-polen-diebstahl>
- Willems W.J.H., *The Work of Making Malta: The Council of Europe's Archaeology and Planning Committee 1988-1996*, European Journal of Archaeology, vol. 10, issue 1, Cambridge University Press, Cambridge 2007
- Williams H., Introduction: Public Archaeology as Arts of Engagement [in:] H. Williams, C. Putney, A. Ezzeldin (eds.) *Public Archaeology as Arts of Engagement*, Archaeopress Publishing Ltd, Oxford 2019
- Williams H., Putney C. Ezzeldin A. (eds.) *Public Archaeology as Arts of Engagement*, Archaeopress Publishing Ltd, Oxford 2019
- Wołpiuk W.J. (ed.) *Dobro Wspólne. Problemy Konstytucyjnoprawne i Aksjologiczne* [The Common Good. Constitutional, Legal, and Axiological Problems], Wyższa Szkoła Zarządzania i Prawa im. Heleny Chodkowskiej w Warszawie, Warszawa 2008
- Yusuf A.A. (ed.), *Standard Setting in UNESCO, vol. II: Conventions, Recommendations, Declarations and Charters Adopted by UNESCO*, UNESCO, Paris 2007
- Zabytek [monument] Słownik Języka Polskiego PWN, <https://sjp.pwn.pl/sjp/zabytek;2541821.html>
- Zajadło J., Zeidler K., *Prawna Ochrona Zabytków na Wypadek Wojny* [Legal Protection of Monuments in the Event of War], Ochrona Zabytków, no. 1-2, Narodowy Instytut Dziedzictwa, Warszawa 2003

- Zajęcki M., Definiowanie Pojęć Podstawowych Prawa Kultury w Kontekście Zasad Wykładni Prawa Polskiego [Defining the Basic Concepts of Cultural Law in the Context of the Principles of Interpretation of Polish Law] [in:] A. Jagielska-Burduk, W. Szafranski (eds.) *Kultura w Praktyce. Zagadnienia prawne* [Culture in Practice. Legal Issues], Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauki, Poznań 2012
- Zalasińska K., Bąkowski T., Paradygmat Zrównoważonego Rozwoju w Prawnej Ochronie Nieruchomości Zabytkowych - Próba Adaptacji [The Paradigm of Sustainable Development in the Legal Protection of Historic Properties - an Attempt at Adaptation] [in:] W. Szafranski, K. Zalasińska (eds.), *Wokół Problematyki Prawnej Zabytków i Dziel Sztuki* [Around the Legal Issues of Monuments and Works of art], vol. 3, Poznań 2009
- Zalasińska K., Zeidler K., *Wykład Prawa Ochrony Zabytków* [Lecture on the Law of Monument Protection], Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Warszawa-Gdańsk 2015
- Zalta E.N. (ed.), *The Stanford Encyclopedia of Philosophy*, 2008, <https://plato.stanford.edu/entries/communitarianism/>
- Zeidler K., O Znaczeniu i Roli Teorii Konserwatorskiej w Procesie Stosowania Prawa [in:] B. Szymgin (ed.) *Współczesne problemy teorii konserwatorskiej w Polsce* [Contemporary Problems of Conservation Theory in Poland], Wydawnictwo Politechniki Lubelskiej, Warszawa-Lublin 2008
- Zeidler K., *Ograniczenia Prawa Własności w Świetle Spor Liberalizmu z Komunitaryzmem* [Restrictions on Property Rights in the Context of the Liberalism vs. Communitarianism Debate], Gdańskie Studia Prawnicze, vol. 35, Gdańsk 2016
- Zeidler K., *Prawo Ochrony Dziedzictwa Kultury* [Cultural Heritage Protection Law], Wolters Kluwer, Warszawa 2007
- Zeidler K., *Restitution of Cultural Property: A Hard Case - Theory of Argumentation – Philosophy of Law*, Gdańsk University Press-Wolters Kluwer, Gdańsk-Warsaw 2016
- Zeidler K., *Restytucja Dóbr Kultury ze Stanowiska Filozofii Prawa. O Trudnych Przypadkach na Granicy Kultury i Prawa* [Restitution of Cultural Goods from the Perspective of Legal Philosophy: On Difficult Cases at the Intersection of Culture and Law], Wolters Kluwer, Warszawa 2011
- Zeidler K. (ed.) *Prawo ochrony zabytków [Cultural Heritage Law]*, Wolters Kluwer-Wydawnictwo Uniwersytetu Gdańskiego, Warszawa-Gdańsk 2014
- Zeidler K., Łągiewska M., *Liberalism versus Communitarianism in Cultural Heritage Law*, International Journal for the Semiotics of Law, vol. 34, issue 3, Springer, Chaim 2021
- Zeidler K., Trzeński M., *Wykład Prawa dla Archeologów* [Law Lecture for Archaeologists], Wolters Kluwer, Warszawa 2009
- Zirk-Sadowski M., *Prawo a Uczestniczenie w Kulturze* [Law and Participation in Culture], Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1998
- Zirk-Sadowski M., *Wprowadzenie do Filozofii Prawa* [Introduction to the Philosophy of Law], Zakamycze-Kraków 2000
- Zoll F., *Pandecta czyli Nauka Rzymskiego Prawa Prywatnego* [Pandecta or the Science of Roman Private Law], vol. 1, Część ogólna, Spółka Wydawnicza Polska, Kraków 1914

### Internet sources

- Chambers and Partners, Art & Cultural Property Law 2025, <https://practiceguides.chambers.com/practice-guides/art-cultural-property-law-2025/italy>
- Council of Europe, *The Council of Europe at a glance*, <https://www.coe.int/en/web/portal/the->

- council-of-europe-at-a-glance
- Countryside Stewardship*, <https://www.gov.uk/guidance/countryside-stewardship-manual>
- Code of Practice for Responsible Metal Detecting 2017*, Portable Antiquities Scheme, <https://finds.org.uk/getinvolved/guides/codeofpractice>
- Cousteau J.Y., Gangan E., Diving Unit, *U.S. Patent US2485039A*, 18 October 1949, <https://patents.google.com/patent/US2485039A/en>
- Denkmalschutz „Denkmäler schützen, Energiepotenziale nützen und Kommunen unterstützen: Ministerrat beschließt Neuerungen im Bayerischen Denkmalschutzgesetz, 2022, <https://www.stmwk.bayern.de/allgemein/meldung/6892/wir-bringen-klimaschutz-und-denkmalschutz-zusammen-neuerungen-im-bayerischen-denkmalschutzgesetz.html>
- Department for Culture, Media and Sport (ed.), *Treasure Act 1996: Code of Practice* (3rd Revision) Presented to Parliament pursuant to section 11 of the Treasure Act 1996, 2023, [https://finds.org.uk/documents/treasure\\_act.pdf](https://finds.org.uk/documents/treasure_act.pdf)
- Equality and Human Rights Commission, <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-8-respect-your-private-and-family-life>
- Główny urząd statystyczny, *Kultura i dziedzictwo narodowe w 2023*, <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/kultura-i-dziedzictwo-narodowe-w-2023-roku,2,21.html>
- Główny urząd statystyczny, *Kultura w 2018*, <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/kultura-w-2018-roku,20,2.html>
- Historic England, *Metal detecting on agri- environment land*, <https://historicengland.org.uk/advice/caring-for-heritage/rural-heritage/metal-detecting-agri-environment-land/>
- Meaning of words around the world, <https://geographical.co.uk/news/the-holidays-as-big-as-thanksgiving-around-the-world>
- Ministero della cultura, comunicato, <https://cultura.gov.it/comunicato/24864>
- Muzeum archeologiczne w Gdańsku, Załącznik 6a - do Zasad przygotowania oraz przekazywania materiałów archeologicznych do działów merytorycznych Muzeum Archeologicznego w Gdańsku, w celu włączenia materiałów do zbiorów Muzeum Archeologicznego w Gdańsku, [https://archeologia.pl/wp-content/uploads/2024/03/Zalacznik-6a-g-do-Zasad-przygotowania-oraz-przekazywania-materialow-archeologicznych-do-MAG\\_WYTYCZNE-DOT.-WARUNKOW-PRZYJECIA.pdf](https://archeologia.pl/wp-content/uploads/2024/03/Zalacznik-6a-g-do-Zasad-przygotowania-oraz-przekazywania-materialow-archeologicznych-do-MAG_WYTYCZNE-DOT.-WARUNKOW-PRZYJECIA.pdf)
- Oxford Archaeology, *Nightawking Survey*, 2009, <https://eprints.oxfordarchaeology.com/5832/1/Night-Hawking-Survey.pdf>
- Portable Antiquities Scheme, *Guidance for landowners, occupiers and tenant farmers in England and Wales, Metal-detecting, Field-walking and Searching for Archaeological Objects: guidance for landowners, occupiers and tenant farmers in England and Wales*, <https://finds.org.uk/getinvolved/guides/guidancelandowners>
- Stewardship*, Oxford English Dictionary, Online English Dictionary, [https://www.oed.com/dictionary/stewardship\\_n?tl=true](https://www.oed.com/dictionary/stewardship_n?tl=true)
- Stolen Works of Art Database, <https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>
- The 1995 UNIDROIT Convention, <https://www.unidroit.org/instruments/cultural-property/1995-convention/status/>
- The Common Heritage of Mankind, *UNESCO video and sound collections*, <https://www.unesco.org/archives/multimedia/document-3437>
- The Contested Histories Initiative, Columbus Monument in Buenos Aires, Contested Histories Case Study #4, June 2021, [contedhistories.org/wp-content/uploads/Argentina\\_-\\_Columbus-Monument-in-Buenos-Aires.pdf](https://contedhistories.org/wp-content/uploads/Argentina_-_Columbus-Monument-in-Buenos-Aires.pdf)

The Council of Europe's Relations with the United Nations, External relations, Council of Europe Portal, <https://www.coe.int/en/web/der/united-nations>

Types of legislation, Law, European Union, [https://european-union.europa.eu/institutions-law-budget/law/types-legislation\\_en](https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en)

UN, *Launch of the Co-Action Against Trafficking in Cultural Heritage (CATCH) in the Mediterranean*, <https://www.unodc.org/unodc/en/frontpage/2023/June/unodc-together-with-unesco-and-interpol-launch-the-catch-pilot-initiative-against-trafficking-in-cultural-heritage-in-the-mediterranean.html>

UNESCO, Call by UNESCO and Partners to Fight Against Illicit Trafficking of Afghan Cultural Property, 26 October 2022, <https://www.unesco.org/en/articles/call-unesco-and-partners-fight-against-illicit-trafficking-afghan-cultural-property>

UNESCO, Legal Affairs, UNESCO's standard- setting. An Overview, <https://www.unesco.org/en/legal-affairs/standard-setting/overview#:~:text=Contrary%20to%20conventions%2C%20recommendations%20are%20not%20binding%20under%20international%20law>

UNESCO, Recent awareness-raising initiatives by State Parties to the 1970 Convention, <https://www.unesco.org/en/fight-illicit-trafficking/awareness-raising-material>

UNESCO State Parties, <https://whc.unesco.org/en/statesparties/>

UNESCO, UNESCO Trains Professionals to Fight Against Illicit Trafficking of Ukrainian Cultural Property, 20 January 2023, <https://articles.unesco.org/en/articles/unesco-trains-professionals-fight-against-illicit-trafficking-ukrainian-cultural-property>

UNIDROIT, About UNIDROIT, Overview, <https://www.unidroit.org/about-unidroit/members-states-2/>

United Nations, About us, <https://www.un.org/en/about-us>

United Nations, Cultural rights and the protection of cultural heritage, <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights/cultural-rights-protection-cultural-heritage>

What is Cultural Heritage? Whose Culture? The Curation and Management of World Heritage, Department of History and Art and Architecture, Harvard University, <https://projects.iq.harvard.edu/whoseculture/what-world-heritage>; Cultural Heritage, Culture and Creativity, European Commission, <https://culture.ec.europa.eu/cultural-heritage>

Why our symbol is tree? University of Strathclyde, Glasgow <https://www.strath.ac.uk/studywithus/ourcampus/whatsoncampus/faithspiritualitysupport/whyoursymbolisatree/#:~:text=The%20Tree%20of%20Life%20represents,and%20the%20interconnectedness%20of%20everything>

World Heritage Convention, About World Heritage, UNESCO, <https://whc.unesco.org/en/about/>

# MONUMENTA ARCHAEOLOGICA IN USU COMMERCIALI

Liberalism versus communitarianism debate in cultural heritage law

## Summary

This research presents a comprehensive legal, philosophical, and policy-oriented examination of archaeological heritage, with particular emphasis on the question of ownership and its consequences for preservation, accessibility, and societal value. Situated at the intersection of cultural heritage law, property law, and legal theory, the research critically examines the prevailing assumption that archaeological monuments must remain permanently excluded from commerce and subject exclusively to state ownership. Instead, it advances a more nuanced framework that seeks to reconcile public interest, private rights, ethical responsibility, and effective heritage management.

At the outset, cultural heritage is conceptualised as a foundational element of collective memory and identity. Heritage, both tangible and intangible, is understood not merely as a vestige of the past, but as a dynamic and evolving resource that shapes social cohesion, cultural continuity, and economic development. Archaeological heritage is identified as a particularly complex subset of cultural heritage, often regulated more restrictively than other cultural assets. While paintings, historic buildings, and movable monuments may circulate under defined legal conditions, archaeological artefacts are frequently treated as exceptional objects subject to absolute state control and exclusion from legal circulation.

The research argues that this exceptional treatment requires critical reassessment. Archaeological heritage, while undeniably significant, is not inherently incompatible with private ownership or regulated market participation. Contemporary pressures, including globalisation, urban expansion, climate change, and armed conflict, pose increasing threats to archaeological sites, exposing the limitations of traditional state-centred protection models.<sup>386</sup> Simultaneously, technological developments in digital documentation, virtual access, and heritage dissemination demonstrate that effective preservation and public engagement no longer depend solely on physical custody by state institutions.

A central focus of the research lies in the legal and ethical dimensions of ownership rights. International legal instruments, particularly those developed under the auspices of UNESCO, are examined for their role in shaping global understandings of archaeological

---

<sup>386</sup> See: J. Basedow, T. Kono (eds.), *Legal Aspects of Globalisation: Conflicts of Laws, Internet, Capital Markets and Insolvency in a Global Economy*, Kluwer Law International B.V., London 2000.

heritage as part of the common heritage of humanity. While these conventions aim to prevent looting and illicit trafficking, the research highlights a persistent tendency to equate state ownership with effective protection. Empirical realities, however, reveal that illegal excavation, trafficking networks, and the destruction of archaeological contexts continue despite strict legal prohibitions.

The research devotes some attention to the consequences of looting, framing it not only as a legal or economic issue but also as a profound epistemic loss. The removal of artefacts without proper documentation destroys their archaeological context, severely limiting their scientific and historical value. Beyond this, looting disrupts cultural narratives and weakens community identity by severing artefacts from the landscapes and histories to which they belong. The research further observes that looting is often driven by socio-economic hardship, producing short-term individual gains while undermining long-term opportunities for sustainable development, such as heritage-based tourism and community engagement.

A key argument advanced in the research challenges the assumption that excluding archaeological artefacts from commerce reduces looting or intentional destruction. No clear correlation is identified between strict non-commercial classification, particularly through the concept of *res extra commercium*, and improved protection outcomes. Instead, the research suggests that rigid interpretations of this Roman-law concept may inadvertently contribute to legal ambiguity, fostering grey markets while preventing transparent and regulated circulation.

The research's philosophical foundation is grounded in the tension between liberalism and communitarianism. Liberal perspectives emphasise individual rights, private property, and market mechanisms, while communitarian approaches prioritise collective memory, shared identity, and public ownership. Rather than treating these paradigms as irreconcilable, the research demonstrates how heritage law has oscillated between them, often inconsistently. Archaeological heritage has traditionally been governed through a predominantly communitarian framework, however, excessive reliance on this model risks alienating local communities, limiting public engagement, and overburdening state institutions with responsibilities they may lack the capacity to fulfil.

These theoretical concerns are reinforced through an examination of practical governance challenges. The research highlights chronic funding, infrastructure, storage capacity, and specialised personnel deficiencies within archaeological institutions. As a result, large volumes of artefacts remain inventoried but inaccessible, unresearched, or inadequately conserved. In this context, exclusive state ownership does not necessarily ensure effective

preservation or public access and may instead contribute to bureaucratic inefficiencies and cultural invisibility.

A central thesis of the research asserts that ownership alone does not inherently restrict the legal circulation of property unless such restriction is explicitly established by law. Applied to archaeological heritage, this principle challenges the assumption that state ownership automatically justifies exclusion from transfer, exchange, or private possession. The research identifies multiple legal scenarios in which ownership of archaeological artefacts may legitimately vest in entities other than the state without undermining public interest or heritage protection.

Building on this premise, the research advocates a conceptual shift from ownership to stewardship. Stewardship emphasises responsibility, care, and accountability rather than absolute dominion. This framework aligns with ethical archaeological practice, indigenous perspectives, and contemporary approaches to cultural heritage management. By adopting stewardship as a guiding principle, the research suggests that both public and private actors can contribute meaningfully to the protection and promotion of archaeological heritage, provided that clear legal safeguards and ethical standards are maintained.

The comparative dimension of the research further elucidates these arguments through an analysis of three distinct legal models: the highly conservative, state-centred framework of Italy, the hybrid system employed in Germany, and the comparatively liberal regime of England. Each model reflects different balances between public control and private involvement. The comparative analysis demonstrates that flexible, mixed approaches tend to offer more effective outcomes in terms of preservation, accessibility, and social utility than rigidly centralised systems.

In its concluding synthesis, the research calls for a reassessment of existing legal frameworks governing archaeological heritage. It advocates clearer distinctions between ownership and protection, greater reliance on stewardship-based governance, and the transparent inclusion of archaeological artefacts within regulated legal markets. Such an approach is presented not as a departure from heritage protection, but as a means to enhance accountability, reduce illicit trade, and foster broader public engagement.

Ultimately, this research conceptualises archaeological heritage not as a static resource to be isolated from society, but as a dynamic cultural asset whose long-term protection depends on legal clarity, ethical responsibility, and inclusive participation. By proposing an integrative framework that bridges liberal and communitarian perspectives, it contributes to ongoing

debates on cultural heritage law and offers pathways for more sustainable and socially responsive heritage governance.

# MONUMENTA ARCHAEOLOGICA IN USU COMMERCIALI

## Spór liberalizmu z komunitaryzmem w prawie ochrony dziedzictwa kultury

### Streszczenie

Zawarte w rozprawie doktorskiej badania zawierają analizę prawną, filozoficzną oraz z zakresu polityk publicznych, dotyczącą dziedzictwa archeologicznego, ze szczególnym uwzględnieniem problematyki własności oraz jej konsekwencji – celem ochrony, dostępności i określenia wartości społecznej tego dziedzictwa. W badaniach tych, osadzonych na styku prawa ochrony dziedzictwa kultury, prawa własności oraz teorii prawa, krytycznej refleksji poddane zostało utrwalone założenie, zgodnie z którym zabytki archeologiczne powinny pozostawać trwale wyłączone z obrotu oraz podlegać wyłącznej własności państwa. W zamian zaproponowane zostało bardziej zniuansowane podejście, uwzględniające równowagę pomiędzy interesem publicznym, prawami podmiotów prywatnych, odpowiedzialnością etyczną oraz skutecznym zarządzaniem dziedzictwem.

Dziedzictwo kultury zostaje ujęte w pracy jako fundamentalny element pamięci zbiorowej i tożsamości społecznej. Dziedzictwo, zarówno materialne, jak i niematerialne, postrzegane jest nie tylko jako pozostałość przeszłości, lecz jako dynamiczny i ewoluujący zasób, który wpływa na spójność społeczną, ciągłość kulturową oraz rozwój gospodarczy. Dziedzictwo archeologiczne zostało zidentyfikowane jako szczególnie złożona część dziedzictwa kultury, która często podlega bardziej restrykcyjnym regulacjom prawnym, niż inne dobra kultury. Podczas gdy dzieła sztuki, zabytki architektury czy ruchome zabytki mogą funkcjonować w obrocie prawnym pod określonymi warunkami, artefakty archeologiczne są nierzadko traktowane jako kategoria wyjątkowa, podlegająca najdalej idącej kontroli państwa i wyłączona z legalnego obrotu.

W pracy wykazano, że takie wyjątkowe traktowanie wymaga krytycznej rewizji. Dziedzictwo archeologiczne, mimo swojej szczególnej wartości, nie jest z natury „niekompatybilne” z własnością prywatną ani z kontrolowanym uczestnictwem w obrocie rynkowym. Współczesne wyzwania, takie jak globalizacja, urbanizacja, zmiany klimatyczne czy konflikty zbrojne, coraz wyraźniej ukazują ograniczenia tradycyjnych, państwocentrycznych modeli ochrony zabytków archeologicznych. Jednocześnie rozwój technologii cyfrowych w zakresie dokumentacji, udostępniania i popularyzacji dziedzictwa pokazuje, że skuteczna ochrona i zaangażowanie społeczne nie muszą być uzależnione wyłącznie od fizycznej pieczy sprawowanej przez państwo.

Istotnym elementem badań jest analiza prawnych i etycznych aspektów własności składników dziedzictwa kultury. Międzynarodowe instrumenty prawne, w szczególności konwencje wypracowane w ramach UNESCO, zostały poddane ocenie pod kątem ich wpływu na globalne postrzeganie dziedzictwa archeologicznego jako wspólnego dziedzictwa ludzkości. Choć celem tych źródeł prawa międzynarodowego jest przeciwdziałanie grabieży i nielegalnemu handlowi, badania ujawniają tendencję do utożsamiania własności państwowej z efektywną ochroną. Tymczasem praktyka pokazuje, że nielegalne wykopaliska, międzynarodowe sieci przemytu oraz niszczenie kontekstu archeologicznego występują pomimo obowiązywania restrykcyjnych regulacji prawnych.

Część badań poświęcona została konsekwencjom grabieży zabytków archeologicznych, postrzeganej nie tylko jako problem prawny lub ekonomiczny, lecz również jako nieodwracalna strata poznawcza. Przemieszczanie artefaktów bez właściwej dokumentacji prowadzi do zniszczenia kontekstu archeologicznego, co w sposób istotny ogranicza ich wartość naukową i historyczną. Ponadto, grabież narusza ciągłość narracji kulturowych oraz osłabia tożsamość wspólnot lokalnych, pozbawiając je materialnych świadectw przeszłości osadzonych w konkretnym krajobrazie i historii. W badaniach wskazano również, że grabież bywa motywowana trudną sytuacją społeczno-ekonomiczną, przynosząc krótkoterminowe korzyści jednostkom, lecz jednocześnie niwecząc długofalowe możliwości rozwoju, takie jak turystyka kulturowa czy lokalne inicjatywy oparte na dziedzictwie.

Jednym z kluczowych wniosków zawartych w rozprawie doktorskiej jest zakwestionowanie tezy, jakoby wyłączenie zabytków archeologicznych z obrotu prowadziło do ich lepszej ochrony, w tym do ograniczenia ich grabieży lub ich celowego niszczenia. Nie stwierdzono jednoznacznej korelacji pomiędzy rygorystycznym stosowaniem koncepcji *res extra commercium* a poprawą poziomu ochrony. Przeciwnie, przeprowadzone badania sugerują, że sztywne i uproszczone interpretacje tej rzymskoprawnej instytucji mogą prowadzić do powstawania szarej strefy oraz nieprzejrzystych praktyk rynkowych, jednocześnie blokując możliwość wprowadzenia przejrzystego, kontrolowanego obrotu.

Filozoficzne założenia badań zostały osadzone w sporze pomiędzy liberalizmem a komunitaryzmem. Liberalizm akcentuje prawa jednostki, własność prywatną i mechanizmy rynkowe, natomiast komunitaryzm podkreśla znaczenie pamięci zbiorowej, wspólnej tożsamości i dobra wspólnego. W rozprawie nie traktuje się jednak tych podejść jako wzajemnie wykluczających się, lecz równocześnie prawo ochrony dziedzictwa często jest sytuowane w tytułowej debacie dość niekonsekwentnie i niespójnie. Dziedzictwo archeologiczne było tradycyjnie regulowane w duchu komunitaryzmu, jednak nadmierne

przywiązanie do tego modelu może prowadzić do alienacji społeczności lokalnych, ograniczenia partycypacji społecznej oraz przeciążenia instytucji publicznych obowiązkami, którym nie zawsze są w stanie sprostać.

Rozważania teoretyczne zostały wzmocnione analizą praktycznych problemów zarządzania dziedzictwem. Badania z tego zakresu wskazują na chroniczne niedobory finansowe, infrastrukturalne oraz kadrowe w instytucjach archeologicznych. W konsekwencji znaczna liczba artefaktów pozostaje skatalogowana, lecz niedostępna dla badań, ekspozycji lub właściwej konserwacji. W takim kontekście wyłączna własność państwa nie gwarantuje ani skutecznej ochrony, ani realnej dostępności dziedzictwa, a niekiedy przyczynia się do biurokratyzacji i marginalizacji jego społecznej funkcji.

Podstawowa teza pracy stanowi, że sama własność nie ogranicza z natury rzeczy możliwości obrotu prawnego danym dobrem, o ile takie ograniczenie nie zostało wyraźnie przewidziane w przepisach prawa. W odniesieniu do dziedzictwa archeologicznego znaczy to podważenie założenia, że własność Skarbu Państwa automatycznie uzasadnia wyłączenie zabytków z obrotu, przenoszenia lub posiadania przez podmioty prywatne. Badania identyfikują wiele sytuacji prawnych, w których własność zabytków archeologicznych może zgodnie z prawem przysługiwać podmiotom innym niż państwo, bez naruszania interesu publicznego i zasad ochrony dziedzictwa kultury.

Na tej podstawie proponowane jest odejście od tradycyjnego pojęcia własności na rzecz koncepcji powiernictwa (*stewardship*). Powiernictwo akcentuje obowiązek troski, odpowiedzialności i długofalowego zarządzania, a nie absolutne władztwo nad rzeczą. Takie ujęcie jest zbieżne z etycznymi standardami archeologii, perspektywą społeczności rdzennych oraz nowoczesnymi modelami zarządzania dziedzictwem kultury. Przyjęcie koncepcji powiernictwa umożliwi współdziałanie sektora publicznego i prywatnego na rzecz ochrony oraz popularyzacji dziedzictwa archeologicznego, pod warunkiem obowiązywania jasnych ram prawnych i standardów etycznych.

Wymiar komparatystyczny badań obejmuje analizę trzech odmiennych modeli regulacyjnych: konserwatywnego, państwocentrycznego systemu włoskiego, modelu pośredniego, funkcjonującego w Niemczech, oraz bardziej liberalnego rozwiązania przyjętego w Anglii. Każdy z tych systemów odzwierciedla inny sposób ważenia interesu publicznego i interesu jednostki. Analiza porównawcza wskazuje, że modele mieszane, łączące kontrolę publiczną z udziałem podmiotów prywatnych, częściej prowadzą do bardziej efektywnej ochrony, większej dostępności oraz wyższej użyteczności społecznej dziedzictwa archeologicznego.

We wnioskach pracy postulowana jest potrzeba aktualnej oceny obowiązujących regulacji prawnych służących ochronie dziedzictwa archeologicznego. Podkreślono konieczność wyraźnego rozróżnienia pomiędzy własnością a ochroną, większego znaczenia koncepcji powiernictwa oraz włączenia zabytków archeologicznych do przejrzystego i regulowanego obrotu prawnego. Takie podejście nie stanowi odejścia od idei ochrony dziedzictwa, lecz ma na celu wzmocnienie odpowiedzialności, ograniczenie nielegalnego handlu oraz zwiększenie zaangażowania społecznego.

Ostatecznie badania ujmują dziedzictwo archeologiczne nie jako statyczny zasób wymagający izolacji, lecz jako dynamiczny element kultury, którego trwała ochrona zależy od jasnych i skutecznych regulacji prawnych, odpowiedzialności etycznej oraz szerokiego udziału społecznego. Zaproponowane podejście, integrujące elementy liberalizmu i komunitaryzmu, jest nowym elementem debaty nad prawem ochrony dziedzictwa kulturowego oraz wskazuje możliwe kierunki rozwoju bardziej zrównoważonych i społecznie pożytecznych modeli zarządzania dziedzictwem archeologicznym.