‘The heavens are high and the Emperor is far away’: cultural heritage law and management in China

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‘The heavens are high and the Emperor is far away’ is a traditional proverb originally referring to the inability of the Emperor to ensure that remote provinces and regions comply with his rule. The phrase is still used today to imply that law enforcement by distant Beijing is not to be feared. The adage equally has resonance when investigating cultural heritage management in China.

China has a rich heritage resource, both realised and discovered daily, a legacy of 5000 years of cultural development. The 300,000 registered cultural relics comprise a significant inheritance for current and future generations and a challenge to sustainably manage it.

The identification and conservation of a nation’s heritage is an inherently political and subjective process. China’s approach to heritage conservation today is influenced by cultural practices, political imperatives, economic development objectives and the knowledge gained through a long experience in managing and conserving its heritage. Cultural relics are considered a ‘resource for tourism and an invaluable source of national pride.’

This paper considers the development of heritage law, the major threats to the protection of heritage, certain of the current legislative and policy responses at the national level and future directions for conservation in China.

Development of cultural heritage law and policy in China

In Imperial China and prior to the emergence of a modern legal system, conservation of significant places and objects was assured through traditional reverence of ancestors and historic relics. With the demise of the Tsing Dynasty and increasing contact with the west, China’s Kuomintang Government developed formal legal measures to protect movable cultural heritage from foreign plunder, the objects and art of China having fascinated Europeans since Marco Polo’s Silk Road. The threat to China’s heritage in the nineteenth and early twentieth centuries was largely external: the looting by the English and French of the Old Summer Palace in Beijing during the Second Opium War of 1860; destruction of relics during the Boxer rebellion; countless late nineteenth- and early twentieth-century foreign excavations and targeted destruction during the Japanese invasion in the 1930s. In the early twentieth century, western archaeologists were active in China, establishing great collections and cataloguing the Imperial collection.

In 1930 China promulgated its first law to protect cultural heritage, the Law on the Preservation of Ancient Objects. This law claimed for the State ownership of all subsurface property, required government approval of all excavations and any participation of foreign persons. In 1961 China promulgated the Provisional Regulations on Protection and Administration of Cultural Relics, prohibiting the export of any cultural relics that predated 1795, and controlling the export of certain relics predating 1911 and 1949. This also protected immovable cultural heritage for the first time, and enshrined in legislation four legal principles for the management of heritage sites. These are to identify a boundary (scope of protection), erect a sign declaring the site protected, establish an archive for records and designate administrative resources to manage it. These historic practices date from the late eighteenth century and are enshrined in cultural relics law today.

Three major environmental philosophies existed in ancient China, the Daoist tradition that adapted to nature’s way, the Buddhist tradition of reverence for all living beings and a...
Confucian school which sought to manage, utilise and control nature. Overtaking all of these in the late twentieth century was Mao’s Marxist philosophy of a struggle against nature, reversing traditional concepts of moderation and adaptation; ‘Harmony between the Heavens and Humankind’ became ‘Man must Conquer Nature’. The fledgling instruments designed to protect heritage were abandoned with the advent of the Cultural Revolution in 1966. Mao’s Red Guards systematically damaged or destroyed much cultural heritage. Tearing down the past was literally national policy. The legacy of this doctrine has important ramifications for cultural and natural heritage management in China. Mao’s exploitative attitude to natural and cultural resources which was so thoroughly embedded, easily translates to today’s pro-development mind-set.


China’s national heritage policy is contained within the Cultural Relics Law 2002. Its stated purpose is to protect cultural relics as the inheritance of the cultural legacy, promote scientific research, promote patriotism in the revolutionary tradition and build socialist spiritual and material civilisation.11 This law defines the heritage of China, vests ownership of undiscovered movable relics and declared protected sites in the State, establishes various obligations and controls as to the use, maintenance and future development of immovable cultural relics and regulates excavations of and trade in movable cultural relics.

**Figure 3** Shopping for Relics, Beijing, November 2002. (L. Rogers)

### Threats to cultural heritage

A new 40-metre-high statue of Buddha greets tourists at the Leshan Great Buddha landscape, in Sichuan province, inscribed on the World Heritage List in 1996 for its significant natural and cultural values. It was from this place that Buddhism first became established in China and spread throughout the east.

The Leshan Great Buddha Site contains a wealth of heritage including a 71-metre-high sitting Buddha statue, carved on the Xiluo Peak of Mount Lingyun in the early eighth century and more than 90 stone carvings of Buddhist shrines dating from the Tang Dynasty, early water irrigation measures and various tombs, statues of Buddha, pagodas, temples and city walls.12 Construction of the new statue, an apparent replica of the destroyed Buddha of Bamiyan, Afghanistan, allegedly displaced ancient Mahayana burial sites, wooden tombs that clung to the cliffs. Local people and archaeologists protested against the actions of the site’s ‘theme park entrepreneurs’. The director of the company responsible, the ‘Sichuan Oriental Buddha Kingdom Company’ was former deputy mayor of Leshan’s Cultural Relics Bureau. Asked to respond to this incident, reported in Time Magazine, the Deputy Director of the State Administration of Cultural Heritage observed, ‘it is hard to keep track of all our national treasures, especially when modernisation is one of our national goals’.13 Conversely, while this contentious development was taking place, the Great Buddha statue itself has been subject to careful conservation works and repairs funded by Chinese governments and the World Bank. Obvious past damage such as the decapitation of some 1000 of the smaller statues carved into Leshan’s cliffs by the Red Guards is today replaced by potentially damaging attempts to present this site. The management of the Leshan landscape highlights many of the issues facing Chinese authorities in conserving and presenting popular sites in a way that is culturally appropriate in China. The main threats, pressures and issues in cultural heritage management in China include: insufficient legal protection, implementation and enforcement of the law; China’s rapid economic development manifesting large scale urban renewal of major cities; inadequate resourcing (administrative, expertise, financial) of responsible government authorities; the maintenance, use and development of heritage sites including cultural tourism and the inaccessibility and fragility of the movable and immovable heritage.

The philosophies and attitudes of the Chinese people, officials and entities to heritage underpin all of these administrative and legislative factors impacting heritage conservation. A lack of respect for the cultural and natural environment will ensure that law and policy designed to protect cultural relics will not be implemented. This prevailing attitude is both a legacy of the Cultural Revolution that devalued built heritage and the environment and a consequence of the current quest for economic development. The example of Leshan and the former official of Leshan’s Cultural Relics Bureau illustrates this contradiction between official duties and personal beliefs and actions. This paper looks at certain of these practical issues from the central framework of the Cultural Relics Law 2002.

### Identification of heritage

Since the 1950s, China has compiled a national inventory of immovable cultural heritage and over 300,000 relics have been
registered. Of these, some 7000 are accorded a level of statutory protection at various levels of government. The State Council has proclaimed 1268 sites 'National Priority Protected Sites', that is sites of the highest significance to the country protected by the national government.

Until the revised Cultural Relics Law 2002 the definition of what was a 'cultural relic' was limited. Heritage outside of the scope of ancient sites or places demonstrative of the revolutionary tradition were not likely to be identified and protected. The scope now includes important historical sites, physical objects and typical buildings of modern and contemporary times relating to major historical events, revolutionary movements or famous people. This recent amendment provides for the protection of a more recent past, sites of contemporary community esteem and the inclusion of representative or typical items, without necessarily having explicit values demonstrating the socialist system or revolutionary history.

**Figure 4 Frozen lake at the Summer Palace, Beijing, November 2002. (L. Rogers)**

**Protection of identified heritage**

Cultural heritage that is identified is not necessarily protected legally and where such protection does exist, it can be weak as owners and regulators may interpret their obligations widely and enforcement is inconsistent.

Law is drafted to provide for flexibility and wide interpretation, as ambiguity is considered the centerpiece of Chinese language. Consistent with this traditional approach, and the youth of the legal system, law is promulgated gradually, as policy. The implementation of norms established in the law will be inherently discretionary. This is true of cultural heritage and policy development in China. This approach to decision-making was evident when a Starbucks coffee shop opened in the Forbidden City creating a storm of protest. The store was seen as inappropriate and an imposition of a foreign culture at one of China's most significant places. In response to the uproar and subsequent cancellation of the café's licence, an official at the Forbidden City Museum was quoted as saying 'we just wanted to throw a stone and watch the ripples, to test the waters.'

The State Administration for Cultural Heritage (SACH), a Beijing central administration reporting directly to the State Council, is responsible for national cultural heritage policy and implementing the Cultural Relics Law 2002. This authority is charged with developing criteria and measures to identify heritage and has the power to direct the conservation and management of cultural relics across the nation. This organisation nominates to the State Council sites of significant historical, artistic or scientific value that may be declared 'major sites' protected at the State level.

Regulations may be issued by various ministries and levels of government. The Ministry of Culture and the Ministry of Construction may promulgate norms and the Ministry of Culture, SACH and provinces and autonomous regions may issue regulations. Local governments may also promulgate cultural relics legislation. Various authorities, including the public security organs, administrative departments of industry and commerce and the departments in charge of urban and rural planning and customs are charged with the protection of cultural relics within their respective competence.

The protection provided differs between movable and immovable cultural relics. Movable cultural relics are the domain of civic or state-owned museums and are not subject to the registration system provided for immovable cultural relics. Control of excavations, the presentation of collections to the public and the control of illegal trade in cultural relics are considered the primary management issues.

Immovable cultural relics of significant historical, artistic or scientific value registered as major historical and cultural sites are afforded statutory protection, that is, they are "identified" and declared 'protected'. Immovable cultural relics of lesser importance may be registered by the respective administrative departments of cultural relics at the provincial level. This identifies and registers the relics but does not provide statutory protection. As noted above, the State Council has proclaimed 1268 sites 'National Priority Protected Sites', protected by the national government. From the inventory of 300,000 sites, authorities at the provincial level select the most significant and designate them as 'protected entities.' County governments, autonomous regional and local municipal authorities select from this group those sites with important historic, artistic and scientific values and proclaim them as protected sites at their respective levels.

In addition to this three-tier level of management, certain cities with an unusual wealth of cultural relics of 'high historic value' and 'major revolutionary significance' may be designated a 'famous city of historical and cultural value' by the State Council. Since 1982, 99 cities have been so designated and the measures for their protection must be determined by the State Council. Apart from this instance, probably because the Ministry of Construction, not SACH, is responsible for managing these cities, the Cultural Relics Law does not in general direct authorities in regard to the necessary standards for care.

This framework established by the legislation provides a competent structure to protect cultural heritage. The Cultural Relics Law 2002 provides for the identification of relics within a fairly broad definition of heritage, provides for the protection of certain relics and provides for the categorisation and prescribes limited standards for care according to level of significance.

**Management of protected heritage**

Many and various obligations to protect cultural heritage are imposed on individuals, organisations and entities by the Cultural Relics Law 2002, the Constitution and criminal and other environmental laws and regulations.

Little guidance is enshrined in legislation prescribing a philosophical basis for decision making. This is increasingly
provided in policy documents, such as the China Principles endorsed by China ICOMOS. The Cultural Relics Law of 2002 does however, establish the principle that 'work concerning cultural relics protection shall abide by the principles of focusing on protection, taking priority in rescue, reasonable utilisation and strengthening the management.' In decision-making, a sustainable development ethic is imposed by requiring all government agencies to 'handle the relationship between economic construction, social development and cultural relics protection and ensure the security of cultural relics. Management and development control in the Cultural Relics Law 2002 is centred around the four traditional mechanisms, that is, delineate a boundary, erect signage declaring the place protected, provide resources for its management and establish records on the place. Government agencies declaring protected sites must specify the scope of protection, that is the curtilage and an additional buffer zone (a certain area for construction control) which effectively controls the impact of new development on the site. No construction projects or operations such as drilling or excavation may be undertaken within the curtilage; however this absolute is clarified by the provision that, where such activities are necessary due to 'special reasons', approval may be sought. Similarly, while there is a clear obligation to avoid reconstructing archaeological sites, this is immediately qualified by the provision that states in 'special circumstances' approval may be sought and obtained by the responsible authority. The circumstances where this may be applied are not defined further, whether it applies in circumstances such as the Three Gorges Dam Project or more modest proposals. The flexibility of the Cultural Relics Law 2002 can translate into weakness through the ability of local proponents and regulators to utilise such exceptions. Government funding is available for the maintenance and repair of cultural relics and the government at the provincial level also has the power to undertake maintenance and repair of relics in private ownership and require the owner to reimburse the expenditure. A significant strengthening of the Cultural Relics Act 2002 over the Cultural Relics Law 1982 is that the owner must obtain approval to carry out the repair of a protected site, and that the work must be carried out by a qualified and certified professional. This Act establishes the principle of maintaining heritage relics in their original state: 'the principle of maintaining cultural relics in its original state must be adhered to in the repairing, maintenance and removal of unmovable cultural relics. To achieve a successful management of the resource, China requires more prescriptive norms in the legislative framework, establishing as regulation the criteria and parameters within which decisions are made (about what to protect, and why and how). This could provide consistency in decision-making and direct an outcome by the under-resourced local bureaus.

Use of heritage

A 1000-year-old palace in Wudang Mountain in Shiyan burnt down whilst being used as a Kung Fu school. The impact of cultural tourism can both benefit and compromise the conservation of heritage; however many heritage sites, both in public and private ownership, are subject to inappropriate uses that are not monitored. Much of the cultural heritage in private ownership is not identified and listed and thus not protected by law. Increasingly, if heritage is not considered an impediment to economic growth, it is conceived as a resource to be exploited. The development of cultural heritage sites and facilities to cater for the 750 million Chinese people visiting China's cultural heritage sites every year can negatively impact vulnerable sites, if not properly managed. There has also been widespread improvement or rebuilding of cultural heritage sites, which can impoverish knowledge gained. All new uses of heritage sites require approval, except if the proposed use is a museum, preservation institute or a tourist site. None of these uses are necessarily benign however. Capital construction and tourist development 'must protect cultural relics' and 'may not damage them' and operation of a tourist site as the assets of an enterprise is prohibited. This has been a problem where the growing number of private and public enterprises seek to utilise heritage resources for tourism, such as the innovative proposal to list the Terracotta Warriors of Xi'an on the stock exchange, which was rejected by SACH.

Enforcement

There are a range of penalties for offences against cultural heritage protection. A significant problem is the implementation of these provisions, although China is increasingly prosecuting (under criminal law) citizens who illegally export cultural relics. In 2001 the People's Daily newspaper reported the case of four people sentenced to death for stealing cultural relics by the Intermediate People's Court of Taiyuan in Shanxi province. This case was much publicised as a deterrent, but the financial incentive in excavating and selling cultural relics far outweighs the risk of sanction. A case reported in 1998 highlights some of the problems with enforcement. This case was reported by an unnamed Chinese lawyer in the web journal, Art and Antiquity, in 2000. In July 1998 a reservoir started to release floodwater and local farmers began to discover large quantities of pottery and porcelain, unearthing an archaeological site. Antiquity collectors learned of the find immediately and commissioned local farmers to excavate. By the end of September several hundred farmers were digging. According to Article 5 of the Cultural Relics Law 2002, all subsurface relics are owned by the State. A local lawyer was concerned that the local authorities, aware of the excavation, were not enforcing the law. He invited CCTV (Chinese English language television station) to film the site and interview the farmers undertaking the excavation. One farmer stated that he did not believe his action was illegal as the local authorities did not stop the excavation and indicated that a local official was also digging. This lawyer sent CCTV to interview the Director of the city government and indicated when the story would be aired. Archaeologists and officials from the Cultural Heritage Department of the Henan Government and archaeologists visited the site, which was believed to contain evidence of a kiln used to produce porcelain during the Song Dynasty. At an on-site meeting, city and government officials resolved to stop the excavation, make arrests, educate the local farmers about the law and protect the site. These decisions were not implemented and, at the end of 1998, some 3000 farmers were excavating the site that had expanded to some 100,000 square metres. The local lawyer continued to lobby the authorities and a subsequent visit by a superior level of Government finally led to a resolution. Police
stopped the dig, made arrests, recovered some relics and the authorities promised to educate the locals and had archaeologists begin work on the site. An estimated 2000 items were not recovered and the antique dealers who commissioned the dig were not arrested. This case illustrates the enormous challenges faced by cultural heritage authorities in China.

The government is increasingly using the media to educate the public about the benefits of cultural heritage conservation. In 1999, the State Administration for Cultural Heritage took 30 reporters on a tour to visit important cultural sites in Henan, Hebei, Shanxi and Shaanxi, to raise awareness of cultural relics conservation issues. CCTV routinely screens programs on the archaeological relics and government excavation projects. The government utilises such channels to raise awareness of cultural relics law and the value in protecting this evidence.

China is also attempting to diminish the obvious material advantage of smuggling by rewarding citizens for their efforts to protect cultural relics. The Supreme People’s Court of the PRC reported recently that five farmers in northwest China’s Shaanxi Province received a cash prize of 20,000 Yuan each for having discovered and protected an archaeological site. Some 27 bronze articles dating from the Zhou Dynasty were found during a subsequent archaeological investigation and the prize was jointly awarded by various levels of government. The provision of ‘moral encouragement or material awards’ is provided for in the Cultural Relics Law 2002 and China’s political system is geared towards manipulating social norms and effecting social pressure which can assist to protect cultural relics.

Future directions

Ultimately, current development priorities, the sheer size, vulnerability and inadequate resourcing for management of heritage defeat State control. The conservation of China’s cultural relics requires the support of the local community. Heritage will only be protected if the Chinese people so desire it and benefit from social and financial incentives to fulfil their obligations to protect it. Sanctions and the intermittent threat of compliance by Beijing require positive incentives and education, generating community will to value heritage.

Administrative improvements to the management of cultural heritage may be made, such as prioritising conservation works at significant sites. There is currently ad hoc protection where conservation of some sites is well advanced but others are under threat. This should be based on an independent and rigorous assessment of the sites, selecting both the representative and rare and consolidation of resources to protect them.

It is essential to regulate both private and public management of cultural relics and funnel profits from tourist use towards conservation works. It is reported that China’s cultural preservation policy has adopted tourism as the principle source of funding for the conservation and protection of certain cultural relics. This has both benefits and disbenefits, depending on the quality of control and management. It is also important to conserve local heritage for local communities as well as the World Heritage sites that have tourist potential.

China’s Cultural Relics Law 2002 and the provisions contained in other legislation provide a framework for protection of heritage and consideration of heritage relics in planning and development decision-making. The inherent discretionary basis undermines certain provisions, as does the likelihood that many government entities, particularly at the provincial and lower levels, will not be financially resourced nor have the expertise to manage cultural relics consistent with the principles enshrined in the law.

Community and professional groups such as the International Council on Monuments and Sites (China ICOMOS) and Cultural Heritage Watch can provide the community and the government sector with expertise and independent advice. However, civil entities in China require government sanction and China ICOMOS is not independant of the government. The Deputy Director-General of SACH is also the Chairman of China ICOMOS. This provides the entity with authority, but it negates the participation of China ICOMOS as representing the civil society. The ownership of much cultural heritage by the State and its ability to intervene in the management of cultural heritage in the ‘civil’ sphere vests authority firmly in the State.

The existing legislative framework, if strengthened and implemented, can provide for the conservation of China’s heritage. This prescriptive base should be supported by utilisation of positive incentives to encourage the public to acknowledge, use and conserve their heritage. The race for development can integrate, adapt and conserve the traces of a long and illustrious past, without erasing it.

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Endnotes


2 This paper uses the generic term heritage, however the Law of the People’s Republic of China on the Protection of Cultural Relics adopts the term Cultural Relic and is defined in Article 2 to encompass immovable and movable heritage expressing Chinese culture and includes sites, objects, buildings, art works and craft, stone carvings and murals, important documents and fossils. The term Cultural Relic is used in the paper where appropriate.

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