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Alicja Jagielska-Burduk talks with Patty Gerstenblith, professor of law at DePaul University and director of its Center for Art, Museum & Cultural Heritage Law*

Patty Gerstenblith is a distinguished research professor of law at DePaul University and director of its Center for Art, Museum & Cultural Heritage Law. She is founding president of the Lawyers Committee for Cultural Heritage Preservation (2005-2011), president of the Board of the U.S. Committee of the Blue Shield and member of the Steering Committee of the ABA's Art and Cultural Heritage Law Committee, and a research associate at the University of Pennsylvania Museum of Archaeology and Anthropology. From 2011 to 2017, she served as an appointee of President Obama as the chair of the President's Cultural Property Advisory Committee in the U.S. Department of State, on which she had previously served as a public representative in the Clinton administration.

Alicja Jagielska-Burduk (AJB): In the United States Art law is a very important part of law. Within your Art Law Center at DePaul University you have led multiple initiatives, research projects, seminars, lectures, what project have you found most challenging?

Patty Gerstenblith (PG): The Center for Art, Museum and Cultural Heritage Law at DePaul University College of Law is focused primarily on offering opportunities to students to develop expertise in this area of law. The Center coordinates course offerings in the field, externship and clinic placements, and the summer study abroad program in Siena (co-sponsored with Tulane Law School). In the past, the Center has sponsored several day-long conferences, but the last was held in 2017. The Center continues to sponsor the Arts Law Colloquium, a lecture series in art law. Also, in the past, the Center sponsored a moot court competition in art and cultural heritage law. This was probably the most challenging but also the most rewarding of the Center's projects. We brought together approximately thirty teams from law schools throughout the US to debate a hypothetical problem in art and cultural heritage law, often

* The issues regarding current status of the cultural heritage protection raised in the questions were consulted with Prof. Wojciech Szafranski.

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based on recently litigated cases. It was a great experience to bring together both students and experts in the field. Unfortunately, due to budgetary constraints, the College of Law could no longer help in funding the competition and so the competition ended several years ago.


I have engaged in several other projects, although these are not necessarily projects of the Center. At the moment, a current project involves litigation concerning interpretation of the U.S. Antiquities Act of 1906 under which Presidents Clinton, Obama and Biden declared the national monuments of Grand Staircase-Escalante and Bears Ears in Utah. President Trump drastically reduced the size of these protected areas and several litigants, including both private companies and state government entities, are now challenging President Biden's reestablishment of these monuments. I am working with several archaeological organizations, the Archaeological Institute of America in particular, to act as intervenors or amicus curiae in defending these designations. There is a good chance this case will reach the U.S. Supreme Court with a challenge to the fundamental interpretation and application of the Antiquities Act.

AJB: As a leading expert in this field, what do you think about the role of experts and academia in the future development of the cultural heritage law? Is pure science the solution or one should be somehow anchored and familiar with the operational level?

PG: I believe that both academics/scientists and practitioners are needed to develop cultural heritage law more fully. Cultural heritage law is a relatively new field, even more so perhaps from the perspective of practitioners than of academics. As a new field, cultural heritage law requires significant development so that we can reach points of agreement as to what the law means. As a result, practitioners are needed to test out, particularly in litigation, how well the law is working to achieve policy goals. At the same time, academics, scientists and theorists are needed to determine what those policy goals should be and how they may be best achieved. There is overlap between these groups – what might be termed “activist academics” – and both groups should and do include both lawyers and non-lawyers.

AJB: In September 2022 the UNESCO World Conference on Cultural Policies and Sustainable Development – MONDIACULT 2022 was organized. It was forty years after the first MONDIACULT. The Declaration presents culture as a “global public good”. What is in your opinion the most significant message of the final declaration?

PG: The most important message of the Final Declaration of MONDIACULT 2022 is that culture is a “global public good” while also stressing the need for cultural diversity and recognizing the many threats to culture and cultural heritage includ-



ing climate change, increasing numbers of natural disasters, and armed conflict. Cultural diversity includes recognition at the national and local level of the importance of culture and cultural heritage at the sub-State level, including local and descendant communities. The most significant message is the statement concerning the rights of Indigenous communities to “safeguard and transmit” their ancestral knowledge, along with a statement concerning the protection of the cultural and natural heritage. The focus on trafficking of cultural property and the appeal to UNESCO and States to increase their efforts to counter this trafficking are also very welcome. To accomplish these goals, a closer tie needs to be established between cultural heritage and the right to access heritage as crucial components of international human rights. The Declaration is important in seeming to put on an equal level the rights of culture and of cultural heritage.

AJB: You are a president of Blue Shield US. How do you find cultural heritage education and its role in peace building? What do you think is the biggest challenge for the national committees?

PG: We clearly need more public education concerning cultural heritage and, particularly, obligations for protection during armed conflict and natural disaster. Having said that, I also feel there have been significant changes since the war in Iraq twenty years ago. The subject of cultural heritage is often in the news and the military is generally aware of its obligations, especially since the U.S. ratified the 1954 Hague Convention in 2009. However, with respect to the details, much more education, awareness and willingness to carry out obligations even when these are not convenient are needed. Members of the military know not to target cultural sites, but they may, for example, be less aware of the need to avoid building military bases on cultural sites or how to identify such sites. The role of cultural heritage in peace building is another subject that needs more study and more education. It is one thing to be aware that a site like Palmyra or Babylon needs to be protected; it is another to convince the military, government officials and the public that sites that are not world heritage sites, but which may have more value to a local community, also need to be protected.

The Blue Shield national committees, including USCBS, are all relatively young organizations and so they are working under the pressure of still trying to find their place among nongovernmental organizations. We have too little funding and lack a sufficiently clear mission. This also stems from the fact that each national committee is different organizationally and in its relationship to its national government and military. USCBS operates entirely independently of the military and government, although it is named as a consulting body to the US Cultural Heritage Coordinating Committee, an interagency committee of sixteen federal agencies, including the State Department, Department of Defense and Justice Department.

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AJB: A decision on dialogue between UNESCO and the UN Special Rapporteur in the field of culture with a special focus on cultural rights in armed conflicts was taken during the 14th Meeting of the High Contracting Parties to the 1954 Hague Convention in December 2022. What are the challenges for the Rapporteur, now prof. Alexandra Xanthaki, especially when it comes to the 1954 UNESCO convention and geopolitical situation?

PG: I think the challenge to the Rapporteur is based in the fact that there is insufficient tie among international legal instruments, including the 1954 Hague Convention, between cultural heritage and international human rights. The two previous Rapporteurs built a framework for integrating the rights to culture and to cultural heritage within human rights. However, that framework needs still more development so that this relationship becomes internationally accepted. It was very welcome that the Second Protocol Committee agreed to hear from the Rapporteur and made a commitment to enter into continuing dialogue with her. However, I would like to see this commitment extended to all States Parties to the Second Protocol and to all States Parties to the 1954 Convention itself, both of which are much larger groups of States. Even as we see these advances, we also see cultural heritage intentionally targeted and destroyed in Ukraine and in other conflicts. This destruction occurs parallel to violations of other aspects of international humanitarian law such as targeting of civilian populations and civilian infrastructure. We need to understand these destructive actions as occurring in tandem and the international community needs to find a more effective way of holding the perpetrators of these violations accountable.

AJB: What is your opinion of the Save Ukrainian Cultural Heritage Online initiative, it is a bottom up initiative with so many volunteers and focus of digitized materials?

PG: I think that the Saving Ukrainian Cultural Heritage Online (SUCHO) initiative has done impressive work and much to preserve aspects of Ukrainian cultural heritage which has been so threatened and attacked during the Russian invasion. The preservation of digitized materials and new digitization projects are key in some cases to preserving the actual heritage. In other cases, digitization can preserve and record the information about or contained in cultural heritage, although it is not capable of preserving the heritage itself. While this is an important distinction, digitization and safe storage of the digital materials play a crucial role in both activities. The archiving of information from the web and from Ukrainian cultural institutions is an important function as these sources of information are also at risk during armed conflict. I hope that some of this documentation can be used at a future time in bringing the perpetrators of these crimes to justice and holding them accountable.

AJB: Thank you very much for the invitation.