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NATIONAL TREASURES (國寶, KOKUHŌ)
IN JAPANESE LAW: FROM ZEN BUDDHISM TO LIVING
NATIONAL TREASURES

If there is one country which radiates a strong cultural identity forged by its heritage, linked to its mythical history and its sacred imperial dynasty, it is Japan. In the eyes of Western jurists, its law is reputed to be nationalistic, and adapted to the singularities of insularity. This article looks at the particularities of Japanese cultural heritage law as regards the protection of its movable heritage. Moreover, within the category of tangible cultural property (有形文化財, *Yūkei bunkazai*), it offers a historical and epistemological look at ‘national treasures’ by discussing the philological origins of the term, which is rooted in centuries-old religious and philosophical traditions, reinvested in and developed during the Meiji era. Works of art and artefacts were protected by a series of three laws, passed in 1897, 1929, and 1950, which established the modern term ‘national treasures.’ This legal framework has been regularly updated over the last 75 years to reflect the new categories of heritage that are constantly emerging. After a brief study of the legal regime for designating the status of important cultural property (*jūbun*) and national treasures (*kokuhō*), I also examine the spread in society and legal culture of the term ‘Living National Treasure,’ so often put forward to highlight the visionary nature of Japanese law, even though it is only a term from popular language, not a legal concept, but one which has shaped international law on intangible cultural heritage and nurtures a heritage imagination¹ that moves beyond the legal category proposed for tangible goods.

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¹ C. Pottier, « Notes sur la protection patrimoniale au Japon », *Bulletin de l'École française d'Extrême-Orient* 1995, vol. 82, pp. 339–351.

1. The spiritual and mythical foundations of the idea of national treasures

1.1. The Buddhist roots of the ‘treasures of the land’

The Japanese term for a national treasure² expressed in kanji is 国宝. This wording is made up of two sinograms meaning ‘national treasure.’ It is in fact the modernised version (*shinjitai*) of an older form (*yūjitai*: 國寶). The ideographic whole is translated into the Western alphabet as the word *kokuhō*.

The expression originated in the *Tendai-shū* (天台宗) school of Buddhism founded by the monk Saichō (最澄) at the end of the eighth century CE. In his systematisation of *Mahāyāna* Buddhism known as ‘the Great Vehicle’ (大乘, *dàchéng*, in Chinese), this was the name given to the initiates who were most advanced on the spiritual path, to those close to enlightenment. The Japanese term therefore originated on the other side of the North Pacific Sea, in Chinese Buddhist philosophy, which was particularly influenced by the precepts of the philosopher Mozi (墨子, *Mò-tseu*; 479 BC – 392 BC). This ‘vital’ dimension of the term would be found later, in the mid-twentieth century with the consecration of the term ‘Living National Treasure’ (人間国宝, *Ningen Kokuhō*).

The link between tangible assets that we, in the West, would call ‘heritage,’ and this idea of national identity, linked to a spiritual influence received and intended to be passed on, was affirmed with the *Sōtō* tradition that emerged in the first half of the thirteenth century around *Dōgen* (1200–1253). The Zen master told his first disciples about his pilgrimage from China, from where he brought back a relic³ of *Siddhārtha Gautama*, the Buddha (signifying ‘the awakened one’), which he then named 重國寶, *Jūkokuho*, ‘important treasure of the country.’

1.2. The origins of a national history: Japan’s three ‘sacred treasures

Alongside this religious root of the term national treasure, the attachment of cultural property (文化財, *bunkazai*⁴) to a national history⁵ is also grounded in the

² A. Seidel, « Kokuhō : note à propos du terme ‘trésor national’ en Chine et au Japon », *Bulletin de l'École française d'Extrême-Orient* 1981, vol. 69, pp. 229–261.

³ F. Girard, « Quête et transmission des reliques de la Chine au Japon au XIIe siècle », *Studia Religiosa Helvetica*, 2005, vol. X: *Les objets de la mémoire. Pour une approche comparatiste des reliques et de leur culte*, dir. Ph. Borgeaud, Y. Volokhine, pp. 149–179.

⁴ A recent term in Japanese, based on the transliteration of ‘cultural property’ by Yūzō Yamamoto.

⁵ This is not linked to material authenticity in the sense of the 1964 Venice Charter. Hence the idea of ‘progressive authenticity’ in the ‘Nara Document’ adopted in 1994 by UNESCO, ICCROM and ICOMOS.

mythical account of the founding of the Japanese archipelago known as 日本神話 (*Nihon shinwa*⁶), which recounts that the goddess Amaterasu (天照) ordered her grandson Ninigi-no-Mikoto (瓊瓊杵尊), father of the first emperor Jimmu Tennō (神武天皇), to rule the Universe. She then offered him three artefacts known as the ‘three sacred treasures of Japan’ (三種の神器, *Sanshu no jing*), which are the material symbols of the legitimacy of the imperial lineage since Emperor Jinmu.⁷

Tradition describes these treasures as Yasakani’s Magatama (八尺瓊曲玉, *Yasakani no magatama*), Yata’s mirror (八咫鏡, *Yata no kagami*), and the sword of Kusanagi (草薙劍, *Kusanagi no tsurugi*), kept in the Imperial Palace, Ise Shrine, and Atsuta Shrine respectively. Tradition relates that this prehistoric stone from the *Jōmon* period and the mirror were used to lure Amaterasu out of the sun goddess’s cave (天岩戸, *Amano-Iwato*); while the sword is said to have been found by Susanō, God of Storms, in one of the tails of the dragon Yamata-no-orochi.

These three objects are the tangible, earthly expression of the sacred nature of the Japanese Empire and the foundation of the *shintō* of the Imperial Household. Relevant archives testify to the continuous presentation of these exceptional objects to every new Emperor for several centuries by High Priests during the imperial enthronement ceremony, of which this is the high point. This part consists of showing the new sovereign a chest, the nature of which is ambiguous: is it full or empty, a copy (modern or historical?) or an original? The originality of the goods contained in the chest is a matter of debate among rationalists, but this is of no importance in the Japanese tradition, for which a symbol does not need physicality to exist (‘シンボルがオブジェクトを必要としません’). As the presentation is not public,⁸ there are no photographs of the three treasures, nor is there an exact graphic representation of them. In any case, the new Emperor is responsible for preserving these items of regalia, which underpin his authority and constitute the legitimacy of the Imperial Household (皇室, *Kōshitsu*), and he is responsible for passing them on to his successor, and more broadly to the next generation as ‘historical objects that must be transmitted with the throne,’ under art. 7 of the Imperial Household Economy Act of 1947.⁹

⁶ « 192. Nihon shinwa », *Dictionnaire historique du Japon* (Iwao Seiichi, Iyanaga Teizō, Ishii Susumu, Yoshida Shōichirō, Fujimura Jun’ichirō, Fujimura Michio, Yoshikawa Itsuji, Akiyama Terukazu, Iyanaga Shōkichi, et Matsubara Hideichi), vol. XV, Librairie Kinokuniya, Tokyo 1989, pp. 141–142.

⁷ Jinja shinpō of 14 November 1974 and 13 January 1975.

⁸ E. Seizelet, « Les « trois Trésors sacrés » de la monarchie japonaise : un « patrimoine caché » ? », *In Situ* 2020, no. 42, <https://journals.openedition.org/insitu/28162> (accessed: 21.05.2024).

⁹ T. Usami, Chambre des représentants, Commission du Cabinet, 30 mars 1962, n° 6. See: N. Ashibe, K. Takami, *Nihon rippō shiryō zenshū 7 kōshitsu keizaihō* [Compendium of Japanese Legislation, vol. 7, The Imperial Household Economy Act, Shinzansha, Tokyo 2002, p. 655.

2. State competence and national unity: Inventory and proto-protection during the Meiji era

This dual genealogy – Buddhist and mythical,¹⁰ religious and national – of the ‘country’s treasures’ was at the root of the emergence of the term ‘national treasure’ in the early twentieth century to designate the country’s most exceptional cultural properties. In fact, the very idea of ‘national heritage’ did not exist in Japan until the opening of the Meiji era (1868–1912). Originally, the conservation of major artefacts was a religious mission of the priests of Shintō shrines from the time of Nara (710–794). Alongside strictly religious objects, precious objects, war ornaments and historical documents were added to this primary core of national heritage from the Tokugawa Shogunate of the Edo period (1603–1868) onwards.

It was at this time that the daimyo Matsudaira Sadanobu (1759–1829), who had just left his role as adviser to the shogun Tokugawa Ienari (1773–1841), initiated a major national inventory of Japan’s heritage, commissioning a group of artists close to him to do so. This individual initiative gave rise to a printed edition called *Collection of ten kinds of antiques* (集古十種, *Shūko-Jūshū*), which was published over a period of fifteen years. The 85 issues are illustrated with 2,000 xylographs of these paintings, musical instruments, inscriptions, armour, calligraphy, etc. This historical inventory is still considered to be the first realization of a national heritage consciousness in Japan, and was reprinted until the beginning of the Taishō democracy (1912–1926). Counter-intuitively, the emergence of a national approach to heritage and museums only came about with the end of the archipelago’s isolationist policy in 1853, when the first diplomatic and commercial exchanges with the Americas and Europe began, and the first Japanese diplomats discovered American, English and French museums.¹¹

However, it was the Meiji Restoration (1868), the recovery of the Emperor’s powers, and the establishment of State Shintoism that were decisive in initiating a fundamental movement to identify and preserve heritage on a national scale, by making it a public prerogative. The movement known as *Haibutsu kishaku* (廃仏毀釈), which advocated the expulsion of Buddhism from the country, led to the destruction of many Buddhist shrines at this time, whose exceptional statutory subsequently was brought to Western museums. This series of destructions and abandonments of key historical testimonies to Japan’s national history led to

¹⁰ M. Bourdier, « Le mythe et l’industrie ou la protection du patrimoine culturel au Japon », *Genèses. Sciences sociales et histoire* 1993, n° 11, pp. 82–110.

¹¹ N. Akagawa, *Heritage Conservation and Japan’s Cultural Diplomacy. Heritage, National Identity and National Interest* coll., Routledge Contemporary Japan Series, Routledge, Londres 2014.

'heritage emotions'¹² that raised the political awareness necessary for the adoption of the first legislation on cultural heritage, particularly movable heritage.

In 1870, when culture became a responsibility of the new 'Ministry of Public Education', Machida Hisanari (町田久成, 1838–1897), who founded the Tokyo Museum, became Secretary of State on his return from England, where he had studied and admired the British Museum. He then set up the Museographic Office, a department of the new Ministry of Public Education responsible for implementing a public policy of heritage protection. He pleaded his case to the Ministry of Supreme Affairs (太政官, *daijō-kan*), headed by the Chancellor of the Realm (太政大臣, *daijō-dajin*), expressing his concern at the disappearance of antiquities 'that could serve as evidence for the study of the past.' He insisted on the fundamental role of museums of antiquities in Western countries in 'providing elements for learning about historical evolution, as well as the institutions and material civilisation of ancient times.'¹³ The great councillors were sensitive to this undertaking, which helped to legitimise the re-established imperial lineage, and also made it possible to unify Japan's various provinces (国, *kuni*) around a shared material history. However, the lack of funding for the mission led to its premature demise. The first impetus for protection came with the publication of the decree of 23 May 1871 for the conservation of antiquities and ancient things (古器旧物保存方, *Koki kyūbutsu hozon kata*), which required each prefecture, Buddhist temple, and Shinto shrine to list its significant artistic and architectural assets. But at this time, Japan was more focused on the future than on its past. The priorities of the young Meiji government at the time were geared towards an expansionist trade policy to ensure a strong economy, an essential vector for political legitimacy and national unity. At best, historical artefacts were promoted as models of craftsmanship abroad, notably at the various World Fairs, and in return for these exchanges, a category of 'fine arts' was introduced into Japanese law by means of a Western transliteration (美術, *bijutsu*).

However, in the last twenty years of the century, as part of its efforts to rebuild the country, the government financed the restoration of looted religious sites, both Buddhist and Shinto. In 1874, the first funds were allocated to the most important Shintō shrines, and in fourteen years, 539 religious buildings were restored or rebuilt. The 'museum office' also became part of the Ministry of Agriculture and Trade, and then, in 1886, of the Ministry of the Imperial Household (宮内省, *Kunaishō*), which, after having taken over religious matters, and in particular the management of national shrines, asserted a broader jurisdiction in the protection of antiquities.

¹² *Émotions patrimoniales*, ed. D. Fabre, Ethnologie de la France, Éditions de la Maison des sciences de l'homme, Paris 2013.

¹³ C. Marquet, « Le Japon moderne face à son patrimoine artistique », *Cipango : cahiers d'études japonaises : mutations de la conscience dans le Japon moderne*, INALCO, Paris 2009, p. 21.

In 1886, the *Kunaishō*, also known as the ‘Imperial Agency,’ became responsible for the Tokyo National Museum, founded in 1872. At the same time, the government commissioned the construction of museums in Kyoto and Nara to unite the modern capital of the archipelago with the two former imperial capitals. Baron Kuki Ryūichi 九鬼 隆一 (1850–1931) was appointed head of the ‘Provisional Investigation Bureau of the Country’s Treasures’ (臨時全国宝物取調局, *Rinji zenkoku bōmotsu torishirabe-kyoku*) from 27 September 1899. He enlisted the services of the painter Kanō Eitoku (狩野永徳), the universalist and orientalist Ernest Fenollosa, and the Japanese scholar Okakura Kakuzō (岡倉覚三), who together organised the largest inventory undertaking ever carried out in the Archipelago. The mission led to the identification of 215,000 works of artistic or historical value among the country’s 170,000 sanctuaries and monasteries, justifying the ‘classification of works of art according to a scale of values set by the State’ (entry on the dedicated ministerial inventory), and the acquisition of the most exceptional among them to fill the display cases of the three national museums, spearheading the cultural and heritage policy of the reinstated Empire.¹⁴

3. 1897–1950: The ‘legalization’ of the protection of Japan’s national heritage

3.1. Law no. 49 of 5 June 1897 on the protection of ancient temples and shrines

The protection of these first movable cultural properties through their identification echoed a renewed interest, both political and more broadly cultural, in the historic sites of Japanese Buddhism and Shintoism. *Kunaishō* officials, now connected to the Western world, also became aware at this time of the first laws on the protection of cultural heritage adopted in Italy, France, England, and Greece. As early as 1896, the Minister of the Interior set up a ‘committee for the protection of ancient religious buildings’ under the direction of the architect Itō Chūta 伊東忠太 (1867–1954), which led to the adoption on 5 June 1897 of Law No. 49 for the Protection of Ancient Temples and Shrines (古社寺保存法, *koshaji hozon-hō*), the first regulation aimed at the general preservation of the country’s cultural heritage. The twenty-article text distinguishes between movable objects, now known as national treasures (國寶, *kokuho*), and specially protected religious buildings (特別保護建造物, *tokubetsu hogo kenzōbutsu*).

¹⁴ The 150th anniversary exhibition of the Tokyo National Museum, which opens in October 2024, will feature a rotating display of all 89 objects in the museum’s collection of national treasures. In 2015 museums also made it possible to exhibit more than 8,000 national treasures in various museums across the country.

This was the first text to use the term ‘national treasure,’ which is defined as ‘any work of exceptional artistic or historical importance according to criteria established by the State.’ In this first system of protection, these criteria are those of modern historical and heritage science imported from Western art history, but still fundamentally the criteria of ‘*kokugaku*’ (國學), a Japanese philological movement supporting a national tradition, distinguished from foreign influences, primarily Chinese, seen as having erased the true Japanese spirit for over a thousand years.¹⁵

This first law, which was essentially conceptual, was quickly supplemented by a second, more operational law, of 15 December 1897. The reform provided the young public heritage policy with subsidies ranging from 20,000 to 150,000 yen (art. 2) to conserve and restore listed religious buildings (art. 1), whose destruction was criminalised.

In the case of movable items, the main aim is to prohibit their sale (art. 3), but the text also stresses the importance of regular public display of listed works in national museums, for their spiritual, historical, and artistic value. These national treasures, which must belong to the State or to religious institutions and not to private individuals, must demonstrate their age, as well as their ‘superior artistic quality’ or their ‘particular historical value,’ and are classified into five categories: painting, sculpture, calligraphy, books, or handicrafts.

An initial wave of classification in 1897 led to the protection of 44 buildings and 155 works of religious art, and a category dedicated to swords was soon added. From 1914, responsibility for classification was transferred to the Ministry of Education. By 1929, 3,704 works of art and 845 buildings had been protected in this way.

3.2. The National Treasures Preservation Act of 1 July 1929

Japan adopted a new text ten years later, this time devoted entirely to national treasures, during the reign of Emperor Hirohito (裕仁, *Shōwa*), when in 1919 Japan adopted a second law on the conservation of historical relics, sites, and natural species to be preserved (史蹟名勝天然紀念物保存法, *Shiseki meisshō tennen kinenbutsu hozon-hō*), one that uses the term ‘classification’ (指定, *shitei*) for the first time.

On 1 July 1929, the National Treasures Preservation Act (国宝保存法, *kokubō hozonhō*) was enacted, replacing the 1897 legal framework. Heritage protection is systematised in these twenty-five articles. Similar to the French law of 31 December 1913 on Historic Monuments, protection became indifferent to ownership, and national treasures could now belong to prefectures, but also and above all to private owners, companies, and individuals. The aim was to prevent the destruction and, above all, the export of the movable treasures lining the castles, tea houses, and

¹⁵ B.J. McVeigh, *Nationalisms of Japan : managing and mystifying identity*, Rowman & Littlefield, Lanham 2004.

noble residences that had been privatised after the Meiji Restoration. The law, thus, included both buildings and objects in its application categories.

It would take several years for the text to be deployed in a second wave of classifications, and beyond buildings of the first rank for Japanese heritage such as the shoin-zukuri Yoshimura villa in Osaka, the Ogawa villa in Kyoto, or the Nandaimon gate at the Tōdai-ji in Nar, Japan went on to protect a number of items of movable property, including paintings by Yosa Buson (与謝蕪村) and Ike no Taiga (池大雅), and the famous illustrated scrolls of the Tale of Genji (源氏物語, *Genji monogatari*) acquired by Masuda Takashi.

In 1933, Japan was hit by the ‘Great Depression’, which had a major impact on cultural heritage. To prevent the mass flight of works and objects of art abroad, the Law on the Preservation of Important Fine Arts (重要美術品等ノ保存ニ関スル法律, *jūyō bijutsubin tōno hozon ni kan suru hōritsu*) was passed on 1 April 1933. The distinctive feature of this text is that it is fully integrated into the 1898 Civil Code and specifically targets the fine arts. The procedure for designating these works is lighter, and prevents the export of the 8,289 items classified on its basis.

3.3. The summary law on the protection of cultural heritage of 30 May 1950

During the occupation of Japan, the Arts and Monuments Service, a branch of the administration of the Supreme Commander of the Allied Powers (SCAP), took charge of heritage conservation and did not call into question the laws in force before its arrival.¹⁶

As a result of the Sino-Japanese war from 1937 onwards, and then as a result of the aerial and atomic devastation of the Second World War, Japan’s national heritage was badly shaken. On 26 January 1949, in Nara, the golden Hōryū-ji, the first temple to be protected in 1897, went up in flames. The loss of such exceptional cultural achievements greatly moved the Japanese, and led to the accelerated adoption of a law to reorganise heritage protection in Japan¹⁷ with the adoption on 30 May 1950 of the Cultural Heritage Protection Law (文化財保護法, *bunkazai hogohō*), applicable from 29 August of that year until the present day. It is primarily a summary law structuring Japanese heritage into three categories, including tangible cultural property (登録有形文化財). It is the first Japanese legal text – and the first in the world – to embrace the idea of intangible cultural heritage, known as ‘living heritage’ (無形文化財, *Mukei bunkazai*), the fragility of which had been

¹⁶ G.R. Scott, “The cultural property laws of Japan: social, political, and legal influences”, *Washington International Law Journal* February 2011, vol. 12, no. 2, pp. 316–402.

¹⁷ W. Edwards, “Japanese Archaeology and Cultural Properties Management: Prewar Ideology and Postwar Legacies” [in:] *A Companion to the Anthropology of Japan*. Blackwell Companions to Social and Cultural Anthropology, ed. J.E. Robertson, Wiley-Blackwell, Oxford 2005, pp. 36–49.

highlighted by the disappearance of human beings during mid-twentieth-century conflicts. More institutionally, the text also created the Committee for the Protection of Cultural Heritage, headed by the then Prime Minister of Japan, Shigeru Yoshida 吉田 茂 (1878–1967).

In the case of movable property, however, the post-war period was marked by a lively black market in cultural goods within a battered economy. Collectors' sales also intensified in order to escape the 1946 tax reform that taxed these items,¹⁸ and some items were given in dation to pay the new property taxes that had been introduced. In this field of movable property, the law established the criterion of 'high artistic or historical interest' for all cultural property, with the exception of archaeological finds, which had to be of 'high academic interest.'

The 1950 reform articulated a dual level of protection in its designation system (指定制度), which is still in force, distinguishing between 'important cultural property' and 'national treasures'. The latter is elective among the assets of the former, making up around 10% of it. Important tangible cultural property (重文, *jūbun*) is itself selected from among the tangible cultural properties inventoried by the Committee for the Protection of Cultural Property, nearly three-quarters of which consists of movable property.

Designation may take place at several levels: municipal (市定重要文化財), prefectural (県定重要文化財) or national (国定重要文化財), but the designation measure may mention a combination of levels in the cultural interest. The 'designation' (指定制度) is made by decree after a preliminary report and consultation with a sub-committee of specialists, who apply indicative criteria regularly revised and published by the Kunaishō.¹⁹ The designation decision is then published in the Official Journal, and a classification certificate is subsequently issued to the property owner. Nearly 13,000 properties have been designated as important cultural assets, two-thirds of which are movable. As far as buildings are concerned, in addition to individual designations, by decision of the Diet (the Japanese Parliament), all properties listed as Unesco World Heritage Sites are automatically designated as *jūbun*.

In parallel, there is a lighter procedure, known as 'registration' (登録制度) as a 'tangible cultural property' (登録有形文化財, *tōroku yūkei bunkazai*). However, it is aimed almost exclusively at immovable property, and essentially provides access to low-interest loans for the restoration of sites and public funding for half of the costs incurred by owners. For the few movable properties concerned, registration mainly opens the door to support for the display of cultural heritage via the National Institutes for Cultural Heritage (独立行政法人国立文化財機構, *Dokuritsugyōseihōjin Kokuritsubunkazaiikō*). This category of 'registered tangible cultural property'

¹⁸ Supreme Commander of the Allied Powers, *Weekly Report*, vol. 77–78, Natural Resources Section, Tokyo 1947, p. 16.

¹⁹ *Bunja database*: bunka.nii.ac.jp (accessed: 1.06.2024).

(有形登録文化財, *Yūkei tōroku bunkazai*) added in 1996 provides useful protection for some twentieth-century creations, and since 2004 for arts and crafts.

Among the mass of ‘designated’ *jūbun* property, the most selective core, that of national treasures (國寶, *kokuhō*), includes property ‘of exceptional interest or special value to the Japanese people’. In addition to later designations, all objects recognised as *kokuhō* under the Empire according to old laws were classified *jūbun*, and many of them designated *kokuhō* under the new system, from the first wave of classification begun in the summer of 1951. Administrative practice, moreover, referred to the other properties designated at that time as ‘new national treasures’ (新国宝, *shinkokuhō*) to distinguish them from those designated under the previous laws.

4. 1950–2024: Developments in Japanese law in relation to the new emerging categories of patrimony

Since this 1950 text, which constitutes the matrix of all contemporary Japanese legislation on cultural heritage,²⁰ the system was very modestly amended in 1954 in the categorisation of important cultural property, going from three to four categories of *jūbun*, so as to add ‘folk documents’ (民俗資料, *minzoku shiryō*), derived from the 1975 category ‘folk cultural property’ (民俗文化財, *minzoku bunkazai*) to designate items of ethnological heritage. A new and independent category was also dedicated in 1954 to buried cultural property (埋蔵文化財, *Maizō bunkazai*), which was further clarified and diversified with the 1975 reform.

At the same time, the 1966 law on the protection of former capital cities strengthened the protection of historic sites and landscapes by introducing an authorisation system. The legislator emphasised the link between these sites and the many national treasures they contain. This period of analysis of the gaps in protection since the law of 1950 also led to increased protection for the country’s western architecture from the 1960s onwards, essentially as part of the policy of designation. The 1975 reform also extended the system of designating buildings to all Japanese municipalities, via two categories of designation for this purpose: ‘traditional building group protection areas’ (伝統的建造物群, *Dentōteki kenzōbutsu-gun*) and ‘important protected district’ (重要伝統的建造物群保存地区, *Jūyō Dentōteki Kenzōbutsu-gun Hozon-chiku*).

²⁰ L.V. Prott., T. Kono, W. Kowalski, M. Cornu, *Témoins de l’histoire : Recueil de textes et documents relatifs au retour des objets culturels*, UNESCO, Paris 2011, p. 191.

From then on, the management of heritage policy was decentralised to the prefectures²¹, but it was not until 1999 that the classification policy became their responsibility.

At central level, the system also underwent a major institutional change when, in June 1968, the Bureau of Cultural Affairs of the Ministry of Education and the Commission for the Protection of Heritage and the Commission for the Protection of Cultural Property were merged to create the Agency for Cultural Affairs (文化庁, *bunkachō*), currently attached to the Ministry of Education, Culture, Sports, Science and Technology, known as *Monbushō* (文部省). At the end of the millennium, the system of protection was amended very slightly on several occasions, in particular by opening up the concept of national treasure with the recognition of ‘great value from the point of view of world culture, as irreplaceable treasures of the nation’ (art. 27 of the revised 1950 law). In 1996, an emergency classification procedure was also created, originally aimed primarily at buildings awaiting designation as important cultural assets but whose condition required rapid intervention by the State.

The latest reform of the 1950 law in 2004, in the wake of the Convention on the Protection of Cultural and Natural Heritage adopted in Paris on 16 November 1972, created a new category of ‘cultural landscapes’ (文化的景観, *bunkateki keikan*), and also placed greater emphasis in intangible cultural heritage law on techniques among ‘folk cultural goods’ (民俗文化財, *Minzoku bunkazai*), linking them with ‘Living National Treasures’ (*below*). This twofold entanglement of tangible movable heritage with, on the one hand, natural heritage and, on the other hand, with persons who possess knowledge or know-how, including heritage conservation (文化財の保存技術, *Bunkazai no hozon gijutsu*), sets Japanese law apart from contemporary Western law.

5. The protection regime for designated *jūbun* and *kokuhō*

In May 2024, a total of 14,051 items of movable property had been granted the status of important cultural property (*jūbun*), including 1,021 national treasures (*kokuhō*), made up mainly (90%) of items of Japanese origin; the 10% of foreign items were mostly historical testimonies of Chinese Buddhism.

The distinction between national treasures and other important tangible cultural property, however legal, remains essentially symbolic. There are, in fact, no

²¹ I. Takashi, « L'évolution de la protection du patrimoine au Japon depuis 1950 : sa place dans la construction des identités régionales » [The Evolution of Heritage Preservation in Japan since 1950 and its Role in Constructing Regional Identities], trans. L. Nespoulous, *Ebisu. Études japonaises* 2015, no. 52: *Patrimonialisation et identités en Asie orientale*, p. 2146.

provisions specific to national treasures, with the exception of the obligation to restore them. For both types of property, the law places responsibility on the owners of registered property, whether public or private, who are required to ensure its proper conservation, under the supervision of the Agency for Cultural Affairs. Registration requires authorisation for any physical movement of the designated items of furniture, and they cannot be permanently exported. Similarly, any sale, exchange, gift, or bequest must be authorised by the public authorities. Theft and unauthorised alteration and destruction are specifically criminalised by special provisions.

In return for the restrictions imposed on the owners of these exceptional assets, they benefit from various tax advantages, and the tax levied on them may be partially or fully waived. Owners also receive support and advice on how to manage their tangible personal property, in particular with regard to safekeeping, proper preservation and even restoration. Under the terms of the law, the owner of a designated property is responsible for its care, conservation and, where appropriate, restoration. What is more, the owner is obliged to make every effort to organise its annual exhibition to the public in the event of public aid for conservation. Since art. 8 of the 1897 law, Japanese law has provided a more general incentive to exhibit, in that it provides for financial compensation in the event of deposit in a public museum institution for a minimum period of five years.

6. From tangible to ‘Living National Treasures’

Japanese law was one of the first countries to give legal consideration to the issue of intangible cultural heritage,²² and served as an example in the design of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage adopted in Paris by the UNESCO General Conference on 17 October 2003, as well as in other national legislation.²³ France, for example, introduced the title ‘Master of Art’ in 1994, based on the Japanese model of Living National Treasures. From 1975 onwards, the protection of cultural heritage went beyond tangible movable and immovable property to include techniques for preserving these assets, in

²² C. Alassimone, *Protection du patrimoine intangible et politique culturelle au Japon*, unpublished doctoral thesis, Université Bordeaux III.

²³ E. Bitauld, « Comparaison des systèmes nationaux de trésors humains vivants de la Corée, de la Thaïlande, des Philippines, de la République tchèque et de la France, en vue de l'évolution du système français en fonction des objectifs de la convention sur le patrimoine culturel immatériel », Résumé de la communication présentée le 16 juin 2006 à la Réunion des conseillers à l'ethnologie et des ethnologues régionaux, Mission à l'ethnologie, Dapa, Ministère de la culture, 2006, p. 26.

recognition of the gradual disappearance of traditional craftsmen as a result of industrialisation.²⁴

Today, Japan is often highlighted in studies on the transmission of know-how, techniques and practices, when talking about the category of ‘Living National Treasures.’ Although this popular expression is commonly used, in society and in administrative circles, to refer to people certified as ‘conservators of important intangible cultural property’ (重要無形文化財保持者, *Jūyō Mukei Bunkazai Hojisha*), the legal framework laid down by the 1950 law only applies to sites, and movable and immovable property.

However, while the expression ‘Living National Treasure’ (人間国宝, *Ningen Kokuhō*) is not a legal concept but a popular expression, it is derived from the legal linguistic history traced in this contribution, and relies on the categorisation of *jūbun*, and, in particular, important intangible cultural property (重要無形文化財, *jūyō mukei bunkazai*) to dedicate an elective category to intangible heritage. For example, exceptional mastery of a technique or art that links tradition and transmission²⁵ through contemporary practice gives the right to funding of two million yen per year, and additional financial support for public demonstration and professional transmission as part of apprenticeship to these craft arts (ceramics, lacquer, woodwork, etc.) and performing arts (*nō*, kabuki, etc.).

Certification of such skills can be carried out by prefectures and municipalities, and includes two categories: performing arts (芸能, *geinō*) and craft skills (工芸技術, *Kōgei Gijutsu*). Recognition can take place on three scales: through individual certification (各個認定, *Kakko Nintei*), collective (総合認定, *Sōgō Nintei*), or as part of diffuse practices to a preservation group (保持団体認定, *Hoji Dantai Nintei*) reserved for fine crafts.

In 2024, there were 116 people certified (the maximum allowed by the Japanese government) as still living, among the almost four hundred people who were recognised as ‘Living National Treasures’. The popularity of this term bears witness to a legal vocabulary that is itself a heritage.²⁶

²⁴ K. Harumi, « La labellisation Trésor national vivant dans le contexte du mouvement Mingei au Japon » [in:] *Les labels dans le domaine du patrimoine culturel et naturel*, ed. Ph. Tanchoux, Presses universitaires de Rennes, Rennes 2020, pp. 389–400.

²⁵ A. Noriko, “Excellence and authenticity: ‘Living National (Human) Treasures’ in Japan and Korea”, *International Journal of Intangible Heritage* 2014, no. 9, pp. 37–51.

²⁶ See more on this dynamic: N. Fiévé, « Patrimoine et architecture au Japon : note sur les mots du monument historique » [in:] *L’abus monumental. Actes des Entretiens du Patrimoine*, ed. R. Debray, Fayard, Paris 1999, pp. 323–345.

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Legal acts

- Decree of 23 May 1871 for the conservation of antiquities and ancient things
- Law no. 49 of 5 June 1897 on the protection of ancient temples and shrines
- Law of 15 December 1897
- National Treasures Preservation Act of 1 July 1929
- 1933 Law on the Preservation of Important Fine Arts
- Imperial Household Economy Act of 1947
- Law no. of 30 May 1950 for Cultural Heritage Protection
- Convention on the Protection of Cultural and Natural Heritage adopted in Paris on 16 November 1972
- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage adopted in Paris by the UNESCO General Conference on 17 October 2003

SUMMARY

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NATIONAL TREASURES (國寶, KOKUHŌ), IN JAPANESE LAW: FROM ZEN BUDDHISM TO LIVING NATIONAL TREASURES

The concept of ‘national treasure’ (國寶, *kokuhō*) appeared in Japanese law in 1897. But it was not until the Law of 30 May 1950 that it was backed by a real legal regime. This transliteration is the modernised version of 國寶, originating in Chinese Buddhism, in which the Sōtō tradition speaks of 重國寶, *Jūkokuho*, ‘important treasure of the country.’ The link between movable cultural heritage and Japan’s national history also revolves around the central role played by the ‘three sacred treasures of Japan’ (三種の神器). Since 1950, the concept, which is indifferent to the oppositions between movable and immovable, tangible and intangible, has been developed in the light of the new categories of heritage that have emerged. The expression has even left the strict confines of the law and entered

everyday language to designate ‘conservators of important intangible cultural property’ (重要無形文化財保持者), commonly known as ‘Living National Treasures.’

Keywords: Japan, *jubun*, *kokubō*, Living National Treasures, national treasures

STRESZCZENIE

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SKARBY NARODOWE (國寶, KOKUHŌ) W JAPOŃSKIM PRAWIE: OD BUDDYZMU ZEN DO ŻYWYCH SKARBÓW NARODOWYCH

Pojęcie „skarbu narodowego” (國寶, *kokubō*) pojawiło się w japońskim prawie w 1897 r. Jednak dopiero w ustawie z 30 maja 1950 r. zostało wsparte przez ujęcie go w prawdziwym systemie prawnym. Ta transliteracja jest zmodernizowaną wersją 國寶, wywodzącą się z chińskiego buddyzmu, w której tradycja Sōtō mówi o 重國寶, *Jūkokuho*, „ważnym skarbie kraju”. Związek między ruchomym dziedzictwem kultury a narodową historią Japonii obraca się również wokół centralnej roli odgrywanej przez „trzy święte skarby Japonii” (三種の神器). Od 1950 r. koncepcja ta, która jest obojętna na opozycje między dziedzictwem ruchomym i nieruchomym, materialnym i niematerialnym, została opracowana w świetle nowych kategorii dziedzictwa. Wyrażenie to opuściło nawet ścisłe granice prawa i weszło do języka potocznego, w którym odnosi się ono do „konserwatorów ważnych niematerialnych dóbr kultury” (重要無形文化財保持者), powszechnie znanych jako „żywe skarby narodowe”.

Słowa kluczowe: Japonia, *jubun*, *kokubō*, żywe skarby narodowe, skarby narodowe