

The Protection of Historic Properties

WIT*PRESS*

WIT Press publishes leading books in Science and Technology.

Visit our website for the current list of titles.

www.witpress.com

WIT*eLibrary*

Home of the Transactions of the Wessex Institute, the WIT electronic-library provides the international scientific community with immediate and permanent access to individual papers presented at WIT conferences. Visit the WIT eLibrary at

<http://library.witpress.com>

The Protection of Historic Properties

A comparative study of
administrative polices

Consuelo Olimpia Sanz Salla
Universidad Jaume I, Spain

WITPRESS Southampton, Boston



Consuelo Olimpia Sanz Salla

*Funcionaria Administración Local con Habilitación Nacional, en excedencia y
Doctora en Derecho,
Profesora Titular de Escuela Universitaria de Derecho Administrativo,
Universidad Jaume I,
Castellón, Spain*

Published by

WIT Press

Ashurst Lodge, Ashurst, Southampton, SO40 7AA, UK
Tel: 44 (0) 238 029 3223; Fax: 44 (0) 238 029 2853
E-Mail: witpress@witpress.com
<http://www.witpress.com>

For USA, Canada and Mexico

WIT Press

25 Bridge Street, Billerica, MA 01821, USA
Tel: 978 667 5841; Fax: 978 667 7582
E-Mail: infousa@witpress.com
<http://www.witpress.com>

British Library Cataloguing-in-Publication Data

A Catalogue record for this book is available
from the British Library

ISBN: 978-1-84564-404-8

Library of Congress Catalog Card Number: 2008940357

*The texts of the papers in this volume were set
individually by the authors or under their supervision.*

No responsibility is assumed by the Publisher, the Editors and Authors for any injury and/or damage to persons or property as a matter of products liability, negligence or otherwise, or from any use or operation of any methods, products, instructions or ideas contained in the material herein. The Publisher does not necessarily endorse the ideas held, or views expressed by the Editors or Authors of the material contained in its publications.

© WIT Press 2009

Printed in Great Britain by Athenaeum Press Ltd.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the Publisher.

Contents

Acknowledgements.....	xiii
Preface.....	xv
Introduction.....	1
CHAPTER 1: THE PROTECTION OF HISTORIC PROPERTIES IN INTERNATIONAL LAW.....	5
1 Historical Evolution of International Law Protecting Historic Properties.....	5
2 The Paris Convention of 1972 Concerning the Protection of the World Cultural and Natural Heritage.....	7
2.1 Definition of Heritage in the Paris Convention.....	7
2.2 The Criteria Defining World Heritage.....	9
2.3 The World Heritage Fund.....	11
3 Industrial Heritage on the World Heritage List.....	13
3.1 Why Industrial Heritage is Important.....	13
3.2 The Zollverein Coal Mine Industrial Complex.....	16
3.3 The Völklingen Ironworks.....	17
3.4 Saltaire.....	20
3.5 Derwent Valley Mills.....	20
3.6 Vizcaya Bridge.....	21
CHAPTER 2: THE PROTECTION OF HISTORIC PROPERTIES IN UNITED STATES LAW.....	25
1 Federal Law.....	26
1.1 Origins of Historic Preservation in United States Law.....	27

1.2	The National Historic Preservation Act of 1966.....	28
1.2.1	The National Register of Historic Places.....	30
1.2.2	State Implementation of the National Historic Preservation Act.....	32
1.2.3	Tribal Properties in the National Historic Preservation Act.....	33
1.2.4	The Grant Programme.....	34
1.2.5	Advisory Council on Historic Preservation	35
1.2.6	Section 106 of the National Historic Preservation Act	36
	<i>A) Alternative Procedures, Programme Alternatives and Exemptions</i>	38
	<i>B) Identifying Historic Properties Affected by the 106 Process</i>	39
	<i>C) Coordinating the 106 Process with the National Environmental Policy Act of 1969.....</i>	43
	<i>D) Special Requirements for National Historic Landmarks.....</i>	45
1.3	National Heritage Areas.....	45
1.3.1	National Heritage Areas and Property Rights	48
1.3.2	Rivers Of Steel Heritage Area	51
1.3.3	Upper Housatonic Valley National Heritage Area	52
2	State Law	54
2.1	California State Law and the Protection of Historic Properties.....	54
2.1.1	California Law implementing the National Historic Preservation Act.....	55
	<i>A) State Historical Resources Commission.....</i>	56
	<i>B) The California Register of Historic Resources</i>	57
	<i>C) The State Historic Preservation Office.....</i>	60
	<i>D) The California Heritage Fund</i>	61
2.1.2	Other Californian Laws Protecting Historic Properties	62
	<i>A) The Mills/Historic Properties Act of 1972</i>	62
	<i>B) Marks Historical Rehabilitation Act of 1976</i>	63
	<i>C) California Environmental Quality Act of 1970</i>	64
3	Conservation Easements in Federal and State Law	75
4	The Protection of Historic Properties in Local Historic Preservation Ordinances and Landmark Laws	79
4.1	Local Ordinances	79
4.2	Local Historic Preservation Ordinances and the Takings Question.....	82
4.3	The Historic Preservation Ordinance of the City of Phoenix	86
4.3.1	Aims of the Historic Preservation Ordinance	86

4.3.2	Administrative Procedure for Designation of Historic Properties and Districts	87
4.3.3	Effects of Designation.....	88
4.3.4	Types of Historic Property Affected	89
A)	<i>Historic Districts and Properties Designated in Phoenix</i>	89
B)	<i>The Villa Verde Historic District</i>	89
 CHAPTER 3: THE PROTECTION OF HISTORIC PROPERTIES IN EUROPEAN UNION LAW.....		93
1	The Illicit Import, Export and Transfer of Ownership of Cultural Property	93
2	Directive 85/337/EEC Regulating Environmental Impact Statements and the Protection of Historic Buildings.....	96
2.1	The Application of Directive 85/337/EEC in Spanish Law.....	99
2.2	The Application of Directive 85/337/EEC in United Kingdom Law	101
3	Directive 2001/42/EC on the Assessment of Strategic Plans and the Protection of Historic Buildings.....	103
3.1	The Application of Directive 2001/42/EC in Spanish Law	104
3.2	The Application of Directive 2001/42/EC in United Kingdom Law	106
4	European Community Projects for the Protection of Cultural Heritage as a Tourist Attraction	108
 CHAPTER 4: THE PROTECTION OF HISTORIC PROPERTIES IN UNITED KINGDOM LAW		111
1	Scheduled Monuments	111
1.1	The Process for Scheduling Monuments and its effects	114
1.2	Types of Historic Property Protected by Scheduling	116
2	Listed Buildings	117
2.1	Criteria for Listing Buildings.....	119
2.1.1	Age and Rarity	119
2.1.2	Aesthetic Merits	120
2.1.3	Selectivity	120
2.2	Criteria for Listing of Industrial Buildings.....	120
2.3	Effects on Property Owners of Listing Buildings.....	123
2.3.1	Obtaining Listed Building Consent	123

2.3.2	Building Preservation Notices	123
2.3.3	Listed Buildings Enforcement Notices	124
2.3.4	Preventing Deterioration and Damage to Listed Buildings ...	126
2.4	Offences under the Listed Buildings Act	128
2.5	Types of Listed Buildings Protected	130
2.6	Incentives for the Preservation of Historic Buildings.....	131
2.7	Tax Concessions and Historic Property	131
2.8	Preservation Programmes	133
3	Conservation Areas.....	134
3.1	The Designation of Conservation Areas	134
3.2	Property Restrictions in Conservation Areas	135
3.2.1	Restrictions on demolition	135
3.2.2	Minor developments	136
3.2.3	Trees in Conservation Areas	137
3.3	Examples of Conservation Areas	137
3.3.1	Stroud Industrial Heritage Conservation Area	138
3.3.2	Blackness Conservation Area Dundee	138
3.3.3	Fishponds Conservation Area	139

CHAPTER 5: THE PROTECTION OF HISTORIC PROPERTIES IN SPANISH LAW 141

1	Evolution of Historic Property Protection in Spanish Law	141
2	The Protection of Historic Properties in the Spanish Constitution..	146
2.1	The Right to Heritage in Article 46 of the Spanish Constitution ...	146
2.2	The Concept of “Social Function” as a Limiting Factor on Individual Property Rights.....	150
3	Spanish Heritage Law	152
3.1	The “Bien De Interés Cultural”	155
3.1.1	The Formal Declaration of Historic Buildings as “Bien De Interés Cultural”	155
3.1.2	The Different Categories of Bien De Interés Cultural	157
	<i>A) Monuments</i>	157
	<i>B) Historic Gardens</i>	159
	<i>C) Historic Districts</i>	159
	<i>D) Historic Site</i>	162
	<i>E) Anthropological Heritage</i>	162
3.2	Urban Planning Law and Historic Properties	163
3.3	Heritage of Local Importance in Valencian Regional Law	167
3.4	The Legal Obligation to Conserve Buildings in Spanish Heritage Law, and Limits on Reconstruction	169

3.5	Financial Tools in Spanish Heritage Law for the Protection of Historical Property	173
3.5.1	Fund for Protection and Rehabilitation of Historic Property ..	173
3.5.2	Tax Incentives for the Protection of Historic Properties	174
3.5.3	Preferential Right of Purchase	174
4	The Sagunto Steel Works	176
Appendix 1: Convention Concerning the Protection of the World Cultural and Natural Heritage.....		
		191
Appendix II: Secretary of the Interior's Standards for the Treatment of Historic Properties		
		207
Bibliography		
		211

Acknowledgements

This genesis of this publication was a suggestion from my thesis director, D.Ramón Martín Mateo, who felt that, on a national level, practical legal studies examining the direct and effective application of heritage law to industrial sites were few and far between. This led to an original study, in Spanish, on heritage law in my own country, applied to a specific case – the Gerencia in Puerto de Sagunto. I would like to express my gratitude to D. Ramón for the original suggestion, and for his continued support and words of kindness throughout my career.

I would also like to extend my gratitude to the members of the Public Law Department at Castellón University, excellently led by Ricardo García Macho, and to my students, too many to name, who keep me on my toes.

Within the context of this publication, I would also like to thank Professor Carlos Brebbia of the Wessex Institute of Technology for his comments and suggestions on the book. It was principally as a result of his comments that I decided to extend the scope of the publication to include sections on English and North American law. I would like to extend my gratitude to Elizabeth, Rachel and Lorraine at WIT press for their patience with me at various moments in the publication process.

Many people have been kind to me when requesting material. In this sense I would like to thank Clotilde Luce from Uphold our Heritage, who sent images and comments on the Jackling House, Hanns-Wilhelm Grobe from the World Cultural Heritage Site at the Völklingen Ironworks – the European Centre for Art and Industrial Culture, Adrian Farmer who was kind enough to send images on the Derwent Valley site and to El Transbordador de Vizcaya, S.L. for the image of the Puente Colgante in Vizcaya. I would like to extend a special mention to Julian Negredo Sanchez, whose fabulous photographs of the wonderful industrial heritage in Sagunto inspired

me, and who has deservedly received many national and international prizes for his work, including the Premio Colección in the XXXII Certamen de Fotografía Calella in Barcelona 2008, and the Gold medal in the 17th Trierenberg Super Circuit 2008. I would also like to thank Miguel Angel Piqueras for the photographs of Ojos Negros taken during his academic years. Also Ximo Revert for his help in understanding the history of the movement to save the Gerencia in Sagunto.

Special thanks go to my husband, Martin Green, whose help in writing this book is unquantifiable.

On the English side of my family, I would like to dedicate the book to Ron and Eileen, who have always been wonderfully kind to me, and to Peter, Mie, Christopher, Jane, Faisal, Shaz, Jamie and William.

On the Spanish side of my family, to my nieces, Sandra and Inma, and my sister Manolita. Also to Eliseo, and to Elena and Lidon and their families.

Finally, I would like to dedicate the book to my father, Julio who worked all of his life for his family until he could do so no longer, to my mother, Consuelo, whose heart of gold and incredible spirit in the face of adversity was always an inspiration to me, and, above all, to our fabulous children, Martin and Giselle, who have brought us love and joy, and who give meaning to all we do.

Preface

This publication is intended to be an introduction to the protection of historic properties by public agencies in three very different legal systems – the United States, the United Kingdom and Spain, as well as analysing international efforts to protect historic heritage. It is not intended as a comprehensive study of any of the legal systems, but rather as a tool to give the reader the chance to compare the legal techniques used in each different administrative system.

The book outlines the historical trends in each legal tradition, as well as present day regulation, using a multitude of examples of how historic buildings and heritage sites are protected in each country. While the publication is intended to cover legal mechanisms established to conserve all types of historic building, we will pay special attention to the protection given to industrial heritage, giving examples wherever possible of how a particular legal technique has been used to protect industrial buildings. We will also examine how case law has affected heritage protection, sometimes in unexpected ways.

An important part of this study will deal with statutes and legal techniques designed integrally to protect cultural heritage. However, important protection is also offered to historic buildings through the inclusion of cultural heritage protection into environmental statutes. This is especially important in the case of those statutes that deal with the preparation of Environmental Impact Statements. In this sense United States law is especially important. The regulatory system of statutes such as the National Environmental Policy Act, as well as the Section 106 process included in the National Historic Protection Act, enter into extensive detail on the responsibilities of public administration in locating, identifying and evaluating historic sites. The extensive case law interpreting these regulations is also an important

tool in understanding the importance of Environmental Impact Assessments in the protection of historic properties.

The study will also deal with financial incentives to protect historic properties, and once again, United States regulation is important in our understanding of methods for protecting our Historic heritage.

As far as the layout of the study is concerned, we have chosen to separate each legislative system into distinctive sections in the book. We therefore deal first with relevant international regulation on the protection of historic properties. We then discuss protection of historic properties in separate chapters dealing with the law in the United States, the European Union, the United Kingdom and Spain.

Finally, this publication is intended as an academic study comparing specific aspects of the law that protects historic properties in the three countries previously mentioned, and follows a style commonly used in Spanish research works – while being primarily a study of legislation and jurisprudence, it also includes brief references to scholarly opinion that has helped to shape and interpret the law on historic properties, with the only intention of allowing the reader to delve further into this area of study by going directly to those authors' works. A publication of this nature cannot deal with all aspects of the subject matter in the level of depth that we would like. To do so would be to duplicate the academic research ably carried out by other scholars. I hope the reader who wishes to follow up on any particular area will find the authors cited and the footnote references a useful guide on where to go for further information.

While I have only made brief reference to their work, and have only included a small fraction of scholarly opinion on the subject, I hope that I have managed in all cases to reflect accurately the opinions of the authors cited, and would like to thank all those who, by way of their articles and publications, have created an important body of academic opinion which others, including the present author, can use as both a point of reference and a starting point for future studies.