Preservation of Historical Cemeteries in Selected Countries

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I. Introduction

This report provides an overview of laws, regulations, and court decisions governing the preservation of historic cemeteries in Brazil, China, Egypt, England, Eritrea, France, Germany, Greece, India, Israel, Italy, Japan, Lebanon, Mexico, New Zealand, Nicaragua, Russia, Spain, and the United States. The country surveys reveal a wide variety of legal and regulatory approaches to this issue and the involvement of an array of actors at various jurisdictional levels.

II. Country Surveys

Brazil

In Brazil, Law No. 3,924 of July 26, 1961, regulates archeological and prehistoric monuments. Article 2(c) of that Law determines that sites identified as cemeteries, graves, or places where there are human remains of archaeological, paleontological, and ethnological interest are considered archeological or prehistoric monuments.[1] Archeological or prehistoric monuments of any nature that exist in the country and all the elements therein are under the custody and protection of the government.[2]

The economic exploitation, destruction, or mutilation, for any purpose, of archaeological or prehistoric deposits and sites, inscriptions, and objects found in cemeteries, graves, or places considered to be archeological or prehistoric monuments is prohibited throughout the national territory before such sites and/or items have being fully researched.[3]

Any act that results in the destruction of or damage to the monuments referred to in article 2 of Law No. 3,924 are considered crimes against the National Patrimony and, as such, are punishable under the provisions of the criminal laws.[4] In addition, the Penal Code punishes with imprisonment from six months to two years and a fine whoever destroys, disables, or degrades a thing that has been registered by the competent authority because of its artistic, archeological, or historical value.[5]

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[1] Lei No. 3.924, de 26 de Julho de 1961, art. 2(c), http://www.planalto.gov.br/ccivil_03/leis/1950-1969/L3924.htm.

[2] *Id.* art. 1.

[3] *Id.* art. 3.

[4] *Id.* art. 5.

[5] CÓDIGO PENAL art. 165, http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm.

China

In China, the Law on Protection of Cultural Relics protects ancient tombs of historical, artistic, and/or scientific value.[6] According to the Law, ancient tombs are generally state property[7] that may be designated as "sites to be protected for their historical and cultural value" (hereinafter "historical and cultural sites") either at the national or local level, depending on their value.[8] The Law regulates the repair, maintenance, and movement of immovable cultural relics, and restricts construction around historical and cultural sites. For example, within the "protection area" of a historical and cultural site, construction, blasting, drilling, and digging are generally prohibited. If such activities must be carried out "under special circumstances," preapproval must be obtained from the relevant government authority.[9] The transfer and commercial operation of ancient tombs are also prohibited or restricted.[10]

The excavation of ancient tombs may be subject to the provisions of the Law on Archaeological Excavations. Under the Law, archaeological excavations require licenses from the State Administration of Cultural Heritage (SACH).[11] Before excavation, a detailed plan of excavation must be submitted to the SACH and approved by the SACH or the State Council.[12] The illegal excavation of ancient tombs may result in criminal, civil, or administrative penalties.[13]

Under the Chinese Criminal Law, "[e]xcavating and robbing ancient tombs of historical, artistic, or scientific value" are criminal offenses, with punishments of up to life imprisonment and confiscation of property.[14]

Egypt

There are no available laws protecting historical cemeteries in Egypt. However, Law 3 of 2010 on Protecting Antiquities, amending Law 117 of 1983, governs the issue of protecting antiquities, which includes historical sites. Under Law 3 of 2010, the Council of Antiquities is the government agency responsible for providing protection to historical sites, including

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[6] 中华人民共和国文物保护法 [Law on Protection of Cultural Relics] (promulgated by the Standing Committee of the National People's Congress (NPC), Nov. 19, 1982, amended June. 19, 2013), art. 2, 2002 FAGUI HUIBIAN 456; 全国人民代表大会常务委员会关于修改《中华人民共和国文物保护法》等十二部法律的决定 [Decision of the NPC Standing Committee to Revise Twelve Laws Including the Law on Protection of Cultural Relics], June 29, 2013, http://www. gov.cn/flfg/2013-06/30/content_2437158.htm.

[7] *Id.* art. 5.

[8] *Id.* art. 3 (translated by the author).

[9] *Id.* art. 17.

[10] *Id.* arts. 24 & 25.

[11] *Id.* art. 27.

[12] *Id.* art. 28.

[13] *Id.* arts. 64–66.

[14] 中华人民共和国刑法 [Criminal Law of the People's Republic of China] (promulgated by NPC July 1, 1979, revised Oct. 1, 1997, last amended Feb. 25, 2011), art. 328, 2011 FAGUI HUIBIAN 1326 (translated by the author).

historical cemeteries. The Council has the authority to confiscate and return any pieces of antiquities taken illegally from historical sites. The Law allows the Council to lead discovery expeditions to explore antiquities under and above the ground. Finally, the Law imposes the penalty of imprisonment and fines on violators.[15]

England

England has amassed a large number of statutes that regulate the preservation and maintenance of cemeteries and historical graveyards,[16] with differing legal regimes based upon the type of cemetery and whether it is owned by the government, the Church of England, or privately.

The care and preservation of historical graveyards are the responsibility of the owners and management.[17] In cases where these sites have been disused or neglected, care often falls to the local authority if it is not already responsible.[18] As ownership of monuments lies with the descendants of the deceased person, and as the graves often date back many centuries, determining who is the owner and therefore financially responsible for the costs of maintaining the monument is often fruitless. In these cases, it is the duty of the entity responsible for the burial site to take the necessary action to ensure the safety of the monument.[19]

Before any work is conducted on historical graveyards, it is necessary to determine through the local authority whether the area has been accorded statutory protection. If this is the case, the necessary consents must be obtained before any work can be carried out. Burial grounds that have been consecrated by the rites of the Church of England are subject to ecclesiastical law and fall under the jurisdiction of the diocesan bishop. No work may be conducted on these sites without church authority, which is granted by a faculty from the diocesan consistory court.[20]

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[15] Law 3 of 2010, al-Jarida al-Rasmiyya, vol. 6 (duplicate), 14 February 2010, p. 3.

[16] These statutes include the following: Open Spaces Act 1909 6 Edw. 7 c. 25, http://www.legislation.gov.uk/ukpga/Edw7/6/25/contents; Local Authorities' Cemeteries Order, 1977, SI 1977/204, http://www.legislation.gov.uk/uksi/1977/204/contents/made; Disused Burial Grounds (Amendment) Act, 1981, c. 18, http://www.legislation.gov.uk/ukpga/1981/18/contents; Disused Burial Grounds Act, 1884, 47 & 48 Vict., c. 72, http://www.legislation.gov.uk/ukpga/Vict/47-48/72/contents; Burial Act, 1857, 20 & 21 Vict., c. 81, http://www.legislation.gov.uk/ukpga/Vict/20-21/81/contents; and Burial Act, 1855, 18 & 19 Vict., c. 128, http://www.legislation.gov.uk/ukpga/Vict/18-19/128/contents. There are four main burial site classifications in England, each of which has unique cultural and religious needs that should be taken into account: church yards, burial grounds set up in the mid-seventeenth century to provide for nonconformist and minority communities, cemeteries established as a result of overcrowding in urban church yards, and war cemeteries and monuments. For the purpose of this report, the term graveyard will be used to cover these different types of sites.

[17] Local Government Act, 1972, c. 70 § 215, http://www.legislation.gov.uk/ukpga/1972/70/contents. *See also* ENGLISH HERITAGE, CARING FOR HISTORIC GRAVEYARD AND CEMETERY MONUMENTS 6 (2011), http://www.english-heritage.org.uk/publications/caring-historic-graveyard-cemetery-monuments/caring-historic-graveyard-cemetery-mon.pdf.

[18] Local Government Act 1972, c. 70 § 215, http://www.legislation.gov.uk/ukpga/1972/70/contents. *See also* ENGLISH HERITAGE, *supra* note 17, at 6.

[19] *Id*.

[20] DEPARTMENT FOR CONSTITUTIONAL AFFAIRS, GUIDE FOR BURIAL GROUND MANAGERS¶ 2.37 (Nov. 2005), http://www.justice.gov.uk/downloads/burials-and-coroners/burial-ground-managers.pdf.

Current regulations aim to ensure public safety around burial grounds, with provisions in place to ensure that these places are maintained.[21] Section 18 of the Burial Act 1855[22] provides that once a graveyard has stopped being active, the church or warden must maintain the condition of the grounds, including surrounding walls and monuments. Section 8 of the Burial Act 1855 provides the Secretary of State with the authority to appoint people to inspect burial grounds to determine the condition of these grounds. A fine may be imposed if the condition of the grounds does not meet the standards of the regulations.[23]

In cases where safety improvements are required to be undertaken on monuments, the costs can be transferred to a local authority (local council), if a churchyard becomes closed to future burials or, in cases of private burial grounds, if it is no longer commercially viable to maintain them.[24] The Burial Act 1857 provides the Secretary of State with the power to order the work on vaults or burial places to prevent them from becoming/continuing to be dangerous or potentially injuring the public.[25] To ensure that these works are conducted, section 1 of the Burial Act 1859 provides that if the works are not conducted, the responsibility will be passed to the local authority.[26]

English Heritage, a Commission established by the National Heritage Act 1983,[27] has produced guidance on caring for historical graveyards.[28] In this guidance, it advises that no restoration should be made to monuments unless it is to slow down the rate of decay or remove the cause of structural instability. The only exception to this rule is for cases where inscriptions of significant historical interest are at risk or if the decay is disfiguring the monument.

The Open Spaces Act 1906[29] allows the transfer of burial grounds to a local authority who may then use them as open spaces. The Open Spaces Act requires the local authority to administer the ground for the use of the public as an open space. The Act provides local authorities with the power to remove and relocate headstones and monuments.[30]

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[21] MINISTRY OF JUSTICE, MANAGING THE SAFETY OF BURIAL GROUND MEMORIALS: PRACTICAL ADVICE FOR DEALING WITH UNSTABLE MEMORIALS (Jan. 2009), http://www.justice.gov.uk/downloads/burials-and-coroners/safety-burial-grounds.pdf.

[22] Burial Act, 1855, 18 & 19 Vict., c. 128, http://www.legislation.gov.uk/ukpga/Vict/18-19/128/contents.

[23] *Id*. These powers have been rarely used, and there is currently no standing body inspectorate. HOME OFFICE, BURIAL LAW AND POLICY IN THE 21ST CENTURY: THE NEED FOR A SENSITIVE AND SUSTAINABLE APPROACH 11 (Jan. 2004), http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/consult/buriallaw/buriallaw_cp.pdf.

[24] *Id*.

[25] Burial Act 1857, 20 & 21 Vict., c. 81, http://www.legislation.gov.uk/ukpga/Vict/20-21/81/contents.

[26] Burial Act 1859, 22 Vict., c. 22, http://www.legislation.gov.uk/ukpga/Vict/22/1/contents.

[27] National Heritage Act, 1983, c. 47, http://www.legislation.gov.uk/ukpga/1983/47/contents.

[28] *See also* ENGLISH HERITAGE, *supra* note 17, at 6.

[29] Open Spaces Act, 1906, 6 Edw. 7, c. 25, http://www.legislation.gov.uk/ukpga/Edw7/6/25/contents.

[30] *Id*. § 11.

Eritrea

Historical cemeteries may be protected under several different laws. Eritrea's Mining Proclamation[31] authorizes the Eritrean government to ban mining operations in areas where historical cemeteries may be located, stating as follows:

> The Government may designate any area or mineral as reserved or excluded for particular mining operations and exclude any area from mining operations particularly as it regards sites of historical, cultural or religious interest and public buildings, infrastructure and other installations.[32]

Except when approved by the Ministry of Energy, Mines and Water Resources, the subsidiary legislation to the Mining Proclamation bans the issuance of a mining license within one hundred meters of a "site of archeological, cultural or religious importance" and prospecting on land within one hundred meters of a cemetery.[33]

In addition to the protection that historical cemeteries are afforded through the Mining Proclamation and its subsidiary legislation, it appears that Eritrea's Transitional Penal Code provides additional protection by criminalizing certain acts that may damage historical cemeteries. The Code makes it an aggravated offense of damage to property to intentionally destroy or seriously damage

> an important object of religious veneration or worship, an object of valuable historical, scientific or artistic nature, a public building or a monument entrusted to the public, a historical site or any objects, machinery, installations or plantations of public utility or necessary for a service or the national interest.[34]

A criminal conviction on this charge entails punishment of up to five years in prison and fine.[35] In addition, violation of laws protecting historical, artistic, or natural riches is a petty offense

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[31] Proclamations are binding statutory laws in Eritrea.

[32] Mining Proclamation No. 68 of 1995, § 6, 5(2) GAZETTE OF ERITREAN LAWS (Mar. 20, 1995), available on the International Labour Organization (ILO) website, *at* http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87837/100257/F1863682771/ERI87837.pdf.

[33] Mining Operations Regulations, Legal Notice No. 19 of 1995, § 13, GAZETTE OF ERITREAN LAWS (MAR. 20, 1995), available on the Food and Agriculture Organization of the United Nations portal, Faolex, *at* http://faolex.fao.org/docs/pdf/eri44712.pdf. Because the Law Library of Congress's holdings on Eritrea are incomplete, it was not possible to ascertain whether the Mining Proclamation and its subsidiary legislation are in force today.

[34] Transitional Penal Code of Eritrea art. 654. The Transitional Penal Code of Eritrea consists of the combined reading of two laws: The Penal Code of the Empire of Ethiopia, Proclamation 158 of 1957, GAZETTE EXTRAORDINARY (July 23, 1957), available on the United Nations High Commissioner for Refugees portal, Refworld, *at* http://www.refworld.org/pdfid/49216a0a2.pdf, and the Transitional Penal Law of Eritrea, Proclamation No. 4 of 1991, 1(1) GAZETTE OF ERITREAN LAWS (Sept. 15, 1991), which is available only in Tigrigna, one of Eritrea's local languages.

[35] *Id*.

punishable by a fine ranging from ERN 1 to 300 (about US$.09 to $29) or arrest ranging from one day to three months.[36]

Sources contacted for this report indicated that Eritrea is currently drafting legislation on cultural heritage protection and conservation.

France

There is no law specifically governing historical cemeteries in France. However, historical cemeteries can be protected under the same rules as apply to other historical buildings and properties. These rules originated in the Loi du 31 décembre 1913 sur les monuments historiques (Law of December 31, 1913, on Historical Monuments),[37] which was codified in the Code du patrimoine (Heritage Code).[38]

There are essentially two levels of protection for historical buildings in France. Such a site may be classified (*classé*) as a historical monument, or registered (*inscrit*) as a historical monument. Article L621-1 of the Code du patrimoine states that, when there is a public interest in the preservation of a building for historical or artistic reasons, this building should be *classified* as a historical monument by the administrative authorities.[39] Article L621-25 of the same Code provides that buildings or parts of buildings that do not justify being immediately classified as historical monuments, but which nevertheless have enough historical or artistic significance to make their preservation desirable, can be *registered* as historical monuments. Cemeteries are considered buildings for the purposes of these provisions.[40] As of 2001, over four hundred cemeteries were partially or entirely protected as historical monuments in France.[41]

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[36] *Id.* arts. 703, 708 & 803.

[37] *En 1913, le Sénat votait la loi sur les monuments historiques* [*In 1913, the Senate Voted on the Law on Historical Monuments*], SÉNAT (SENATE), http://www.senat.fr/histoire/loi_sur_les_monuments_historiques.html; Loi du 31 décembre 1913 sur les monuments historiques [Law of December 31, 1913, on Historical Monuments] (Dec. 31, 1913), http://www.senat.fr/fileadmin/Fichiers/Images/archives/monuments_historiques/Loi_31_decembre_1913_01.pdf.

[38] CODE DU PATRIMOINE [HERITAGE CODE], http://www.legifrance.gouv.fr/affichCode.do;jsessionid=7F2636F9D45A14E81A4818FE28F850F4.tpdjo09v_1?cidTexte=LEGITEXT000006074236&dateTexte=20140331

[39] *Id.* art. L621-1

[40] FRANCIS JAMOT ET AL., MINISTÈRE DE LA CULTURE ET DE LA COMMUNICATION [MINISTRY OF CULTURE AND COMMUNICATION], LA PROTECTION DES IMMEUBLES AU TITRE DES MONUMENTS HISTORIQUES, MANUEL MÉTHODOLOGIQUE [THE PROTECTION OF BUILDINGS AS HISTORICAL MONUMENTS, METHODOLOGICAL MANUAL] 20 (2003), http://www.culture.gouv.fr/culture/infos-pratiques/guides/dapa-protection/introduction.pdf.

[41] Circulaire n° 2000/022 du 31 mai 2000 relative à la protection des tombes et cimetières au titre des monuments historiques et gestion des tombes et cimetières protégés [Circular No. 2000/022 of May 31, 2000, Regarding Protection of Tombs and Cemeteries as Historical Monuments, and Management of the Protected Tombs and Cemeteries], MINISTÈRE DE LA CULTURE ET DE LA COMMUNICATION, DIRECTION DE L'ARCHITECTURE ET DU PATRIMOINE [MINISTRY OF CULTURE AND COMMUNICATION, DIRECTORATE FOR ARCHITECTURE AND HERITAGE], BULLETIN OFFICIEL [OFFICIAL BULLETIN] p. 30 (May–June 2000), http://www.culture.gouv.fr/culture/infos-pratiques/bo/bo_pdf/2000/bo119.pdf.

As implied by the paragraph above, the law affords a higher level of protection to classified buildings than to registered ones. Under article L621-9 of the Code du patrimoine, "a building classified as a historical monument may not be destroyed or moved, even partially, nor may it be restored, repaired, or modified without the authorization of the administrative authority."[42] By contrast, a registered site may be modified by its owner(s) without prior administrative authorization.[43] However, the administrative authorities must be notified at least four months in advance, and someone who modifies a registered site without notifying the authorities four months prior may be fined up to €3,750 (about US$5,210).[44]

If a classified or registered historical monument has been illegally broken up and taken apart (for example, if part of a funerary monument is detached and taken away by someone), the authorities can search for the missing parts and order that they be put back into place at the cost of both the seller and buyer of those parts.[45] Furthermore, anyone who illegally destroys, moves, restores, repairs, or otherwise modifies without authorization a classified historical monument is liable to pay a fine of €3,750 in addition to having to pay damages and pay for the monument's repair.[46] It should be noted that the conservator or guardian of a classified historical monument is subject to a heightened level of responsibility, as he/she is liable to pay a €3,750 fine *and* may be sentenced to up to three months in jail if he/she allowed, through gross negligence, the destruction, mutilation or degradation of the monument in question.[47]

Germany

Generally, the subject areas of cemeteries and monument preservation fall into the legislative power of the German states. There is, however, a federal law on burial sites of soldiers, the Act on the Maintenance of the Graves of the Victims of War and Tyranny (Act on Graves).[48] The purpose of the Act is to remember the victims of war and of violent regimes and to uphold this memory for future generations. The Act applies to the graves of World War I soldiers, World War II soldiers, Holocaust victims, certain refugees, and interns of concentration and forced labor camps. Germany has more than ten thousand cemeteries with graves of war victims or soldiers and many more individual grave sites.[49]

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[42] CODE DU PATRIMOINE art. L621-9.

[43] *Id*. art. L621-27.

[44] *Id*. art. L624-1.

[45] *Id*. art. L621-33.

[46] *Id*. art. L624-2.

[47] *Id*. art. L624-6.

[48] Gesetz über die Erhaltung der Gräber der Opfer von Krieg und Gewaltherrschaft [Act on the Maintenance of the Graves of Victims of War and Tyranny] July 1, 1965, BUNDESGESETZBLATT [BGBL.] I at 589, last repromulgated Jan. 16, 2012, BGBL. I at 98, *as amended*, up-to-date German text *at* http://www.gesetze-im-internet.de/gr_bg/BJNR005890965.html.

[49] *Das Online Gedenkbuch* [*The Online Memory Book*], WELTKRIEGSOPFER.DE, http://www.weltkriegsopfer.de/_Neuheiten_1.html?grab=1&dat=1363302000 (last visited Apr. 14, 2014).

The graves covered by the Act are guaranteed to exist in perpetuity. Private property owners on whose soil such graves exist must leave these graves in existence and grant the necessary liens for access. Such private owners are compensated by the state where the grave is located. The states also bear the costs for graves in public cemeteries. The states must maintain lists of the graves that fall under the protections of the Act and the state must care for these graves. The federal government reimburses the states for many of these costs.

The Act on Graves does not contain any sanctions for contravention of these laws. However, section 304 of the Criminal Code contains a provision that penalizes the illegal destruction or damaging of sacred objects and of graves and monuments.[50]

Greece

Ancient cemeteries are constitutionally protected in Greece as part of its cultural heritage.[51] Preservation of ancient cemeteries that fall within the term "ancient structures" or "cultural heritage" are governed by Law No. 3028/2002 on the Protection of Antiquities and the General Cultural Heritage, as amended by Law No. 3658/2008 on Measures to Protect Cultural Treasures.[52] Pursuant to Law No. 3028/2002, everything that was built or created during a specified period falls within its scope, as follows: Ancient cemeteries are those that were created before 1850; after that period, cemeteries are deemed cultural treasures if, due to their historical, social, aesthetic, or scientific value, their protection and preservation is required.[53] Ancient cemeteries created prior to 1830 or afterwards are registered in the National Register of Monuments, which is kept under the supervision of the Ministry of Civilization.[54]

Ancient cemeteries built prior to 1830 are considered "ancient" *ipso jure*, without the need of an administrative decision. Those created after 1830 are designated as "cultural treasures" by a decision of the Minister of Culture published in the *Official Gazette of Greece*.[55]

Preservation consists of measures to protect ancient cemeteries from further deterioration and to safeguard them from illegal excavation, theft, and the illegal export of findings. In addition, it includes measures to restore them and facilitate contact with the public and the study of history.[56] All restoration and preservation expenses are assumed by the state.

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[50] Strafgesetzbuch, *repromulgated* Nov. 13. 1998, BGBL. I at 3322, *as amended*, translation *at* http://www.gesetze-im-internet.de/englisch_stgb/index.html.

[51] GREEK CONSTITUTION art. 24, para. 6. Article 24 specifies that measures to restrict private ownership of archeological sites as well as the manner and kind of compensation payable to owners are subject to a special law.

[52] Law No. 3028/2002 on the Protection of Antiquities and the Cultural Heritage in General, EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [EKED], 2002, A:138, *as amended by* Law No. 3658/2008 on Measures to Promote Cultural Treasures, A: 20.

[53] *Id*. art. 4, para. 1.

[54] *Id.*

[55] *Id*. art. 6, paras. 1 & 2.

[56] *Id*. art. 3.

India

India regulates archeological and historical sites through the Ancient Monuments and Archaeological Sites and Remains Act 1958[57] and its subordinate rules.[58] The Archaeological Survey of India (ASI), under the provisions of the 1958 Act, is responsible for the protection of "monuments, sites and remains of national importance."[59] Protection of historical monuments and archaeological sites includes historical or ancient tombs and cemeteries.[60] Section 4(1) of the 1958 Act gives the central government the authority to declare certain ancient monuments or sites "to be of national importance," along with a number of powers to protect and preserve such monuments and sites.[61]

The Ancient Monuments Preservation Act, 1904[62] regulates the preservation of monuments that are "under the custody of individual or private ownership."[63]

Israel

The territory of Israel is saturated with remnants of civilizations that are thousands of years old and the country's courts have frequently grappled with issues concerning the preservation of burial sites. In a decision rendered by Israel's Supreme Court in January 2007 the Court held that the determination of whether the disclosure of ancient burial places justifies cessation of construction at any particular site requires a balancing of the competing interests of preservation of religious sentiments and protecting the dignity of the dead against the property interests of land owners and the increasing need for development in the country.[64]

In a comprehensive leading decision rendered by the Supreme Court in October 2008, the Court clarified the scope of the constitutional right associated with the preservation of historical burial sites, holding that "respect for the [dignity of the] dead derives from the dignity of the live person, and from his right to personal autonomy,"[65] rights that are guaranteed under Basic Law:

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[57] Ancient Monuments and Archaeological Sites and Remains Act, No. 24 of 1958, http://asi.nic.in/pdf_data/new_6.pdf. For other laws regulating historical sites see *Legislations* [sic], ARCHAEOLOGICAL SURVEY OF INDIA, GOVERNMENT OF INDIA, http://asi.nic.in/asi_legislations.asp (last visited Apr. 14, 2014).

[58] Ancient Monuments and Archaeological Sites and Remains Rules, 1959, Gazette of India, § II(3) (Oct. 15, 1959), http://asi.nic.in/pdf_data/7.pdf.

[59] *Id.*

[60] *Monuments*, ARCHAEOLOGICAL SURVEY OF INDIA, GOVERNMENT OF INDIA, http://asi.nic.in/asi_monuments.asp (last visited Apr. 14, 2014).

[61] Ancient Monuments and Archaeological Sites and Remains Act § 4(1).

[62] Ancient Monuments Preservation Act, 1904, Act No. VII of 1904, http://asi.nic.in/pdf_data/5.pdf.

[63] *Id*.

[64] HCJ 6685/05 Al-Aqsa Corp. for Dev. of Moslem Waqf Properties v. Contractual Archeology Corp., p. 10, http://elyon1.court.gov.il/files/05/850/066/H11/05066850.h11.pdf (in Hebrew)

[65] HCJ 52/06 Al-Aqsa Co. v. Simon Wiesenthal Ctr. Museum Corp. ¶ 135 (in Hebrew) SICA, http://elyon1.court.gov.il/files/06/520/000/r51/06000520.r51.pdf (translated by author).

Human Dignity and Liberty.[66] However, constitutionally protected rights in Israel are not absolute.[67] Accordingly, rights protected under the Basic Law cannot be violated "except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required."[68]

The subject of the 2008 decision involved remnants of graves dating three to four hundred years old, which had been found during excavation work for construction of a museum of tolerance in Jerusalem.[69] The Court recognized that the construction of the museum constituted a project of special national and international importance, which coincided with the state's values[70] and further held that halting construction would harm the interest of the public and of individuals involved in the established project planning system.[71] As such, the court approved alternative methods offered by the developers to significantly reduce the negative impact on the constitutional right to dignity of the dead associated with implementing the museum plan and allowed the project to proceed.[72]

In addition to court decisions, several pieces of legislation include specific requirements regarding preservation of historic cemeteries in Israel:

- Under the Planning and Building Law, 5725-1965, any provision in regional or local plans regarding protection of cemeteries must be drafted in consultation with the Minister of Religious Affairs;[73] any provision concerning the protection of buildings or cites of historical or archeological importance must similarly be drafted in consultation with the Minister of Education and Culture.[74]
- Under the Water Law, 5719-1959, the approval of a water supply scheme that may affect any place of religious worship, including a cemetery, requires the consent of the Minister of Religious Affairs.[75]
- Under the Penal Law, 5737-1977, trespassing on a place of worship or burial is prohibited and punishable by three years' imprisonment.[76]

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[66] *Id*. (citing Basic Law: Human Dignity and Liberty, SEFER HAHUKIM No. 1391 of 5752 (1992), *as amended*, up-to-date text available on the Knesset Website, *at* http://knesset.gov.il/laws/special/eng/basic3_eng.htm).

[67] *Id*. ¶ 158.

[68] Basic Law: Human Dignity and Liberty § 8.

[69] HCJ 52/06 Al-Aqsa Co. v. Simon Wiesenthal Ctr. ¶ 248.

[70] *Id*. ¶ 239–242.

[71] *Id*. ¶ 243.

[72] *Id*. ¶ 232.

[73] Planning and Building Law, 5725-1965, § 99, 19 LAWS OF THE STATE OF ISRAEL [LSI] 330 (5725-1964/65).

[74] Id.

[75] Water Law, 5719-1959, § 70, 13 LSI 173 (5719-1958/59).

[76] Penal Law, 5737-1977, § 172, LSI (Special Volume) 1977.

Italy

For historical reasons, Italy is a country with an abundance of historical cemeteries. The Italian Constitution does not provide a specific legal framework regulating historical cemeteries.[77] However, the Constitution states that the Italian Republic "safeguards natural landscape and the *historical* and artistic heritage of the Nation."[78] The expression "historical" logically encompasses historical cemeteries. In addition, the Constitution allocates exclusive legislative powers to the national government in, among other matters, those related to the "protection of the environment, the ecosystem and the cultural heritage."[79]

The Code of Cultural Assets and Landscape[80] is one of the main legal instruments covering cemeteries as historical assets. In fact, the Code defines "cultural heritage" as real estate and movable property with an "artistic, historic, archeological, ethnic-anthropological, archival, or bibliographical interest."[81] Historical cemeteries are thus a part of the national "cultural heritage." The Code also includes a specific category of "Cultural Assets of a Religious Interest," defined as those "pertaining to the Catholic Church and other religious confessions,"[82] and subjects such assets to specific legal protections. The provisions of the Code are generally enforced by the Ministry of Cultural Heritage and Activities.[83]

In addition, Law No. 1089 of 1939 provides legal protection to all real and movable property that has artistic, historical, archeological, or ethnographic interest.[84] The Ministry of Public Education may designate any real estate as covered by this Law by notifying the landowner of this decision,[85] and may impose any measures aimed at the protection of such property.[86] Other relevant legislation forbids the construction of new buildings within a radius of two hundred

[77] Costituzione della Repubblica Italiana [Constitution of the Italian Republic] (as last amended Apr. 20, 2012), available in Italian *at* http://www.senato.it/documenti/repository/istituzione/costituzione.pdf, and in English *at* http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

[78] *Id.* art. 9, para. 2 (emphasis added).

[79] *Id.* art. 117(s).

[80] Decreto Legislativo 22 gennaio 2004, n. 42, Codice dei beni culturali e del paesaggio [Legislative Decree No. 42 of June 22, 2004, Code of Cultural Assets and Landscape], GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA [G.U.] No. 45, Feb. 24, 2004, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2004-01-22;42!vig.

[81] Id. art. 2(1).

[82] Id. art. 9.

[83] MINISTERO DEI BENI E DELLE ATTIVITA CULTURALI E DEL TURISMO, http://www.beniculturali.it/mibac/export/MiBAC/index.html#&panel1-3 (last visited Apr. 14, 2014).

[84] Legge 1 Giugno 1939, N. 1089, Tutela delle cose d'interesse artistico o storico [Law No. 1089, of June 1, 1939, on the Protection of Assets of Artistic or Historical Interest] art. 1, http://www.architoscana.org/Normativa/ns_nazionale/anno_1896-1939/L.1089-39.html.

[85] *Id*. arts. 2 & 3.

[86] *Id*. art. 21.

meters from the perimeter of a cemetery, except by authorization of the respective municipality.[87]

In practical terms, however, most of the regulations concerning the protection of historical cemeteries are enacted at the regional and local levels throughout the country. At the regional level, for example, in the Veneto region each municipality is under the legal obligation to build at least one cemetery.[88] At the local level, the City of Verona prohibits anyone from removing objects attached to sepulchers or other movables from cemeteries.[89]

Finally, the national Criminal Code punishes the violation of a sepulcher, a tomb, or "anything devoted to the veneration of the dead."[90] One aggravating circumstance is the commission of such acts against "public buildings or buildings destined to public use or to the exercise of a religion, or over things possessing a historical or artistic interest irrespective of their location, or over buildings located within the perimeter of historical centers."[91] In consequence, Italy protects historical cemeteries at the national, regional, and local levels within its legal framework.

Japan

Under the Cultural Property Protection Act, the government may designate historic sites as historic monuments.[92] Managers of designated historic monuments must administer the sites in accordance with government regulations.[93] Particularly important historic sites cannot be modified without the Cultural Affairs Agency's permission.[94]

Cemeteries that are functioning are subject to the Act on Cemeteries and Burials.[95] It aims to ensure that the management of cemeteries and burials are done in the ways that do not offend

[87] Legge 1 agosto 2002, n. 166, Disposizioni in materia di infrastrutture e trasporti [Law No. 166 of August 1, 2002, Provisions Concerning Infrastructure and Transportation], G.U. No. 181, Aug. 3, 2002, art. 28(1)(a) & (b), http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2002-08-01;166!vig=.

[88] Legge Regionale 4 marzo 2010, n. 18 "Norme in materia funeraria" [Regional Law No. 18, March 4, 2010, "Provisions on Burials"] art. 27(1), BOLLETTINO UFFICIALE DELLA REGIONE DEL VENETO No. 21, Mar. 9, 2010, http://www.agec.it/sites/default/files/Servizi/Gestione%20Cimiteriale/Riferimenti%20Normativi/lr_4_marzo_2010_n_18_pdf_12125.pdf.

[89] Comune di Verona, Regolamento di Polizia Mortuaria, 1 novembre 2005 [City of Verona, Regulations for the Funeral Police, November 1, 2005], art. 31(1), http://www.agec.it/sites/default/files/Azienda/Riferimenti%20Normativi/Gestione%20cimiteriale/regolamento_comunale_nr_45_del_01_11_2005_pdf_37001.pdf.

[90] CODICE PENALE [CRIMINAL CODE] arts. 407–408, *available at* http://www.altalex.com/?idnot=36653 (updated to Mar. 28, 2013).

[91] *Id.* art. 635(3).

[92] Bunkazai hogo hō [Cultural Property Protection Act], Act No. 214, *amended by* Act No. 61 of 2004, arts. 109 & 132. *Kinenbutsu* [*Historic Objects*], AGENCY FOR CULTURAL AFFAIRS, http://www.bunka.go.jp/bunkazai/shoukai/kinenbutsu.html (last visited Apr. 4, 2014).

[93] *Id*. arts. 120 & 133.

[94] *Id*. art. 125.

[95] Bochi, maisō ni kansuru hōritsu [Act on Cemeteries and Burials], Act No. 48 of 1948, art. 1.

people's religious views and conform with public hygiene standards and other considerations. The Act states that a person who manages cemeteries must obtain permission from a prefecture government. The Act also states that when the person who manages a cemetery changes the boundary of the cemetery or diverts its use to some other purpose, he or she needs permission from the prefecture government.[96]

Lebanon

There are no laws in Lebanon related specifically to the preservation of historical cemeteries. However, if such cemeteries qualify as a part of the antiquity heritage of the country then they are subject to the Antiquities Law issued during the French Mandate by Order of the High Commissioner No. 166 of 1933.[97]

Pursuant to the first article of this Order, things produced by human activities prior to 1700 and immovable objects whose preservation is in the public interest and which are recorded in the registry provided for in article 20 must be considered antiquities. The recordation is effected as provided for in article 22 by the relevant minister, based on a recommendation of the Director General of Antiquities.

Mexico

Mexico's Constitution provides that the Federal Congress has the authority to legislate on archeological, artistic, and historic monuments whose conservation is of national interest.[98] Mexico's Federal Law on Monuments and Archeological, Artistic and Historic Sites provides rules applicable to the designation, conservation, and protection of these sites and lists the authorities with jurisdiction over protected monuments and their respective powers.[99] The Law also provides guidelines and procedures applicable to the designation of a specific site in order to be declared a protected monument.[100] According to an online database maintained by the federal government, a number of cemeteries have been declared protected monuments under this Law.[101]

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[96] *Id*. art. 10.

[97] Arrêté No. 166 LR du 7 novembre 1933 portant réglement sur les antiquités en Syrie et au Liban, *available at* http://www.unesco.org/culture/natlaws/media/pdf/lebanon/lebanon_reglement_7_11_1933_fre_orof.pdf.

[98] CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES], *as amended*, art. 73(XXV), DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], Feb. 5, 1917, available on the website of Mexico's House of Representatives, *at* http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf.

[99] Ley Federal sobre Monumentos y Zonas Arqueológicos, Artísticos e Históricos [Federal Law on Monuments and Archeological, Artistic and Historic Sites], *as amended*, D.O., May 6, 1972, http://www.diputados.gob.mx/LeyesBiblio/pdf/131.pdf.

[100] *Id*.

[101] *Catálogo Nacional de Monumentos Históricos Inmuebles* [*National Catalog of Historic Immovable Monuments*], INSTITUTO NACIONAL DE ANTROPOLOGÍA E HISTORIA [NATIONAL INSTITUTE OF ANTHROPOLOGY AND HISTORY] (2012), http://www.catalogonacionalmhi.inah.gob.mx/monumentos/index.jsp (click on "Búsqueda" [Search], and enter the term "Cementerio" or "Panteón" [both terms mean "Cemeteries"]).

In addition, the Law includes a chapter on penalties applicable to conduct and acts that are detrimental to protected monuments,[102] which include fines and even imprisonment.[103]

New Zealand

The Burial and Cremation Act 1964 places responsibilities on local authorities[104] or trustees[105] with respect to the management of cemeteries, while denominational or private burial grounds are managed by landowners or trustees.[106]

With regard to historic cemeteries, burial grounds, or gravesites, under the Historic Places Act of 1993 any place in New Zealand that "was associated with human activity that occurred before 1900" and "is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand" is categorized as an archaeological site.[107] Unless specific authority is granted by the New Zealand Historic Places Trust,[108] it is unlawful for anyone to "destroy, damage, or modify, or cause to be destroyed, damaged, or modified, the whole or any part of any archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site."[109] In addition, the Historic Places Trust maintains a register of historic places that meet specified criteria[110] and may give notice to a local authority of a requirement for a "heritage order" to protect any such place.[111] It may also negotiate a "heritage covenant" with the owner, lessee, or licensee of any historic place.[112] The penalties for offenses under the Act include fines of up to NZ$40,000 (approximately US$34,570) for damage to a historic place, and up to NZ$100,000 (approximately $86,431) for the destruction of such a place.[113]

In addition to the historic places legislation, some cemeteries may be maintained and protected as "historic reserves" in accordance with the Reserves Act 1977.[114]

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[102] Ley Federal sobre Monumentos y Zonas Arqueológicos, Artísticos e Históricos ch. VI, "Penalties."

[103] *Id*.

[104] Burial and Cremation Act 1964, pt 1, http://www.legislation.co.nz/act/public/1964/0075/latest/DLM355079.html. Restrictions and powers related to the removal of monuments and tablets are contained in the Burial and Cremation (Removal of Monuments and Tablets) Regulation 1967, http://www.legislation.co.nz/regulation/public/1967/0118/latest/DLM26514.html.

[105] Burial and Cremation Act 1964, pt 3.

[106] *Id.* pt 4.

[107] Historic Places Act 1993, s 2, http://www.legislation.co.nz/act/public/1993/0038/latest/DLM300511.html.

[108] *Archeological Authorities*, NEW ZEALAND HISTORIC PLACES TRUST, http://www.historic.org.nz/protectingourheritage/archaeology/legalauthorities.aspx (last visited Mar. 20, 2014).

[109] Historic Places Act 1993, s 10(1).

[110] *Id.* s 23.

[111] *Id.* s 5.

[112] *Id.* s 6.

[113] *Id.* pt 5.

[114] Reserves Act 1977, s 18, http://www.legislation.govt.nz/act/public/1977/0066/latest/DLM444305.html.

The New Zealand Law Commission is currently undertaking a review of burial and cremation law and has published an issues paper that includes discussion of the laws related to the management and protection of burial places.[115] A final report containing recommendations for various legislative changes is expected by the end of 2014.[116]

Nicaragua

In Nicaragua several decrees[117] and laws[118] have been promulgated declaring a particular cemetery to be part of the historical and artistic heritage of the Nation. Each of these decrees and laws also state that a cemetery so designated is subject to the special protection regime established by the Law on Protection of Cultural Heritage of the Nation.[119] Under this Law, the Ministry of Culture is responsible for the maintenance and preservation of the nation's cultural heritage.[120] The Law prohibits the destruction or partial or total modification of assets designated as cultural heritage.[121] The Law also prohibits the removal of such assets from their original site without prior authorization from the Directorate General of Cultural Heritage of the Ministry of Culture.[122] Likewise, archaeological excavations of such sites are prohibited.[123]

Under the Law on Protection of Cultural Heritage of the Nation, penalties for acts and omissions that destroy or cause irreversible damage to the assets protected by the Law include imprisonment of one to four years, plus fines.[124] In addition, the Penal Code imposes imprisonment of two to three years upon a person who destroys, disables, makes disappear, or otherwise fully or partially damages museums or assets of scientific, artistic, cultural, historical, or religious value, and other buildings and tombs in cemeteries.[125]

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[115] Law Commission, The Legal Framework for Burial and Cremation in New Zealand: A First Principles Review (NZLC IP34, Oct. 2013),Ch. 6, http://ip34.publications.lawcom.govt.nz/.

[116] *Burial and Cremation Law*, LAW COMMISSION, http://www.lawcom.govt.nz/project/review-burial-and-cremation-law (last visited Mar. 20, 2014).

[117] Decreto No. 36-2003, April 12, 2003, Se Declara Patrimonio Histórico de la Nación al Cementerio San Pedro de la Ciudad de Managua, LA GACETA [L.G.], Apr. 22, 2003; Ley No. 829, January 16, 2013, Ley que Declara al Cementerio San Pedro "Panteón Nacional de Nicaragua," L.G, Jan. 23, 2013; Decreto No. 72-2005, October 14, De Declaratoria de Patrimonio Histórico y Cultural de la Nación "Antigüos Cementerios de San Juán del Norte," L.G., Oct. 26, 2005.

[118] Ley No. 814, October 30, 2012, Ley que Declara Patrimonio Histórico y Artístico de la Nación al Cementerio de Granada, L.G., Nov. 6, 2012.

[119] Decreto N. 1142, November 22, 1982 Ley de Protección al Patrimonio Cultural de la Nación, L.G., Dec. 2, 1982, *as amended by* Decreto No. 1237, April 12, 1983 Reforma al Decreto No. 1142, "Ley de Protección al Patrimonio Cultural de la Nación," L.G., Apr. 19, 1983.

[120] *Id*. art. 3.

[121] *Id*. art. 31.

[122] *Id*. art. 33.

[123] *Id*. art. 32.

[124] *Id*. art. 39.

[125] Ley No. 641, November 13, 2007, CÓDIGO PENAL, L.G., May 5–9, 2008.

Russian Federation

In the Russian Federation, cemeteries are established and managed by local and municipal authorities according to ethical, sanitary, and environmental requirements under the Federal Law on Burials and Funerals.[126] The Law states that cemeteries can be communal, religious, military, and military memorials. The Law does not define historic cemeteries; however, it allows for the recognition of burial grounds as areas having cultural and/or historic significance.[127] The procedure for such recognition is prescribed by the Federal Law on Objects of Cultural Heritage of the Peoples of the Russian Federation, which regulates the administration of historical and cultural monuments.[128] Burial grounds, mausoleums, and necropolises can be recognized as historic and cultural monuments.[129] Depending on their historic and cultural significance, these places can be categorized as monuments of national, regional, or local importance, and their ownership is established respectively. Regardless of the categorization of a monument, all objects of cultural heritage are subject to state protection measures.[130] The Law regulates issues related to ownership, usage, and termination of property rights on an object of cultural heritage.[131]

Further issues related to preserving and using historic monuments are regulated by the laws of the individual constituent components of the Russian Federation because such issues fall within the joint jurisdiction of federal and provincial authorities. For example, the City of Moscow passed the municipal Law on Preservation and Usage of Immovable Historic and Cultural Monuments in 2000.[132] This Law defined historic cemeteries as "cemeteries, individual graves, and burial places of outstanding state and military figures, national heroes, famous persons who worked in the field of science, art, and literature, and collective graves of military personnel and civilians who lost their lives for freedom and independence of their country."[133] Cemeteries recognized as historic are managed by the city government agency authorized to regulate the preservation and usage of historic monuments. The City of Moscow is responsible for the restoration work required to properly maintain historic cemeteries and regulates public access to historic places.[134]

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[126] Federal Law of the Russian Federation on Burials and Funerals, SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [SZ RF] [COLLECTION OF RUSSIAN LEGISLATION (official gazette)] 1996, No. 3, Item 146, available in Russian *at* http://www.consultant.ru/document/cons_doc_LAW_133395/.

[127] *Id*. art. 4.1.

[128] SZ RF 2002, No. 26, Item 2519, available in Russian *at* http://www.consultant.ru/document/cons_doc_LAW_148669/.

[129] *Id*. art. 3.

[130] *Id*. art. 6.

[131] *Id*. arts. 52–54.

[132] Text of this law available in Russian *at* http://www.bestpravo.ru/moskva/bz-instrukcii/u5n.htm (last visited Mar. 25, 2014).

[133] *Id.* art. 3 (translated by author).

[134] *Id*. art. 31.

Historic cemeteries as well as all other historic monuments cannot be destroyed, transferred, or changed, except pursuant to a specific resolution by the federal government. In such cases, the authorized city agency conducts research associated with preservation of the monument.[135]

Spain

Historic cemeteries are protected in Spain as part of its historic cultural heritage.[136] Preservation of historic cemeteries that have been declared and registered as historic property in the General Registry of Cultural Assets are governed by Law No. 16/1985 on the Historic Spanish Heritage and its implementing decree, Royal Decree 111/1986.[137]

According to Law 16/1985, cemeteries declared cultural Spanish property are subject to special protection and preservation rules, which include restrictions as to their alteration, demolition,[138] transfer, or sale.[139] The list of cemeteries registered as cultural Spanish heritage monuments under Law 16/1985 is available in a Ministerio de Educación, Cultura y Deporte (Ministry of Education, Culture and Sports) database.[140] Cemeteries may be declared a cultural historic property as a monument, historic garden or site, or archeological site if they have historic, artistic, social, or scientific interest.[141]

Preservation consists of measures to protect historic cemeteries from further deterioration and to safeguard them from illegal excavation, theft, and the illegal export of any part thereof. In addition, it includes measures to finance works of preservation and restoration.[142] Restoration and preservation costs are paid by the state.[143]

Cemeteries are governed and administered by each of the seventeen autonomous communities, and cemetery services are provided by the municipalities according to Law 7/1985 of the Local Government.[144]

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[135] *Id*. art. 29.

[136] Ley 16/1985 del Patrimonio Histórico Espanol [Spanish Historic Heritage], June 25, 1985, B.O.E., June 29, 1985, http://www.boe.es/buscar/act.php?id=BOE-A-1985-12534.

[137] Real Decreto 111/1986 de Desarrollo de la Ley 16/1985 [Royal Decree 111/1986 Implementing Law 16/1985], B.O.E., Jan. 28, 1986, http://www.boe.es/buscar/act.php?id=BOE-A-1986-2277.

[138] Ley 16/1985, arts. 12.2–25.

[139] Real Decreto 111/1986 arts. 40–44.

[140] Searchable list of cemeteries registered as Spanish cultural property, *Patrimonio Cultural*, MINISTERIO DE EDUCACIÓN, CULTURA Y DEPORTE [MINISTRY OF EDUCATION, CULTURE AND SPORTS], http://www.mcu.es/bienes/cargarFiltroBienesInmuebles.do?layout=bienesInmuebles&cache=init&language=es (enter "cementerio" in the "Bien" box and click "Buscar") (last visited Apr. 14, 2014).

[141] Ley 16/1985 art. 15.

[142] *Id*.

[143] Real Decreto 111/1986, art. 58.

[144] Ley 7/1985 Reguladora de las Bases del Régimen Local [Law 7/1985 Regulating the Basis of the Local Government Regime] arts. 25.2.k & 26.1.a, B.O.E. Apr. 3, 1985, http://www.boe.es/buscar/act.php?id=BOE-A-1985-5392&tn=1&p=20131230&vd=#a25.

United States

In the United States, the preservation of historic cemeteries is largely subsumed under the complicated body of law that governs historic preservation generally. That body of law consists of statutes, regulations, executive orders, administrative guidelines, and case law at multiple levels of government.[145]

Federal laws of the US relevant to historic preservation (and thus preservation of historical cemeteries) include the following:[146]

- The Antiquities Act of 1906,[147] the earliest federal historical preservation law, prohibits the unauthorized excavation, removal, or defacement of objects of antiquity on public lands;[148] provides for permits for the examination of ruins, excavation of archaeological sites, and gathering of objects of antiquity when undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions;[149] and authorizes the President to designate historic landmarks situated on lands owned by the US as national monuments.[150]
- The Historical Sites Act of 1935[151] declares that it is a national policy to preserve for public use historical sites, buildings, and objects of national significance,[152] and authorizes the National Park Service (NPS) to identify, acquire, operate, and manage buildings and sites of national significance.[153]
- The National Historic Preservation Act of 1966[154] authorizes NPS to maintain the National Register of Historic Places, a list of districts, sites, buildings, and objects significant to

[145] CONSUELO OLIMPIA SANZ SALLA, THE PROTECTION OF HISTORIC PROPERTIES: A COMPARATIVE STUDY OF ADMINISTRATIVE POLICIES 25 (2009).

[146] The laws listed here and other federal laws, regulations, executive orders, and guidelines on historical preservation are compiled in US DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, FEDERAL HISTORIC PRESERVATION LAWS: THE OFFICIAL COMPILATION OF U.S. CULTURAL HERITAGE STATUTES (2006 ed.), http://www.nps.gov/history/history/online_books/fhpl/contents.htm.

[147] Act of June 8, 1906, ch. 3060, 34 Stat. 225 (codified as amended at 16 U.S.C. §§ 431–433 (2012), *available at* http://www.cr.nps.gov/history/online_books/fhpl/fhpl_antiact.pdf).

[148] 16 U.S.C. § 433.

[149] 16 U.S.C. § 432.

[150] 16 U.S.C. § 431.

[151] Act of Aug. 25, 1935, ch. 593, 49 Stat. 666 (codified as amended at 16 U.S.C. §§ 461–467 (2012), *available at* http://www.cr.nps.gov/history/online_books/fhpl/historic_sites_act.pdf).

[152] 16 U.S.C. § 461.

[153] 16 U.S.C. § 462.

[154] Public Law No. 89-665, 80 Stat. 915 (codified as amended at 16 U.S.C. §§ 470–470x-6 (2012), *available at* http://www.cr.nps.gov/history/online_books/fhpl/nhpa.pdf).

American history, architecture, archeology, and culture.[155] When a site is listed on the National Register, federal agencies are required to consider the effects of their actions (such as issuing permits allowing development) on the site.[156] The Act established the Advisory Council on Historic Preservation,[157] which may comment on any federal action that might adversely affect a site listed on the National Register.[158]

- The Archaeological Resources Protection Act of 1979[159] regulates the excavation and removal of archeological resources on federal or Indian land,[160] and prohibits any unauthorized excavation of or damage to such archeological resources.[161] The term "archeological resource" is comprehensively defined as "any material remains of past human life or activities which are of archeological interest" that is at least one hundred years old, including graves and human skeletal remains.[162]
- The Native American Grave Protection and Repatriation Act of 1990[163] protects Native American ancestral human remains and cultural items found on federal or Indian lands. It provides a process for remains and cultural items excavated or discovered on federal or Indian lands in the possession of federal agencies or museums to be placed under the ownership or control of tribes affiliated with them.[164] In the event of inadvertent discovery of such remains or items during construction, mining, or similar projects on federal or Indian lands, activity in the area must temporarily cease to allow for protection of the materials.[165] The Act also requires federal agencies and museums to create an inventory of remains and cultural items in their possession.[166] The Act makes it a crime to illegally traffic in covered items.[167]

In the US, powers not conferred to the federal government are reserved by the states, and thus many aspects of the law relevant to historic preservation and protection of cemeteries are matters

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[155] 16 U.S.C. § 470a. Criteria for listing cemeteries in the National Register are set forth in US Dep't of the Interior, Nat'l Park Serv., National Register Bulletin 41, Guidelines for Evaluating and Registering Cemeteries and Burial Places (1992), http://www.nps.gov/nr/publications/bulletins/pdfs/nrb41.pdf. Approximately 1,700 cemeteries and burial places were entered in the National Register between 1966 and 1992. *Id.* at 1.

[156] 16 U.S.C. § 470h-2.

[157] 16 U.S.C. § 470i.

[158] 16 U.S.C. §§ 470f, 470h-2(f).

[159] Public Law No. 96-95, 93 Stat. 721 (codified as amended at 16 U.S.C. §§ 470aa–470mm (2012), *available at* http://www.cr.nps.gov/history/online_books/fhpl/arpa.pdf).

[160] 16 U.S.C. § 470cc.

[161] 16 U.S.C. § 470ee.

[162] 16 U.S.C. § 470bb.

[163] Public Law No. 101-601, 104 Stat. 3048 (codified as amended at 25 U.S.C. §§ 3001–3013 (2012), and 18 U.S.C. § 1170, *available at* http://www.cr.nps.gov/history/online_books/fhpl/nagpra.pdf).

[164] 25 U.S.C. §§ 3002, 3005.

[165] 25 U.S.C. § 3002(d).

[166] 25 U.S.C. § 3003.

[167] 18 U.S.C. § 1170.

of state law. States typically have laws providing for the protection and registration of historic places, the authority of municipalities to establish historic preservation districts, the regulation of cemeteries, and similar laws affecting the preservation of historic cemeteries. To take Pennsylvania as an example, the Historic Preservation Act,[168] the Historic District Act,[169] and the Historic Burial Places Preservation Act[170] are among the laws of that state relevant to the preservation of cemeteries.[171]

Local governments are also empowered to provide for historic preservation within their borders through enabling legislation found in most states that delegate to municipalities "the police power of the state to regulate the preservation of historic or architecturally significant private property."[172]

[168] 37 PA. CONS. STAT. §§ 501–512, http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=37&div=0&chpt=5 (last visited Mar. 31, 2014).

[169] Act of June 13, 1961, P.L. 282, No. 167, http://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1961/0/0167..PDF.

[170] Act of Apr. 29, 1994, P.L. 141, No. 22, http://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1994/0/0022..PDF.

[171] In addition to these laws, other Pennsylvania laws relevant to cemetery preservation are listed in *Pennsylvania Laws Regarding Burial Practices and Cemeteries*, PA. HISTORICAL & MUSEUM COMM'N, http://www.portal.state.pa.us/portal/server.pt/community/pennsylvania_laws_regarding_burial_practices_and_cemeteries/1956 (last visited Mar. 31, 2014).

[172] Scott H. Rothstein, Comment, *Takings Jurisprudence Comes In From the Cold: Preserving Interiors Through Landmark Designation*, 26 CONN. L. REV. 1105, 1109 (1994) (footnote omitted).