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Transnational Religious Practices as a UNESCO Intangible Cultural Heritage: The Complex Case of the Traditional Latin Mass

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Abstract: The 2003 UNESCO Convention definition of intangible cultural heritage (ICH) covers religious practices and rites, as can be seen from normative descriptions and dozens of actual examples, many of which are Catholic religious traditions. The Traditional Latin Mass (TLM), practiced in one form or another for over 1500 years by an ever-increasing number of peoples and nations and in possession of a common stable set of rules, meets the UNESCO criteria for listing as ICH; in fact, it is arguably the best possible example. It is also a complicated one. After the Catholic Church's liturgical reform in the 1960s and 1970s, new rites were introduced and the old rites were officially abandoned; nevertheless, a minority of clergy and laity continued to celebrate the TLM, and, over time, the legitimacy of their attachment to it was recognised by several popes, who also spoke regularly of the great value of the Church's cultural and artistic patrimony and recommended that it remained joined with its religious origins. In contrast, the current pope, Francis, has recently become opposed to the continuation of the old rites. Be this as it may, it is quite possible that such a threatened but deeply appreciated international ICH as the TLM could be proposed for listing by several states that (unlike the Holy See) have signed the Convention for the Safeguarding of the Intangible Cultural Heritage, to give it a recognition appropriate to its immense historical and present-day cultural value.

Keywords: Traditional Latin Mass; intangible cultural heritage; UNESCO; transnational heritage; Catholic Church; Catholic heritage



Citation: Kwasniewski, Peter, Izabella Parowicz, Joseph Shaw, and Piotr Stec. 2023. Transnational Religious Practices as a UNESCO Intangible Cultural Heritage: The Complex Case of the Traditional Latin Mass. *Laws* 12: 23. <https://doi.org/10.3390/laws12020023>

Academic Editor: Patricia Easteal

Received: 13 February 2023

Revised: 27 February 2023

Accepted: 1 March 2023

Published: 2 March 2023



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1. Introduction

We are in an era in which ruins and traditions are enhanced in order to regain the original spirit of each population. Why shouldn't we do the same in regards to religious patrimony? ([John Paul II 1981](#))

On 16 July 2021, Pope Francis promulgated the Apostolic Letter *Traditionis custodes*, in which he addressed the issue of liturgical forms. This short document stated in Article 1 that "The liturgical books promulgated by Saint Paul VI and Saint John Paul II, in conformity with the decrees of Vatican Council II, are the unique expression of the *lex orandi* of the Roman Rite" ([Francis 2021](#)). In practice, this meant that the faithful of the Catholic Church who are attached to earlier liturgical forms, in particular the rite of the Traditional Latin Mass (hereafter TLM), have become severely restricted in their access to this form of worship. In addition, the right possessed by priests to use the older books, which they had enjoyed since the legislation of Pope Benedict XVI in 2007 (to be discussed below) has also been restricted in certain ways, and is now much more subject to the discretion of local bishops. On 20 February 2023, Pope Francis further tightened the restrictions and limited the powers of local bishops by ruling that if any bishop had granted a dispensation

during the time that had elapsed since the promulgation of *Traditionis custodes* for the use of a parish church for the celebration of the TLM or for its celebration by newly ordained priests, “he is obliged to inform the Dicastery for Divine Worship and the Discipline of the Sacraments, which will assess the individual cases” (Roche 2023).

We are talking here about a form of rite that developed in Rome from the 4th century and had assumed its current form, in its most important respects, by the 13th century when it was adopted by the Franciscan order. Through this development, it began to spread throughout Europe, and its spread beyond Rome accelerated following the Council of Trent (1545–1563). In modern times, it was the form experienced by the overwhelming majority of Catholics all over the world. This form was superseded by the post-Vatican II reform of the liturgy, which culminated in a substantially new set of liturgical books beginning with the 1970 Missal. Nevertheless, the older ritual, usually in the form encapsulated by the liturgical books of 1962, has been nurtured and painstakingly sustained by a few priestly societies, groups of the faithful, and individual priests and bishops throughout the world.

Notable differences between the old and the new forms can be summarized as follows. The older Mass uses Latin rather than the cradle languages of the people for whom it is celebrated; the central part is celebrated in silence. The celebrant faces away from the congregation and performs a complex series of ceremonies only partially visible to them. When sung, Gregorian chant is used, a form of music dating back to late Antiquity with roots going back to the liturgy of the Jewish Temple. This is sometimes supplemented by a tradition of polyphonic music which found its classical expression in the 16th century. The experience of participants can be described as spiritual or mystical, rather than rational, as the different elements of the liturgy—language, silence, elaborate ceremonies, music, the clothing of the celebrants, the items used in the rite, and its architectural setting—create a sense of other-worldliness that has often been remarked upon. In contrast, a deliberate attempt was made in the reform of the 1960s to create a rite which was brief, simple, and easy to understand (cf. *Sacrosanctum Concilium* 1963; §§21, 48, 59).¹

A beacon of hope for the faithful “who continued to be attached with such love and affection to the earlier liturgical forms which had deeply shaped their culture and spirit” (Benedict XVI 2007a) was the Apostolic Letter *Summorum Pontificum* promulgated by Pope Benedict XVI on 7 July 2007. The Pontiff effectively liberated the ancient rite of the liturgy, naming it an ‘Extraordinary Form of the Roman Rite’; the term ‘Ordinary Form of the Roman Rite’ referred to the Mass celebrated according to the 1970 Missal and subsequent editions. This pope declared that, contrary to widespread belief, the older rite had never been officially abrogated. In this way, Pope Benedict XVI granted a great deal of freedom to priests to celebrate the liturgy according to the ancient rite, facilitating access for multitudes of the faithful to ‘the treasures of worship and culture amassed (. . .) in preceding centuries’ (Benedict XVI 2007a). Over the next fourteen years, there was a marked increase in interest in the TLM: more and more priests, including many of those newly ordained, learned to celebrate Holy Mass in the Extraordinary Form of the Roman Rite. It was celebrated in an increasing number of places around the world, and there was a significant increase in the number of the faithful wishing to participate in the ancient liturgy.

To illustrate, in England and Wales, where the Latin Mass Society keeps detailed records of the availability of the older Mass, the number of every-Sunday celebrations increased from 20 in 2007, to 34 in 2012, 36 in 2017, and 46 in early 2020, before the COVID pandemic affected the public celebration of Mass. Similar levels of growth have been noted in the United States and France. In recent years, growth has picked up in a larger number of countries, including Italy and Poland, while in yet other countries, notably those of Latin America, Africa, and Southeast Asia, bishops and priests have remained reluctant to permit

¹ A detailed discussion of these and other pastoral arguments behind the post-Vatican II liturgical reform is beyond the scope of this article. Similarly, we have abstained from discussing the actual pastoral effects of this reform. Our concern is the TLM as the cultural intangible heritage of the Catholic Church, which, because of its outstanding value, its vulnerability, and the range of threats to which it is currently subjected, deserves to be protected.

it despite the requests of lay Catholics. Nevertheless, by the end of 2018, the TLM was celebrated in over 80 countries (Paix Liturgique 2020).

Another indication of the growth of supply and demand for the ancient Mass around the world is the continuous increase in the number of priests dedicated solely to its celebration, in the Priestly Fraternity of St Peter, the Institute of Christ the King, and other, smaller, groups. These include growing religious communities, particularly in France and the United States.

The aforementioned 2021 Apostolic Letter *Traditionis custodes* by Pope Francis, in a certain contradiction to its very name (Eng. “Guardians of Tradition”), effectively reimposed the kinds of restrictions which had been in force before *Summorum Pontificum* in 2007: individual bishops need to give permission for celebrations. Indeed, unlike Pope John Paul II’s encouragement to apply his “indult” for the earlier Missal² “generously”, here the bishops are clearly discouraged from doing so. The faithful and clergy concerned reacted with considerable distress, and a sense of profound injustice and deprivation. They found themselves in a dilemma, trying to decide between the deference to the wishes of the reigning Pope, a powerful instinct for faithful Catholics, and fidelity to those traditions of the Church which had formed and sustained them,³ which urged them to stand up for the right to access the TLM.

While it is beyond the scope of this article to cite the multitude of arguments and essays devoted to this issue between July 2021 and today, Peter Kwasniewski has offered a very interesting insight. He suggested that perhaps the TLM could be given legal protection and international recognition, i.e., through inclusion on UNESCO’s list of intangible cultural heritage (Kwasniewski 2021).

Kwasniewski thus directed attention to two issues that have thus far—rather surprisingly—eluded academic interpretation. The first is the recognition of the TLM as intangible cultural heritage (thereafter ICH). We will endeavour to showcase the uniqueness of the TLM as an ICH, as well as its vulnerable nature, which makes it worthy of efforts of preservation. We will also demonstrate that there have been many omissions, silences, and even wrongdoings in this regard on the part of the Holy See, which, especially under the current pontificate, has sought to conceptualise the TLM in terms of a history that has irrevocably passed, rather than a heritage to be lived and handed down (cf. Macdonald 2006). Secondly, we will discuss the extremely complex issue of the legal protection of the TLM as ICH. As a heritage not contained within the walls of the Vatican State, but spread throughout the world, does the TLM fall under the exclusive jurisdiction of the Holy See? Does the decision to legally protect the TLM as ICH have to be adjudicated and authorised by the Holy See (Hafstein 2009) or can it be effectuated by a grassroots initiative? In other words, bearing in mind that “the way of ‘safeguarding’ ICH lies in the concerted effort of the whole community that lives by and in the heritage” (Yu 2015), can protection of TLM be effectively demanded by members of the Church community who are citizens of a country or countries other than the Vatican?

2. Historical Background

Until the liturgical reform that took place in the Catholic Church after Vatican II, the TLM enjoyed the natural and sustainable protection that the concept of Sacred Tradition guaranteed in an indisputable way. This concept, which presupposes passing on to the next generations what has been handed down by the Holy Roman Church to be believed and taught, both in the form of oral and written transmission (cf. 2 Th 2:15), was, for 2000 years, the shaping principle of the identity of the entire Catholic community in time and space

² The “indult” refers to permission to use the old liturgical books that John Paul II urged bishops to grant generously. Benedict XVI determined, with *Summorum Pontificum*, that since the old missal had never been abrogated, no indult was in fact necessary for its use.

³ St. Thomas Aquinas quotes the Decretals (a collection of ecclesiastical laws): “It is absurd, and a detestable shame, that we should suffer those traditions to be changed which we have received from the fathers of old.” *Summa Theologica* Ia IIae Q97 a.2 sc.

and at the same time continually reinforced this identity. Additionally, by its very nature, it protected the entire intangible heritage of the Church (her liturgy, rituals, traditions, i.e., the forms in which divine worship was to be performed as part of the professed faith), which was to be passed on to the next generation without damage or violation, in all its fullness.

Before his election as Pope Benedict XVI, Joseph, Cardinal Ratzinger expressed this idea as follows:

“The Pope is not an absolute monarch whose will is law; rather, he is the guardian of the authentic Tradition and, thereby, the premier guarantor of obedience. . . . That is why, with respect to the liturgy, he has the task of a gardener, not that of a technician who builds new machines and throws the old ones on the junk-pile. The ‘rite’, that form of celebration and prayer which has ripened in the faith and the life of the Church, is a condensed form of living Tradition in which the sphere using that rite expresses the whole of its faith and its prayer, and thus at the same time the fellowship of generations one with another becomes something we can experience, fellowship with the people who pray before us and after us. Thus, the rite is something of benefit that is given to the Church, a living form of *paradosis*, the handing-on of Tradition”. (Ratzinger 2005)

In particular, this concerned the TLM, which is the most perfect and adequate form of reflecting, with reverence and solemnity, the deepest content and reality accomplished in the Holy Mass—the presence of the sacrifice of Jesus Christ on the Cross. In practice, this heritage and Catholic identity were mutually sustained: as Prosper of Aquitaine (390–455) put it: ‘*legem credendi lex statuat supplicandi*’, or ‘the law of prayer determines the law of belief’, which is often paraphrased as the maxim: *lex orandi, lex credendi*. This allowed the meaning attributed to this heritage to remain intact over the centuries and to mitigate the impact of inevitable changes in human mentality from generation to generation on the understanding and practice of the truths of the Catholic faith.

After Paul VI promulgated the reformed Mass in 1969, however, the liturgical rites of the Holy Mass were significantly altered: the TLM was replaced by a Holy Mass in the New Rite (Lat. *Novus Ordo*). Latin was supplanted in favour of vernacular languages, many prayers and priestly gestures were removed, and the position of the priest changed: from this time, priests almost always celebrated Holy Mass with their faces to the people and not—as before—to the apse.⁴ The break with the previous *lex orandi*, that is, in the language of our considerations, the abandonment of the immaterial heritage, hitherto carefully protected, and its replacement by innovative solutions, also had devastating consequences for the ecclesiastical material heritage. Above all, the historic structure of the vast majority of church interiors suffered, with sanctuaries being remodelled and altars sometimes unceremoniously destroyed and replaced by simple tables to allow the priest to face the people. Moreover, the movable heritage suffered—some parts of the liturgical vestments and liturgical instruments, whose use had, moreover, been marked by significant symbolism, were rendered redundant and at best ended up in museums, but more often in attics or rubbish bins, with their original purpose forgotten.⁵

It was not merely the TLM that was supplanted by the *Novus Ordo* Mass. The priests and faithful who wished to preserve this form of worship, i.e., the centuries-old *lex orandi*, faced endless difficulties and were quickly marginalised within the universal Church. Some gathered with the few priests and religious congregations who managed to obtain special permission (an indult) from the Holy See to celebrate Holy Mass in this form; others (e.g., the Society of St Pius X), out of concern for preserving their liturgical heritage, departed (to

⁴ A convenient and comprehensive account of the changes is given in *Work of Human Hands: A Theological Critique of the Mass of Paul VI* by Anthony Cekada (2010).

⁵ The process of forgetting can be illustrated when popular television and film dramas made today, but set at a time prior to the reform, attempt to show the old liturgy. For example, the 2013 BBC series “Father Brown” showed a Catholic priest wearing a liturgical vestment called a maniple around his neck: it is supposed to be worn on the left arm, but was abolished in the liturgical reform, and evidently no one involved in the show knew how it was used.

varying degrees) from full communion with a Catholic Church undergoing unprecedented changes. Sacred Tradition, a concept that was increasingly inconsistent with the changes that were being introduced, was given less and less prominence in Church documents and teaching, which took its toll on the mentality and on the Catholic identity of the clergy and the faithful.⁶

Paradoxically, this centuries-long and effective protection of her own heritage began to fade in the Catholic Church just when awareness of the need to protect cultural heritage started to grow in the world, both at the state and international level. Following the international intervention initiated by UNESCO in 1960 to relocate monuments and archaeological sites to higher ground, which would otherwise have gone underwater as a result of the construction of the Aswan Dam, Egypt, and the frantic efforts of the international community to rescue many priceless artefacts and books that suffered from the 1966 flood of the Arno river in Florence, Italy, there has been a general awareness of the intensification and professionalisation of efforts to preserve cultural heritage for future generations. The aforementioned intervention by UNESCO gave impetus to the granting of World Heritage status to cultural and natural sites of universal value to humanity and to provide them with special protection and international attention. This idea was consolidated with the signing on 16 November 1972 of the Convention concerning the Protection of the World's Cultural and Natural Heritage ([UNESCO Convention 1972](#)), whose preamble notes that the protection of this heritage at the national level often remains insufficient, and that the deterioration or disappearance of any element of cultural or natural heritage represents a harmful impoverishment of the heritage of all peoples of the world. In the 50 years since the signing of this Convention, which has since been ratified by 194 countries around the world, 1157 sites, including 900 cultural sites, have been inscribed on the UNESCO World Heritage List.⁷ The Holy See is among the signatories to this Convention (see Section 5).

In the years that followed the signing of the aforementioned Convention, the discourse of heritage increasingly embraced the notion that it includes not only the buildings and monuments of the past, but also the rich traditions that have been preserved and handed down by successive generations. At the end of the twentieth century, the concept of cultural heritage underwent a semantic expansion in international discourse. It began to move away from defining cultural heritage solely on the basis of its tangible aspects and broadened to include intangible phenomena ([Vecco 2010](#)). It was increasingly understood that the tangibility of heritage was a secondary issue, as culture could be properly understood and interpreted only in the light of the intangible ([Munjeri 2000](#)). There was a growing understanding that in the process of preserving heritage, the tangible and the intangible cannot be separated; it would be artificial and meaningless to disconnect these closely related and interdependent spheres ([Kurin 2004](#)). The need to ensure respect for the legacy of indigenous peoples and for different communities, groups, and individuals; the need for mutual appreciation of this legacy; and the need to create awareness of it from the local to the international level were acknowledged ([Blake 2017a](#)).

This led to the signing of another Convention for the Safeguarding of the Intangible Cultural Heritage on 17 October 2003 ([UNESCO Convention 2003](#)). Safeguarding is defined in the Convention as “measures aimed at ensuring the viability of ICH” (Art. 3.), such as identification, preservation, promotion, transmission (especially through formal and informal teaching), and revitalisation of various aspects of this heritage. At the international level, the Convention provided for the creation of two lists of intangible heritage: a Representative List of the Intangible Heritage of Humanity, including practices and expres-

⁶ This reality was recognised by the Pope Paul VI who authorised the liturgical reform. He said to the General Audience on 26 November 1969: “A new rite of the Mass: a change in a venerable tradition that has gone on for centuries. This is something that affects our hereditary religious patrimony, which seemed to enjoy the privilege of being untouchable and settled. It seemed to bring the prayer of our forefathers and our saints to our lips and to give us the comfort of feeling faithful to our spiritual past, which we kept alive to pass it on to the generations ahead.” <https://www.ewtn.com/catholicism/library/changes-in-mass-for-greater-apostolate-8969> (accessed on 8 February 2023).

⁷ UNESCO World Heritage List. <https://whc.unesco.org/en/list/> (accessed on 1 February 2023).

sions to demonstrate the diversity of this heritage and raise awareness of its importance, and a List of Intangible Cultural Heritage in Need of Urgent Safeguarding. The latter list consists of the cultural elements that the communities and countries concerned consider to be in urgent need of action to ensure their viability. The majority of world governments have realised the importance of publicly affirming the value of their national and local cultures in various manifestations that confer and reflect international prestige (Kurin 2004). The convention has been signed by 180 countries to date (the Holy See is not among its signatories). As of 2023, there are 677 elements on the Representative List, corresponding to 140 countries, and 76 elements on the Urgent Safeguarding List, corresponding to 39 countries (UNESCO Intangible Cultural Heritage List n.d.).

As of 2023, the Representative List features five elements explicitly featured as Catholic:⁸ the Maundy Thursday Passion procession ‘Za Krizen’ on the island of Hvar, Croatia (Inscription: 4.COM 13.33); the ‘Círio de Nazaré’ festival in Belém, Brazil, in honour of Our Lady of Nazareth (Inscription: 8.COM 8.7); the ‘La Romeria’ pilgrimage, involving the carrying of the statue of the Virgin Mary of Zapopan in Mexico (Inscription: 13.COM 10.b.26); the flower carpets tradition for the Corpus Christi processions in Poland (Inscription: 16.COM 8.b.33); and dances and expressions associated with the Feast of Corpus Christi in Panama (Inscription: 16.COM 8.b.31) (UNESCO Intangible Cultural Heritage List n.d.). The Urgent Safeguarding List includes only two manifestations of heritage associated with the Catholic Church, i.e., paghjella, a tradition of male singing, performed on festive, social, and religious occasions in Corsica, France (Inscription: 4.COM 14.05); and Suiti cultural space, i.e., wedding and religious traditions, music, and cuisine upheld by a small Catholic community living in the Lutheran part of Latvia (Inscription: 4.COM 14.07) (UNESCO Intangible Cultural Heritage List n.d.).

3. Intangible Cultural Heritage—Definition and Characteristics

The UNESCO Convention on Intangible Cultural Heritage defines ICH as “practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artefacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (Art. 1). This heritage manifests itself in the following areas, among others: (a) oral traditions and expressions, including language as a vehicle of ICH; (b) performing arts; (c) social practices, rituals, and festive events; (d) knowledge and practices concerning nature and the universe; and (e) traditional crafts (Art. 2). The Convention thus recognises the need to take care of the immaterial context in which tangible heritage exists, i.e., the heritage that is lived, experienced, shared, and continuously re-created by groups and communities and that constitutes their belonging, identity, and sense of continuity (see Art. 1). In other words, it is the totality of tradition-based products of a cultural community, expressed by a group or individuals and reflecting its cultural and social identity (UNESCO Recommendation 1989). It is traditional in the sense that it is socially transmitted from generation to generation (Kurin 2004). ICH is traditional, contemporary, and living at the same time: it embraces not just the inherited traditions of the past, but also the daily, contemporary cultural practices of communities and groups, i.e., their beliefs, ephemeral representations, and phenomena, which constitute the essential ‘spirit’ of a given cultural group (Carrera 2003).

Inherent in the concept of living heritage are its preservation, continuity (Wijesuriya 2005), and performativity, the deepest sense of which is commemoration (Smith 2006). Thus, Japan’s ‘Law for the Protection of Cultural Properties’ as early as 1950 coined the term ‘living treasures’, which, when identified, should be protected, valued, used, and managed, together with all their resources and assets, not for commercial gain, but for the very survival of civilization (Kurin 2004). Hence, it becomes clear that concern for heritage has little to do with romantic nostalgia (understood in a negative sense); rather,

⁸ In addition, 31 elements of traditions and ludic rituals related to the heritage of the Catholic Church (such as community festivals, traditional craft techniques), albeit not directly related to Divine worship or not highlighted as such, are included in this list.

it constitutes a sincere concern to build the identity of future generations based on an appreciation of the past (Ashworth and Howard 1999).

The identity-conveying character of ICH cannot be stressed enough. Traditions, rituals, and social practices that are preserved, nurtured, and re-enacted are able—to a greater extent than material heritage—to give living communities a sense of continuity with previous generations and to reinforce a sense of community with other members of a community (Deacon et al. 2004). It is, moreover, a two-way process. While the existence of tangible heritage may be jeopardized by factors beyond the control of the community—natural factors (floods, earthquakes, fire), wars, lack of financial resources to maintain a given historical object—ICH can persist regardless of the above threats, as long as there is a community, as long as there are interactions within its members, and as long as they are determined to nurture it in their midst and pass it on to the next generation. ICH symbolises that which has almost been lost, but which a community wishes to invoke as evidence of who it is and where it is going (Lowenthal 1998). Awareness of the fragility of this heritage can intensify the efforts of community members to preserve it in extreme situations. The prospect of the loss of heritage is capable of reinforcing a sense of intra-community identity, which manifests itself in efforts to save heritage previously taken for granted. This is experienced, for example, by immigrant communities, indigenous minority groups whose national identity has been suppressed as a result of government policies and who engage in a determined struggle to preserve traditions, language, and rituals that are dear to them. In doing so, it is not uncommon for an aspect of ICH to be preserved and handed down not by the community as a whole, but by a series of individuals (Truscott 2003).

Thus, ICH distinguishes itself by its social dimension (Lähdesmäki 2016). Living practices, expressions, skills, and knowledge to survive have to be nurtured by communities recognizing them as their own heritage (Azoulay 2018). Without their recognition, it is impossible for anyone else to decide for them that a particular tradition, ritual, or practice is their heritage (Carrera 2003). Its survival depends on the willingness and ability of the cultural community to embody, nurture, preserve, and pass it on (Kirshenblatt-Gimblett 2004; Blake 2019). The social environment and the community's attachment to heritage are essential for it to make sense and to become valuable (Gonzalez 2014). Hence, many scholars support the belief that the communities concerned should actively participate in the protection of ICH (Cominelli and Greffe 2012; Keitumetse 2016; Kwon 2017). Additionally, the 2003 UNESCO Convention provides (Art. 15) for the widest possible participation of communities, groups, and individuals in the preservation and transmission of this heritage and their involvement in its management.

However, in practice, the voice of these communities is likely to be marginalised and drowned out if the protection of an ICH element is not in line with the will or views of decision makers at the state level. The 2003 UNESCO Convention (Art. 11) requires the State Parties, i.e., national governments, to validate heritage authorization, nomination, and listing processes. In practice, this means that the postulated consultation with cultural communities may be very cursory and the interests and opinions of the latter downplayed or even ignored (Lixinski 2011), with grassroots initiatives being significantly weakened (Kuutma 2012). Thus, a new paradigm in heritage protection has emerged, in that the emphasis and value have begun to be placed on the community of tradition and culture 'bearers', 'carriers', or 'transmitters' (Kirshenblatt-Gimblett 2004). Within this paradigm, it is emphasised that a key condition for protecting ICH is to protect its inheritors (Alivizatou 2016) and to move away from state-driven procedures towards a greater influence of cultural groups and communities (Blake 2017b), and that the right to protect ICH should be interpreted in terms of human rights (Eichler 2021; Tsivolos 2019).

The human factor is therefore the one that determines the chances of preserving ICH, for only that is protected which is deemed worthy of protection (Kirshenblatt-Gimblett 2004). In this regard, there is an inevitable contestation, discordance, or lack of agreement. As "all the heritage is someone's heritage and then logically not someone else's" (Tunbridge and Ashworth 1996), it is intrinsically dissonant. Thus, seeking recognition of heritage may

exacerbate political, ethnic, and ideological differences (Foster and Gilman 2015). Since heritage is that part of the past which a person, group, or community chooses to pass on to posterity, it is only natural that the selection of that part worthy of preservation and transmission will not be the same for everybody (Ashworth et al. 2007). This dissonance becomes more apparent when conflicts arise over the ownership, interpretation, or use of heritage (Ingerpuu 2018), or when an aspect of heritage is considered controversial, ambivalent, or associated (at least by some) with an unwanted past (Pavličić 2016). Heritage is ‘dissonant’ when its value is contested by various interest groups, and when its meanings are not static but can be redrawn over time (Bruce and Creighton 2006; Nauert 2017). Heritage dissonance is a potentially escalating phenomenon as different communities, especially religious groups (or even sub-groups), seek to interpret ICH from their own perspective (Corsale and Krakover 2018), while aiming to use it for different purposes (Timothy and Nyaupane 2009).

The dissonance in the heritage sphere is inextricably linked to the phenomenon of its contestation. It occurs when an interest group does not recognise heritage as its own, trivialises it (Macdonald 2008), manipulates it (Ashworth 2014), or questions the rationale for its preservation or transmission. Heritage contestation is not a phenomenon specific to any country. It is commonly found in pluralistic societies due to their complexity and dynamically changing reality (Kisić 2013).

Among the main factors that trigger heritage contestation is the factor of power. In particular, the question of power can be seen as determining the process of recognising or authorising heritage (Silva and Mota Santos 2012). It is sometimes the case that the authorities of multi-ethnic countries tend to restrict the rights of their minorities in order to force their assimilation and submission to the regime, or they make selective interpretations of heritage in order to shape mainstream cultural identity and public opinion, even at the expense of human rights (Logan 2007). Those with the power to decide and dictate what is to be treated, valued, nurtured, and passed on to posterity as heritage tend to marginalise and deliberately omit grassroots stakeholders from governance processes (Kouri 2017) if the latter’s postulates are not in line with the political (Robertson 2018), economic (Banaszkiewicz 2017), social (Malan 2004), and ideological (Madsen 2014) agenda of the former. The marginalisation of these stakeholders is most often manifested in the narrative adopted (Lemelin and Johansen 2014), and in the discriminatory way in which the contested heritage is (if at all) managed (Hall 2019).

4. Religious Practices as Intangible Cultural Heritage: A Doctrinal Analysis of Cases

Few authors have analysed religious intangible heritage as a subset of customs and practices covered by the 2003 UNESCO Convention. Foremost among these is Lixinski, who has devoted considerable space to the issue in his works (e.g., 2015, 2018, 2020), analysing extensively the issue of religious heritage as an object of interest in international law and reflecting on the significance of ICH listing as a tool of advocacy for such heritage. Ubertazzi (2020, 2022) essentially focused on the issue of protecting religious rituals as one of the manifestations of ICH. It is also worth citing studies by Tsivolas (2014, 2017, 2019), Burton (2002), Stovel et al. (2005), and Chechi (2014). This relatively low interest for religious ICH among researchers is somewhat surprising, because even a cursory look at the Lists of Intangible Cultural Heritage and the Register of Good Safeguarding Practices unveils a list of 59 protected religious practices corresponding to 44 countries, many of them connected with the Roman Catholic Church. To identify them, we have analysed the UNESCO ICH list using the following filters: *religion*, *religions*, *religious activities*, *religious buildings*, *religious belief*, *religious education*, *religious groups*, *religious music*, *religious practice*, *religious syncretism*. When ‘secondary level relations’ are additionally taken into account, then as many as 217 elements corresponding to 90 countries are identified as ICH with religious connotations (UNESCO Intangible Cultural Heritage List n.d.).

As stated in Section 2, only seven ICH items are explicitly featured on the list as Catholic, but just using the filter *Catholicism* results in 38 objects related to this religion,

while a careful analysis of the list reveals even more items with obvious links to the Catholic religion but not featured as such, e.g., the Holy Week in Guatemala (Inscription: 17.COM 7.b.13). In the following discussion, we will focus precisely on the Catholic ICH and try to determine which categories of this heritage are subject to protection by UNESCO.

Overall, Catholicism-related intangible heritage elements listed as UNESCO ICH seem to be customs and traditions connected with “core” religious practices, but they are not essential to the religion as such. They represent supplementary, mostly ludic activities demonstrating various degrees of connection to the religion. They range from strongly connected ones, e.g., the Croatian procession ‘Za Krizen’ (following the Cross) (Inscription: 4.COM 13.33), to loosely connected ones, e.g., the Polish tradition of the building of Cracow Nativity scenes (Inscription: 13.COM 10.b.29), an activity which has also a very strong cultural dimension. One of the special cases would be the Czech Ride of the Kings (Inscription: 6.COM 13.13): this particular tradition has Catholic roots, but in the Communist era it was secularized and turned into a local custom deprived of its spiritual content.⁹ Thus, it is an example of a religious practice surviving in a secular costume. Another special case would be when Catholic and pagan traditions are intertwined, and the contemporary descriptions of such intangible heritage stress that both religious aspects are protected (e.g., the hopping procession of Echternach, Luxembourg (Inscription: 5.COM 6.27)).

One may notice that the Catholicism-related traditions and other manifestations of Catholic ICH are protected in their externals rather than in their religious essence. There are at least three possible explanations for this. We may argue that they have been increasingly perceived as yet another form of cultural expression. Folk dances and religious processions are simply “ways people behave on certain occasions.” The underlying spiritual rationale may no longer be seen as important, or not even be recognised by secular governments. It may not be adequately recognized by the participating faithful, let alone by outside observers such as tourists. An alternative explanation could be that the Catholic community and, first and foremost, ecclesiastical authorities (notably, the Holy See and particular churches) do not sufficiently recognise the need to preserve their religious ICH in order to safeguard their cultural identity and security: were they to do so, the spiritual aspect would be more emphasised. A third possible explanation lies in the claim that, for religious rituals to be considered ICH by UNESCO, they should not be seen as ‘canonical or orthodox practices’, but as ‘popular religious customs’ (Ubertazzi 2020). This interpretation could be changed by a precedent-setting case of listing an element of cultural heritage which, although it is a canonical practice, is worthy of protection and preservation for the benefit of humanity, not because of its religious aspects, but because of its deep and widespread cultural value. It should be noted, however, that there are at least two cases of “canonical or orthodox” religious practices registered as ICH. One is the Byzantine chant for Cyprus and Greece (Inscription: 14.COM 10.b.9) and the other is the Ethiopian Epiphany (Inscription: 14.COM 10.b.11). Both are ‘canonical or orthodox’ practices and, like the TLM, they are living practices. They are ‘popular religious practices’ in the sense that there is a large population that cultivates and maintains them. They are ‘popular’ in the sense that people want to have them in their traditional form, even if there are alternative forms of worship.

In view of the above, one can propose a taxonomy of religious ICH related to Catholicism.

- ICH connected with the core Catholic religious festivities, e.g., the chant of the Sybil in Majorca, Spain, sung during Holy Mass on Christmas Eve, with its roots in Gregorian chant (Inscription: 5.COM 6.38);
- practices in honour of local patron saints or holy relics of importance to a given community, e.g., the festival of Saint Blaise, the patron saint of Dubrovnik, Croatia (Inscription: 4.COM 13.31);

⁹ We wish to thank Joanna Czaplinska, Professor of Czech Language and Literature at the University of Opole for making this point.

- local traditions loosely connected with religious festivities, secularised, or originating from earlier traditions, e.g., the Czech Ride of the Kings (Inscription: 6.COM 13.13);
- traditional crafts, e.g., the Polish tradition of building Nativity scenes (Inscription: 13.COM 10.b.29).

These are definitely in line with practices exemplified in Article 2.2 of the UNESCO Convention (oral traditions and expressions, performing arts, social practices, rituals, and festive events). It is striking, however, that the above taxonomy, proposed on the basis of an analysis of the religious (Catholic) ICH listed by UNESCO, does not include the core element of intangible religious heritage, i.e., the rite(s) of the Divine cult, the sacred liturgy, described as the source and summit of the Church's life (cf. [Sacrosanctum Concilium 1963](#), 10), i.e., as the highest, most significant, and most representative manifestation, as well as the one that requires the most careful protection.

At the same time, another division of religious heritage emerges from the UNESCO ICH list. While most elements of religious ICH are attributed to a single country, some have been listed as transnational heritage: for example, the craft techniques and customary practices of cathedral workshops or Bauhütten in Europe, which comprise know-how, transmission, the development of knowledge, and innovation, and are shared by Germany, Austria, France, Norway, and Switzerland (Inscription: 15.COM 8.c.3), and listed as good safeguarding practices ([UNESCO The Register of Good Safeguarding Practices n.d.](#)).

It is to be noted that much Catholic intangible heritage is connected with particular events in the liturgical calendar, which are usually common to all the believers all over the world. This makes Catholic intangible heritage transnational in nature. Given this, the sacred liturgy, the TLM, which was celebrated in an almost identical form throughout the world from well before the Council of Trent (1545–1564) until the introduction of new liturgical books in 1969, should be recognised as the most important and also essentially transnational manifestation of the heritage of the universal Church. It is therefore striking that it is not currently subject to protection.¹⁰

5. What Does the Catholic Church Recognise as Her Cultural Heritage?

Having examined what elements of Catholic ICH are protected through UNESCO listing, it is useful to look at what the Catholic Church herself recognises as her heritage and what legal and institutional framework she has given (if any) to the protection of this heritage. In the Code of Canon Law, the mention of cultural goods or [cultural] patrimony appears in the broader context of the administration of ecclesiastical goods, whose supreme administrator and steward, by virtue of the primacy of governance, is the Bishop of Rome, the Pope (Canon 1273). Canon 1284 stipulates that all stewards of ecclesiastical goods must carry out their task with the diligence of a good steward, taking particular care of the following: (1) the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose insofar as necessary; (2) the ownership of ecclesiastical goods is protected by civilly valid methods; and (3) the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority are observed and no damage is allowed to come to the Church from the non-observance of civil laws ([Code of Canon Law, Book V 1983](#)). In contrast, it is difficult to find references in the Code of Canon Law to the Church's ICH and the need for its protection. One such rare reference, a fairly generic one in the context of our considerations, is Canon 214, which stipulates that "The Christian faithful have the right to worship God according to the prescripts of their own rite approved by the legitimate pastors of the Church and to follow their own form of spiritual life so long as it is consonant with the doctrine of the Church" ([Code of Canon Law](#),

¹⁰ The Council of Trent unified the rite of the Holy Mass throughout the world, but retained an exception for those rites that had existed for at least 200 years, such as the Mozarabic rite proper to the Iberian Peninsula, the Ambrosian rite proper to Milan, parts of Northern Italy, and Southern Switzerland, or the Dominican rite proper to that religious order. A more detailed examination of these and other exceptions is beyond the scope of this paper.

[Book II 1983](#)). The logical conclusion can be derived that approved rites, understood as heritage, must be protected so that the faithful attached thereto can benefit from them.

5.1. *The Tangible Heritage of the Catholic Church*

With regard to the Church's tangible heritage, a high degree of cooperation between the Holy See and UNESCO has been established. Significantly, the initiative for the Holy See to join the signatories of the World Heritage Convention by UNESCO came from the latter organisation. At the 21st session of the General Conference of UNESCO in Belgrade in 1980, the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage considered it "desirable that the Vatican City be protected under the World Heritage Convention and therefore recommended that, in conformity to the article 31 thereof, an invitation to accede to the Convention be addressed by the General Conference of UNESCO to the Holy See" ([UNESCO General Conference 1980](#)). The inscription of the Vatican City, in recognition of its role as a witness to a history of two millennia and to a formidable spiritual venture, on the UNESCO World Heritage List was made during the eighth session of the World Heritage Committee in Buenos Aires, 29 October–2 November 1984 ([UNESCO World Heritage Committee 1984](#)). In 1990, the Holy See and Italy jointly and successfully applied for an extension of the Historic Centre of Rome site on the World Heritage List. Following the World Heritage Committee's recommendation expressed as early as 1980 for the Historic Centre of Rome to be inscribed on the List, the World Heritage List of properties has since started to include the Properties of the Holy See in that City Enjoying Extraterritorial Rights and San Paolo Fuori le Mura ([UNESCO World Heritage Committee 1990](#)).

Following the inscription of the Vatican City on the UNESCO World Heritage List, the Church began to devote more space in her documents to the need to protect this heritage, recognizing the great pastoral potential of Christian art and architecture ([von Bühren 2008](#)), as well as their role in carrying out the work of evangelization ([Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church 1992](#)). Church documents relating to cultural heritage and its protection definitely focus on material, i.e., tangible, heritage. The Pontifical Commission for Preserving the Patrimony of Art and History was established under the Apostolic Constitution *Pastor Bonus* within the Congregation for Clergy in 1988. The Commission absorbed and took over the tasks of other previously existing organisations, such as the Central Pontifical Commission for Sacred Art in Italy, established by Pius XI in 1924, and the Pontifical Commission for Church Archives in Italy, established by Pius XII in 1954 ([Settis n.d.](#)). It had the task of acting as a curator of the artistic and historical patrimony of the whole Church, with this patrimony including 'in the first place, all works of every kind of art of the past, works that must be kept and preserved with the greatest care' (Art. 100). In particular, documents and materials (Art. 101) and movable objects (Art. 175) are to be kept, if necessary, in museums, archives, and libraries (Art. 102). The Constitution directed the Commission to work closely with the Congregation for Seminaries and Educational Institutions and the Congregation for Divine Worship and the Discipline of the Sacraments in order "to make the people of God more and more aware of the need and importance of conserving the artistic and historical patrimony of the Church" (Art. 103) ([John Paul II 1988a](#)).

Subsequent documents have emphasized the need for bishops and priests to make "a renewed effort" "regarding the conservation of these goods and their cultural and pastoral valorisation, and an awareness of their role in the work of evangelization, the liturgy, and the deepening of the faith" ([Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church 1992](#)). When, in his Apostolic Letter *Inde a pontificatus* on 25 March 1993, Pope John Paul II renamed the aforementioned commission the Pontifical Commission for the Cultural Patrimony of the Church, he also included material objects among this heritage: "works of art, historical documents, books and everything kept in museums, libraries and archives" ([John Paul II 1993](#)). The Commission, in its 1994 letter to religious families, defined the scope of heritage to be protected as follows: "from majestic

cathedrals to smaller objects; from the marvellous works of art of the great masters to the smaller expressions of the poorer arts; from the most penetrating literary works to the apparently arid financial registers which follow step by step the life of the people of God" (Pontifical Commission for the Cultural Patrimony of the Church 1994b). "Books and parchments" as well as the role of libraries were specifically mentioned in the Commission's letter about the ecclesiastical libraries, drawing upon the Pastoral Constitution *Gaudium et Spes* of the Second Vatican Council from 7 December 1965, n. 58 (Pontifical Commission for the Cultural Patrimony of the Church 1994a). In his address to the participants at the First Plenary Assembly of the Pontifical Commission for the Cultural Heritage of the Church in 1995, Pope John Paul II defined cultural goods as "first of all the patrimony of painting, sculpture, architecture, mosaics and music, put at the service of the mission of the Church [. . .], the wealth of books contained in ecclesiastical libraries and the historical documents preserved in the archives of the ecclesial communities [as well as] the literary, theatrical and cinematographic works produced by the mass media" (John Paul II 1995). In 2000, the Pope drew attention to the importance and need for local churches to make appropriate use of their own cultural heritage (John Paul II 2000).

The Commission's circular letter *The Pastoral Function of Ecclesiastical Museums* (Pontifical Commission for the Cultural Heritage of the Church 2001) mentioned "the cultural treasures of the Church" and "cultural goods [as] an expression of historical memory", i.e., "works of different generations [whose] artistic value reveals the creative capacity of artists, craftsmen and local guild traditions that have been able to imprint on what is visible their religious experience and the devotion of the Christian community". The importance of handing down the Church's own patrimony of cultural goods was emphasized therein (Pontifical Commission for the Cultural Heritage of the Church 2001). The document pays attention to the valorisation of objects that have been withdrawn from use, for example as a result of liturgical reform (1.1): "In the cultural patrimony of the Church, we find the immense art-historical patrimony disseminated around the world. It owes its identity to the use by the Church it was created for and this end should not be forgotten. For this reason, the Church needs to work on strategies designed to appreciate and present the art-historical patrimony in all its richness. Even when pieces have fallen into disuse, for example, because of liturgical reform, or because they are too old to be used, the pieces should be placed among the goods in use in order to show the interest of the Church in expressing in a variety of styles her catechesis, worship, culture and charity" (Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church 1992).

In 2002, Pope John Paul II stressed the necessity of an "effective collaboration with administrations and civil institutions in order to create together, each according to his/her own competence, effective working synergies to defend and safeguard the universal artistic heritage" (John Paul II 2002).

The years covering the pontificate of Pope Benedict XVI and the pontificate of Pope Francis to date have not been rich in documents on the Church's cultural heritage. In 2012, Pope Benedict XVI, by his Apostolic Letter *Pulchritudinis fidei*, closed the Pontifical Commission for the Cultural Heritage of the Church, transferring its tasks and activities to the Pontifical Commission for Culture, due to the convergence of the roles of the two bodies (Benedict XVI 2012). However, a statement by Pope Francis on the occasion of a conference on the sad issue of decommissioning places of worship should be quoted. The Pope noted that cultural heritage is "part of the sacred liturgy, of evangelization and of the exercise of charity. In fact, [it is] in the first place among those 'things' (*res*) that are (or were) instruments of worship, 'holy signs' according to the expression of the theologian Romano Guardini (1930), '*res ad sacrum cultum pertinentes*', according to the definition of the conciliar Constitution *Sacrosanctum Concilium* (122)" (Francis 2018). Noting further that "ecclesiastical cultural assets are witnesses to the faith of the community that has produced them over the centuries, and for this reason they are in their own way instruments of evangelization that accompany the usual tools of proclamation, preaching and catechesis,"

the Pope has thereby encouraged the formulation of a theological discourse on cultural heritage (Francis 2018).

5.2. *The Intangible Heritage of the Catholic Church*

With regard to the protection of the ICH and, in particular, the TLM rite, the relevant references are far less explicit in the Church documents. The last firm regulation can be found in the Constitution on the Sacred Liturgy *Sacrosanctum Concilium*, of the Second Vatican Council, promulgated by Paul VI on 4 December 1963. Article 4 of the Constitution stated: “In faithful obedience to tradition, the sacred Council declares that holy Mother Church holds all lawfully acknowledged rites to be of equal right and dignity; that she wishes to preserve them in the future and to foster them in every way.” Article 36 (1) of the Constitution stipulated that “the use of the Latin language is to be preserved in the Latin rites”, apart from the exceptions laid down by particular laws. Furthermore, Article 114 of the Constitution provided that “[t]he treasure of sacred music is to be preserved and fostered with great care” and urged bishops and other pastors to take care of the musical education of the faithful so that they can actively participate in liturgical singing. Finally, the Constitution (Art. 129) directed that care be taken to educate clerics in the history and development of ecclesiastical art, so that “they will be able to appreciate and preserve the Church’s venerable monuments, and be in a position to aid, by good advice, artists who are engaged in producing works of art” (*Sacrosanctum Concilium* 1963).

The circular letter regarding the cultural and pastoral training of future priests in their upcoming responsibilities concerning the artistic and historic heritage of the Church stressed the perennial tradition of the Church to “perceive the promotion, the custody, and the valorisation of the highest expressions of the human spirit in the artistic and historic fields as an integral part of her ministry”, adding that “this constant attention of the Church has enriched humanity with an immense treasure of testimonials of human ingenuity and its adhesion to the faith. This constitutes a conspicuous part of the cultural patrimony of humanity” (*Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church* 1992).

In 1997, at the Second Plenary Assembly of the Pontifical Commission for the Cultural Heritage of the Church, Pope John Paul II stressed that the work of this Commission was to culturally and pastorally animate ecclesial communities, valuing the *many forms of expression* that the Church has produced and continues to produce at the service of the new evangelisation of peoples. The Pope pointed out that “it is about preserving the memory of the past and *protecting the visible monuments of the spirit* through meticulous and continuous work of cataloguing, conservation, restoration, care and *defence* (our emphases)” (*John Paul II* 1997). The 1997 circular letter on the pastoral function of church archives, although focusing on the documentary heritage, contains important formulations on the importance of the pastoral transmission of “historical memory constitut[ing] an integral part of the life of every community” (1.3) (*Pontifical Commission for the Cultural Patrimony of the Church* 1997). The transmission of this memory and its preservation belong primarily to the sphere of the protection of ICH.

In 1999, a circular letter on the urgent need to inventorise and catalogue the Church’s cultural assets was issued. Including works of architecture, painting, sculpture, as well as furniture, furnishings, liturgical vestments, musical instruments, etc., in the heritage, the document stated that “[t]he uninterrupted cultural and ecclesial function that characterises these goods is the best support for their preservation. It is enough to think how difficult and costly it becomes for the community to maintain structures that have lost their original purpose and how complex the choices to identify new ones are” (*Pontifical Commission for the Cultural Patrimony of the Church* 1999). The letter further called for ‘contextualised conservation’, which can only be understood as the possibility of experiencing tangible cultural heritage in its original intangible context. The words of John Paul II’s address to the members of the Pontifical Commission for the Cultural Heritage of the Church can be read in a similar vein. The Pope noted that “worship has always found a natural ally in art,

because monuments of sacred art have a catechetical and cultic significance in addition to their intrinsic aesthetic value. It is therefore necessary to make the most of them, taking into account their liturgical ‘habitat,’ combining respect for history with attention to the current needs of the Christian community and ensuring that the artistic-historical patrimony at the service of the liturgy loses nothing of its eloquence” (5) (John Paul II 2000). He also stressed the need to further nurture the legal protection of this heritage among the various ecclesiastical institutions and civil authorities, in a spirit of cooperation with the various state authorities, while appreciating the help of associations that protect, preserve, and enrich cultural assets, as well as voluntary groups (6) (John Paul II 2000).

In 2002, Pope John Paul II, when addressing the members of the Pontifical Commission for the Cultural Heritage of the Church, also mentioned sacred music and theatre among a “storehouse of historical-artistic articles.” The Pope stressed the need to secure the legal protection of this heritage “through appropriate guidelines which take into account the religious, social, and cultural needs of the local populations” (John Paul II 2002).

The highest manifestation of concern for the protection of the TLM in Church documents in recent decades was the 2007 Apostolic Letter by Pope Benedict XVI, mentioned in the introduction. Although the notion of “heritage” or “cultural goods” is not mentioned, the Holy Father, citing the General Instruction of the Roman Missal (3rd ed., 2002, p. 397), emphasises the importance of an unbroken tradition in transmitting the faith in its integrity, in accordance with the ecclesiastical rule stating that the law of prayer (*lex orandi*) corresponds to its law of faith (*lex credendi*). Noting that “it enriched (. . .) the culture of numerous peoples”, and invoking the authority of St Gregory the Great, who ordered the definition and preservation of the liturgy of the Mass, Pope Benedict created the conditions for the nurturing of this ‘treasure of worship’ and for making it more widely available to priests and the faithful (Benedict XVI 2007a).

Two years later, Pope Benedict applied the same logic to the liturgical heritage of Anglicans who wished to be reconciled to the Holy See. In the Apostolic Constitution *Anglicanorum Coetibus* (Benedict XVI 2009) III, he made the provision “to maintain the liturgical, spiritual and pastoral traditions of the Anglican Communion within the Catholic Church, as a precious gift nourishing the faith of the members of the Ordinariate and as a treasure to be shared” (Benedict XVI 2009). This led to the authorisation of a special liturgical form which incorporated elements of the Anglican *Book of Common Prayer*.

The Apostolic Constitution *Praedicate evangelium* promulgated by Pope Francis on 19 March 2022 put an end to the existence of the Pontifical Commission of Culture. Instead, its functions, and those of the Congregation for Catholic Education, are merged in a new Dicastery for Culture and Education. The Culture Section within the newly created Dicastery has, among other things, the task of ‘enhancement of cultural heritage’ (Art. 153 § 2). It “offers its assistance and cooperation so that diocesan/eparchial Bishops, Episcopal Conferences and the hierarchical structures of the Eastern Churches may protect and preserve their historical patrimony, particularly documents and juridical instruments concerning and attesting to the life and pastoral care of ecclesial entities, as well as their artistic and cultural heritage. These should be kept with the utmost care in archives, libraries and museums, churches and other buildings in order that they be available to all interested parties” (Art. 155). It “seeks to ensure that diocesan/eparchial Bishops, Episcopal Conferences and the hierarchical structures of the Eastern Churches enhance and protect local cultures with their patrimony of wisdom and spirituality as a resource for the whole human family” (Art 155 § 2). Finally, “in consultation with the Secretariat of State, it shows an interest in and follows the action programmes undertaken by States and international institutions aimed at the promotion of culture and the enhancement of cultural patrimony. It participates in these areas, as opportunity allows, in international forums and specialized conferences, and it promotes or supports congresses” (Art 157, § 2; our emphases) (Francis 2022b).

References to the Church’s patrimony of music in the documents mentioned above illustrate a particular problem with the proposed programme for the preservation of cultural heritage. One could think of the preservation of music in terms of printed scores,

to be kept in archives, whether physical or electronic, but such preservation fails to respect the place music has in cultural life. To be preserved, music must really be performed. The preservation of the Church's music in this sense, as an integral part of liturgical celebrations, was stressed in the Second Vatican Council's Constitution on the Liturgy, *Sacrosanctum Concilium* nn. 54 and 126.

Despite this, the reformed liturgy is only rarely accompanied either by the Gregorian Chant, the most characteristic form of traditional liturgical music, and still less by the sacred polyphony which has been composed over many centuries up to the present. This reality was apparent very quickly and Pope Paul VI urged the preservation of traditional forms of music in their liturgical setting in a series of documents: his Apostolic Letter *Sacrificium laudis* (Paul VI 1966), the Instruction *Musicam Sacram* (Paul VI 1967), an Address to the Italian St Cecilia Association (Paul VI 1968), and a Letter addressed to bishops, *Voluntati obsequens* (Sacred Congregation for Divine Worship 1974).

These documents, however, were apparently in vain. The reformed liturgy was felt to demand a different kind of music, simple enough for performance without preparation by untrained Mass-goers, and modern in feel. Echoes of this view, indeed, can be found in official documents. Pope Paul himself had admitted that Gregorian chant would be lost at least to a large extent in a General Audience Address in 1969, in which he admitted "We will lose a great part of that stupendous and incomparable artistic and spiritual thing, the Gregorian chant" (Paul VI 1969). Later, the Congregation for Divine Worship issued an instruction which, apparently conceding the point that the Church's great patrimony of music was unsuitable for liturgical use, made a provision for it to be performed in concerts (Congregation for Divine Worship 1986).

Traditional Catholic Liturgical Music, not the least of the artistic treasures created by the Catholic Church over the centuries, in this way illustrates a two-fold problem. First, its preservation implies an 'intangible' element: it is not enough for some record of it to exist, but it must be part of a cultural practice of performance. Second, because of the specific nature of the cultural context for which it was created, performance in a secularised setting is far from the ideal way to preserve it: this preserves only part of the intangible cultural practice which it represents.

The preservation of Catholic sacred music therefore can only be fully achieved in the context of the continuing celebration of the ancient liturgy for which it was composed. The same, in fact, can be said, not only of the liturgical items no longer in use, noted in passing above, but of the great places of worship which, like liturgical music, were designed and built with the ancient liturgy in mind. This point was made by no less a cultural commentator than Marcel Proust, who, writing in 1904, argued that France's cathedrals would be 'dead' if the liturgy for which they were designed were no longer celebrated in them: they would be "mere museum pieces and icy museums themselves" (Proust 2021). The preservation of intangible elements of Catholic culture is, in this way, necessary to the preservation even of what seems most tangible of all: large architectural monuments.

The foregoing review of Church documents from the last 50 years on the preservation of ecclesial heritage has demonstrated that, with the few exceptions just noted, almost no mention is made of the concept of tradition or other expressions of ICH. The concept of Sacred Tradition as something demanding respect has largely fallen into oblivion, and has ceased to provide an umbrella of protection for all the richness of the intangible heritage of the Catholic Church. In practice, it is observed that the Holy See is acting in flagrant contradiction to the principles of heritage protection: not only is it not promoting it as something valuable to the Catholic Church's own cultural identity, but it is deliberately suppressing attempts by the members of the faithful and clergy attached to it to experience it as a living heritage.

Since the highest ecclesiastical authorities choose not to properly protect the heritage that is the TLM, and even seem intent on suppressing it, is it reasonable and possible for the faithful to ask a secular institution, such as UNESCO, to inscribe the TLM on the ICH list

and thereby draw public attention to the fact that it is a heritage that needs and deserves to be protected? In the following sections, we will lean into these issues.

6. TLM as Intangible Heritage: Justification of Protection

The removal of the protective umbrella (i.e., the historical understanding of Sacred Tradition) over the Church's intangible heritage (especially the TLM) and the reaction to this by those who remain attached to this heritage raises the question of how, exactly, the heritage could be protected, and what would be desired by its supporters.

As demonstrated above, among the reasons that justify the legal protection of the TLM as ICH are the following:

- The TLM is justified as ICH because of what it is

From the point of view of heritage nomenclature, the TLM belongs to the realm of intangible religious heritage comprising the rituals, worship, and events that take place in sacred spaces within a sacred time (Aulet and Vidal 2018). As a religious practice that is an essential part of social life, it also becomes an important part of cultural life, helping to build and strengthen the identity of the community that performs the rituals in question (Lixinski 2018). At the same time, the artistic and cultural value of religious rituals ensures that they can be appreciated by believers and non-believers alike (Chechi 2014). Rituals may be defined as a group's past that is usable in the present as a continuous point of reference. Being generative of identity, rituals affect the sense and quality of belonging (Brosius and Polit 2011; Bartoszewicz 2015). They affect the way people understand their culture and themselves (Kirshenblatt-Gimblett 2004). In the interplay between ritual, heritage, and identity, ritual can be seen as an element of heritage or as a means of passing on heritage, while identity is the result of heritage application. Within this triad, therefore, heritage is the most important ingredient, as it is through the inheritance of ritual that contemporary value is ascribed to it, and heritage is the most important instrument in the process of identification (Ashworth 2011). Sacred rituals, however, have an even deeper meaning because their practice and transmission are motivated by strictly religious rather than cultural considerations and have the potential to deepen the faith and religious life of those involved (Banús 2018). Their nurturing and practice, moreover, help to sustain the meaning and relevance of the cultural setting in question (Tan 2018): the sacred spaces in which worship takes place, i.e., the ecclesiastical architectural heritage, and the meaning and symbolism of the equipment and vestments used in the practice of these rituals. From the perspective of those involved with it, a living religious heritage, which requires the continuity of forms, takes on more importance than the documentary and historical values of the heritage. As a result, the continuity of religious practices becomes the primary goal of protecting this heritage (Stovel 2005; Wijesuriya 2005). In short, the sacredness of those elements of cultural heritage which are characterized by exceptional religious solemnity and unique significance may justify the application of special rules for their protection (Tsivolas 2017).

In this way, religious heritage escapes to some extent one of the principles governing ICH. As a general rule, ICH, as a living heritage, is still being recreated or narrated today. It is therefore subject to dynamics and frequent changes in response to new social contexts and environments over time.¹¹ This sometimes leads to the situation that Wulf (2015) warns against, in which modern societies, accustomed to individualisation and personal autonomy, find that many of the practices of ICH have become redundant and can be replaced by other practices (which, however, do not belong to the realm of ICH). Since a given meaning or symbolism is closely linked to the forms of religious heritage, the gestures used or the words spoken, any changes should be organic rather than imposed. Additionally, if they are imposed from above, such changes must be done with extreme caution and theological justification. Protecting the TLM as an ICH would, paradoxically, at the same time help to ensure its organic changeability in the long term. It is the outlawing,

¹¹ See Frequently Asked Questions on ICH <https://ich.unesco.org/en/faq-01058> (accessed on 22 February 2023).

i.e., the prohibition of the practice of this heritage, that ‘petrifies’ or ‘freezes’ it (cf. [Lixinski 2015](#)), because relegating it to the past prevents its organic development.

In this context, the words of Benedict XVI from his letter to the bishops on the occasion of the publication of the Apostolic Letter *Summorum Pontificum* resonate particularly strongly: “What earlier generations held as sacred, remains sacred and great for us too, and it cannot be all of a sudden entirely forbidden or even considered harmful” ([Benedict XVI 2007b](#)). If the TLM cannot be forbidden, it follows that it should be allowed to be practised as a living heritage of the community of the faithful of the Catholic Church, because its practice, which sustains the Catholic identity of the faithful, is the most organic way of protecting this heritage.

The momentousness of the TLM as the ICH of the universal Church is raised by various milieus. The noticeable proportion of the Catholic Church’s faithful, as well as priests and some bishops and cardinals, who are attached to the TLM, draw attention to the fact that it is an extremely precious heritage for them, which they not only wish to preserve, but which they seek to live actively, as they nourish their spiritual life from it. They stress that it is a heritage that is precious not only to the individual members of the faithful but to the universal Church, being a pillar of Catholic identity and a source of numerous vocations to the priesthood ([Kwasniewski 2020](#)).

They can make their own the words of Pope Paul VI, who warned religious communities that abandoning the tradition of Latin Gregorian chant would harm vocations: “One can also wonder whether men would come in such numbers to your churches in quest of the sacred prayer, if its ancient and native tongue, joined to a chant full of grave beauty, resounded no more within your walls. We therefore ask all those to whom it pertains, to ponder what they wish to give up, and not to let that spring run dry from which, until the present, they have themselves drunk deep” ([Paul VI 1966](#)). What is most remarkable about this document, however, is the extent to which it has been ignored in subsequent Catholic practice.

Another surprising endorsement of the claims of Catholics attached to the liturgy could be quoted from the chief architect of the liturgical reform, Archbishop Annibale Bugnini, who wrote: “in countries with a strong Protestant majority, the introduction of the vernacular into the liturgy meant to many the loss of one distinction between Catholics and Protestants and of a sign of their attachment to Rome in the face of Protestantism” ([Bugnini 1990](#)). The place of the ancient Mass as a marker of identity was not, however, limited to majority Protestant countries, as the strength of resistance to the liturgical form, which Bugnini was trying to explain, is very evident in France, among other countries.

The general principle that cultural practices central to the self-understanding of a community cannot be radically changed without harm to that community’s sense of identity and cohesion has been made by many social scientists who have taken an interest in the Catholic case. Early in the period of the reform, this point was made by the Catholic anthropologist Mary [Douglas \(1970\)](#); recent examples include the British sociologist of religion, Stephen [Bullivant \(2019\)](#), and the French historian of religion, Guillaume [Cuchet \(2020\)](#). The general principle has been clearly expressed by Joseph Cardinal [Ratzinger \(1997\)](#), who wrote: “A community is calling its very being into question when it suddenly declares that what until now was its holiest and highest possession is strictly forbidden, and when it makes the longing for it seem downright indecent. Can it be trusted any more about anything else? Won’t it proscribe tomorrow what it prescribes today?”

- It is justified because of the threats to which it is exposed

Among the types of threats to intangible heritage defined by UNESCO¹², the following specifically concern the TLM.

- The most fundamental threat, which incidentally affects most elements of intangible heritage, is its *weakened practice and transmission*. In the case of the TLM, the factors that

¹² See web-semantics and graphic visualization *Dive into intangible cultural heritage!* <https://ich.unesco.org/en/dive&display=threat> (accessed on 12 September 2022).

have contributed to this are primarily the time (more than 50 years) that has elapsed since the *halting or, in the best case, the hampering of this transmission* (i.e., reduction in practice transmissions below the level required to ensure their viability on the scale of the universal Church). This has led to a *reduced practice* (i.e., diminished frequency of intangible heritage manifestations); furthermore, it has drastically *reduced the number of practitioners* (i.e., active tradition-bearers, that is, priests who have both the knowledge and the will to celebrate the TLM) *and participants*. As mentioned above, the effective protection of ICH always depends on the concerted efforts of the entire community, which functions in and through the heritage in question (Yu 2015). In the case of the TLM, this must be the joint efforts of the ‘expert’ side, i.e., the priests, that is, the celebrants assisted by the liturgical ministers (altar servers) and singers, and the ‘vernacular’ side, i.e., the faithful who participate in divine worship. More than 60 years after the liturgical reforms, there is a serious educational deficit (Dagnino et al. 2015) in both groups. There is a lack of knowledge and skills in the celebration of the TLM and how to participate therein. Broadly speaking, this is true, even though, in a fortunate surprise, the number of celebrations of the TLM have in fact increased rather dramatically in the past 15 years, thanks to Benedict XVI’s *Summorum Pontificum*.

- Another type of threat is the *loss of objects or systems*. Among practitioners (priests) there has been a *loss of command of the Latin language* and a *loss of skill and knowledge* required to both celebrate the TLM and participate therein. In addition, due to the adaptation of churches and altars to the *Novus Ordo Mass*, the number of *cultural spaces* adapted to celebrate the TLM has been *reduced*.

- *Negative attitudes* towards the TLM are another very important threat thereto. These consist of *repressive policies* (i.e., suppression of this intangible heritage, leading to its weakening), *intolerance* (i.e., rejecting the beliefs or practices of particular groups or communities and treating them in a discriminatory manner), and *disrespect* (i.e., contempt or disregard for traditional practices in the community or even from those who administer them, leading to a lesser appreciation and practice of them, or even their abandonment). Perhaps one of the reasons why the notion of tradition is barely present in the narrative of the Church under the current pontificate is that this term denies a rupture that leads to the dismissal of the past, and instead brings to the fore the aspect of continuity or continuation with the past (Assmann 2013). Thus, an emphasis on tradition stands in clear contradiction to the words of Pope Francis’ Apostolic Letter *Traditionis custodes*: “The liturgical books promulgated by Saint Paul VI and Saint John Paul II, in conformity with the decrees of Vatican Council II, are the unique expression of the *lex orandi* of the Roman Rite” (Francis 2021), which clearly relegate all pre-conciliar forms and manifestations of divine worship, and in particular the TLM, to an irrecoverable and rightfully abandoned past.

In view of the above arguments, we would like to state forcefully: the TLM, the most prominent manifestation of the ICH of the Catholic Church and its unfailing trademark and identity kernel, which was protected with extraordinary care for centuries, should be considered a prerequisite for the very survival of the communities whose culture it forms. As such, it is worthy of being recognised as a representative element of the ICH of humanity. At the same time, as a heritage abruptly discarded in the 1960s and now with emerging attempts for its revival and nurturing being ruthlessly suppressed by the highest ecclesiastical authorities, to whose very care it has been entrusted, it is also an evident example of ICH in need of urgent safeguarding.

7. TLM as a Transnational Intangible Heritage: Are We in a Legal Lacuna?

The problem we face is as follows. The Pope, the visible head of the Catholic Church, the main depositary, trustee, and guardian of the treasury of the Church’s Tradition, including the TLM, not only applies repressive policies against it, but also does so in clear opposition to the bottom-up reactions of the people. Thus, there is a power struggle between the Pope and grassroots actors (i.e., the faithful concerned and some priests) manifested in the marginalisation and deliberate omission of the latter from governance

processes (Kouri 2017). These actors, although relatively numerous, have both the right to be heard and the right to preserve their forms of worship that have been developed and curated over centuries. Additionally, one of the ways to do this is to use the ICH listing to advocate for their cause (Lixinski 2015). At the same time, the heritage in question is not contained within the walls of the Vatican; as mentioned above, it is a heritage with which the faithful of the Catholic Church identify on every inhabited continent of the globe. It is a transnational ICH par excellence. As such, it may be subject to international heritage law (Chechi 2014).¹³

With the TLM as a truly transnational intangible heritage practice, we find ourselves in a legal lacuna: there is no other item on the UNESCO ICH list like this one. Therefore, we have to answer the following question: is it possible to list a transnational intangible heritage practised all over the world, even though the main hub (the Holy See) responsible for it is outside the UNESCO system and is most likely—under the current pontificate—not interested in becoming a signatory to the Convention for the Safeguarding of the Intangible Cultural Heritage in order to protect the TLM?

Before answering this question, let us look at other elements of ICH that can be categorised as transnational. The UNESCO ICH list encompasses 75 such elements.¹⁴ One of the most natural examples is falconry (Inscription: 16.COM 8.b.14) (Wakefield 2012). This is one of the very few cross-cultural practices cultivated both in the East and the West, and recognized jointly by more than a dozen countries, supported by international associations interested in preserving this sport. Although falconry has no commonly recognized central authority responsible for setting standards, its practice in various countries follows the same standards and rules, and participating associations seem to follow the same commonly agreed path of development. Other multinational examples are limited to cultural “bubbles,” be it European, Arabic, African or Asian. Thus, they are connected with regional (though supra-national) traditions.

The falconry case shows that it is possible to achieve a consensus and to register intangible cultural heritage of a truly inter- and transnational nature. Furthermore, it is possible to maintain a common standard for such an international cultural practice without the need to invoke a central authority responsible for the supervision of a common standard.

This example proves that the TLM already fits into the UNESCO ICH concept, without the need to seek approval from the Holy See as a standard-setting entity. It is definitely a special case, even compared to falconry, but still placed within the general convention framework. What makes the TLM case unique is that this is a practice maintained in many places all over the world, where local communities follow a common standard, originally set by the Holy See. That is, the TLM itself, with its detailed books and rubrics, is the common standard upheld by all the clergy and faithful who follow the old version of the liturgy.¹⁵ Consequently, there is a centrally determined set of rules adopted and maintained by communities all over the world. Members of these communities are predominantly members of the Catholic Church and perceive the TLM as a binding element of the Church, without necessarily rejecting newer rites.¹⁶

Following one rite, one set of rules, and recognizing one standard-setter are enough to have the TLM listed as transnational or multinational intangible heritage. The fact that

¹³ In this context, it is worth recalling that the City of Vatican City was added to the list created by the 1954 Hague Convention, which means that it is under special protection in the event of armed conflict (Duursma 1996). The inclusion of the Vatican City under this protection means that the Holy See concurred that these emblems of the Catholic faith should be protected on the basis of their cultural rather than religious value (Lixinski 2020).

¹⁴ The query for this is: <https://ich.unesco.org/en/lists?text=&multinational=2#tabs> (accessed on 31 January 2023).

¹⁵ Moreover, even though there are some disagreements about editions of books, these disagreements are highly specific and not numerous. The unity of the international TLM community is indeed remarkable thanks to the stability of the forms it uses.

¹⁶ The TLM is also practised by communities that remain in incomplete communion with the Holy See or outside the Church, such as sedevacantist communities that do not recognise the supremacy of the current Pope. A detailed discussion of these is beyond the scope of this paper.

the Holy See as the standard-setting authority remains outside the UNESCO convention system does not change anything in this regard.

It is important to consider whether the listing of the TLM as an ICH will conform with the Article 2.1 of the 2003 UNESCO Convention. According to this Article, “consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development”. There is no doubt that considering the TLM for inclusion into the UNESCO ICH list conforms with the existing human rights instruments, in particular those connected with religious freedom. It does not contravene the requirement of sustainable development. What may raise potential doubts is the requirement of mutual respect among communities, etc. The convention clearly opts for an amicable, non-contentious process of identification of intangible heritage elements. So, any controversies from within the interested community regarding the validity of a proposed intangible heritage item would hamper the registration process. Additionally, this constitutes one of the crucial questions of the present paper: is the fact that the Holy See undertakes actions to limit the use of the TLM an impediment? Or can, perhaps, the TLM be listed as an intangible heritage of humankind, even if the Holy See opposes its continuation?

We think that the current position of the Holy See does not prevent the listing of the TLM as an ICH, even if the Holy See, as the principal stakeholder concerned, may try to oppose it (Poria et al. 2011). On the contrary, even pontifical decrees that seem *prima facie* to be aimed at removing the TLM from popular use prove the opposite. The Holy See as a principal external stakeholder in this case seems to acknowledge, albeit reluctantly, the need for maintaining the TLM as a living part of the Roman Catholic Church’s practice. Even the Apostolic Letter *Traditionis custodes* by Pope Francis recognizes that the TLM is part of the religious culture of a significant, if not numerous, group of Catholics and therefore allows it to be maintained, in a restricted manner. This impression was reinforced by the subsequent Decree granted to the Fraternity of St Peter—a priestly institute dedicated to the celebration of the TLM—which gave the Fraternity’s priest members the right to use all the associated liturgical books without a time limit (Francis 2022a). What changes is the official conceptualisation of the maintenance of the TLM within the Church, from the idea of the “one Church, two equally valid rites” to the idea of “one Church, one rite, but some exceptions allowed”. Pope Francis, in his letter *Traditionis custodes*, expressed his ongoing desire for ecclesial communion, which could suggest that the coexistence of two rites threatens this communion. However, there is insufficient proof that the faithful attached to the TLM intend to break this communion; on the contrary, for many centuries the Western Church saw the existence of many difference rites, and this was never perceived as interfering with the unity of belief. In truth, this communion is compromised not by the coexistence of two equal rites, but rather by repressive policies against one of them. As Joseph Shaw (2023) points out, it is those “who choose to go the extra mile in preserving a shared inheritance” that are facing hostility and intolerance from their opponents within the Church. At the same time, insufficient evidence exists to support the claim that listing the TLM as an intangible religious heritage would be in any way against the requirement of mutual respect.

Therefore, it will be possible for any interested countries to apply for the inclusion of the TLM as their national heritage on the UNESCO ICH list, and then apply for an extended, international protection. It will not disturb the peace within the Church, nor will it lead to the refusal of such a registration attempt.

The TLM also fulfils the criteria for inscription on the Representative List of the Intangible Cultural Heritage of Humanity set out in the Operational Directives (UNESCO Directives 2022). There are five such criteria (R.1-R.5), all of which must be met.

Criterion R.1 is the demonstration that the TLM constitutes ICH as defined in Article 2 of the Convention. As we have already demonstrated, this criterion is met.

Criterion R.2 requires that the inscription of the element contributes to ensuring the visibility and awareness of the importance of the intangible cultural heritage and to promoting dialogue, thus reflecting the cultural diversity of the world and testifying to human creativity.

The TLM is a practice shared and developed by many communities in many countries. These communities cherish the centuries-old tradition, which demonstrates its vitality despite the existence of alternative rites. Additionally, the listing of the TLM will definitively raise the awareness and visibility of a cultural practice that was thought to be marginalised and treated as if almost extinct.

Safeguarding measures, such as the promotion of associations of believers who practise the TLM and the encouragement of multidisciplinary research on the subject, will satisfy the rule of safeguarding and promotion set out in criterion R.3.

What will be of paramount importance in the preparation of a proposal to list the TLM as an ICH is the broad participation of the community (criterion R.4). Possible stakeholders include national and international associations of traditional Catholics, religious orders practising variations of the TLM, and of course the decision-making bodies within the Church. Non-religious actors include NGOs and local governments in communities where the TLM is practised. It may be added, in passing, that this consultation process seems to be in line with the process recently introduced by the Holy See in which lay people are encouraged to participate, such as the regional consultations on the future of the Church called the “Synod on Synodality”.

Finally, there is no doubt that criterion R.5, concerning the existence of the cultural practice in the requesting country, would be the easiest to fulfil ([UNESCO Directives 2022](#)).

The valorisation and recognition of the TLM as an ICH worthy of protection by an external actor, such as UNESCO, would therefore raise its visibility vis-à-vis stakeholders from outside its community of origin (i.e., the Catholic Church), thus releasing more incentives for its preservation for future generations. This would also give the TLM renewed relevance to the community of the Church, which—proud of the fact that its heritage is recognised externally—would be motivated to care for and protect the TLM by living and practising it ([Lixinski 2015](#)).

It should be remembered, however, that religious heritage is subject to many different layers of regulation ([Lixinski 2018](#)). Even if it is recognized as a UNESCO ICH and having some level of secular protection, the TLM will still remain a religious practice of the Catholic Church. Therefore, if the Pope decided to cancel the TLM in some churches, or to suspend the practice entirely, there will be little that UNESCO could do to counter this. Of course, the possible prohibition of the TLM will not lead to the annulment of its registration, but at the same time, the registration of the TLM as a UNESCO ICH is not likely to effectively hinder the Holy See’s freedom of action. What is important from the perspective of the 2003 UNESCO Convention is that a given tradition is being upheld/maintained for its outstanding value—not if this particular heritage practice conforms with current Catholic regulations or any other set of rules.

Listing the TLM as a UNESCO ICH could therefore, if only to a limited extent, contribute to giving it recognition despite the current repressive policy of its formal administrator and custodian, the Holy See (cf. [Lixinski 2018](#)). One can expect a substantial social resonance to be triggered by the introduction of any stricter repressive policies against a heritage inscribed on the UNESCO ICH list. It is quite likely that, should the Pope decide to tighten restrictions even further or ban the TLM, if it were listed as UNESCO intangible heritage, his action would generate considerable interest and even indignation, even among non-Catholic circles indifferent to the Church’s heritage as such. It is also possible that he would be subjected to strong public pressure coming from outside the community of the faithful, and this, for better or for worse, often seems to be taken more seriously by the Vatican than appeals from the faithful themselves.

8. Listing the TLM as ICH as a Way of Easing Tension

A tension between the respect towards an item of ICH and the evolving attitude of the civil government (national or local) of the places where the ICH is practiced is not an unfamiliar situation. A national government may take pride in registering certain monuments as World Heritage Sites, for example, in the hope that later office holders and local decision makers may feel some compunction about building a major road through it or building a dam which would submerge it. In some cases, there can be a tension between different branches of government from the beginning, with some favouring increased protection for an item of heritage and others unwilling to limit the possibilities of future (possibly destructive) development.

The Holy See, and more specifically the Papacy as the supreme legislative authority (on spiritual matters) for the world-wide Roman Catholic Church, has a pivotal role in relation to the liturgy celebrated and attended by Catholics. The Holy See has a traditional self-understanding as the guardian of the purity and authenticity of the Catholic liturgy, but it would be too simple to conclude that the Holy See is the only authentic spokesman for the community whose culture includes the Catholic liturgy as a key item. The role of the Holy See needs to be understood in a historically nuanced way.

The idea of the Holy See as the unique source of liturgical legislation dates from the era of the Church after the Council of Trent. Up to that time, bishops and religious orders had considerable autonomy in liturgical matters. Indeed, even to the present day, bishops continue to have an important place, as (in the words of the Second Vatican Council, Decree *Christus Dominus* 11) the ‘moderators’ of the diocese in their liturgy (Paul VI 1965).

The ordinary Catholic faithful too, however, have historically played a role in the preservation of liturgical heritage. The very strong attachment of ordinary Catholics to particular liturgical and (to use a technical distinction) para-liturgical customs has, over the centuries, played a critical part in their preservation. A notable example is the resistance of the people of Milan to the imposition of the liturgy found in Rome and, increasingly as the centuries passed, in the rest of Italy and Europe, in place of the distinctive liturgy of Milan, the ‘Ambrosian Rite’. This form of the liturgy, indeed, survives to this day, and it is commonly agreed that had the Holy See triumphed in its attempts to suppress this Rite, this would have been a mistake, a diminution, and impoverishment of the Church’s legitimate liturgical diversity.

An area in which the Holy See historically came into conflict with grassroots liturgical sensibilities is in relation to the rites of the ‘Eastern Churches’: those parts of the Catholic Church, under the authority of the Holy See, that not only have their own liturgy but also their own Code of Canon Law. They have a higher degree of autonomy from the Holy See than any part of the ‘Latin’ Church, but for an important period, particularly from the 17th to the mid-19th century, the Holy See encouraged the dilution of their distinctive liturgical customs, a process known as ‘Latinisation’. This policy was reversed in a dramatic fashion by Pope Leo XIII, who recognised the value of the eastern rites (Apostolic Letter *Orientalium dignitas* (Leo XIII 1894)). The period of Latinisation has since then been regarded with official embarrassment, and practical steps have been taken, not only to stop the process, but actually to reverse it.

The 1996 Instruction of the [Congregation for the Oriental Churches \(1996\)](#), *Il Padre incomprensibile* 24, expresses this as follows: “These interventions felt the effects of the mentality and convictions of the times, according to which a certain subordination of the non-Latin liturgies was perceived toward the Latin-rite liturgy which was considered *ritus praestantior* (a more excellent rite). This attitude may have led to interventions in the Eastern liturgical texts which today, in light of theological studies and progress, have need of revision, in the sense of a return to ancestral traditions.”

In this instance, official acts of the Holy See have been recognised, albeit in diplomatic language, as being serious mistakes.

The TLM finds itself in a similar situation of tension. Although the Holy See understands itself as having the legislative authority to make the changes to the Catholic liturgy that

took place between 1964 and 1971, and made these changes with the intention of making the liturgy more spiritually fruitful for the Catholic faithful, the decision to suppress the older form of the liturgy almost completely was in time recognised as a mistake as a direct result of grassroots opposition. Thus, Pope John Paul II responded to the requests of Catholics attached to the TLM in 1988, referring to their desire to attend celebration of the older Mass as ‘their rightful aspirations’ (John Paul II 1988b). In 2007, Pope Benedict XVI wrote to the bishops of the world, concerning the TLM: “It behoves all of us to preserve the riches which have developed in the Church’s faith and prayer, and to give them their proper place” (Benedict XVI 2007b). Pope Francis, also, has made favourable reference to the former liturgy, noting that in the reform “we have lost some of the sense of adoration” (Francis 2013).

The Holy See has developed and even reversed its position on the TLM more than once, and national and local authorities within the Church (Bishops’ Conferences and individual bishops) have taken up a variety of attitudes and policies. One consequence of this confusion is that those who acknowledge the authority of the institutional Church can point to important official statements in support of the value of the TLM. As elements in a somewhat legalistic bureaucracy, Popes and curial entities very rarely contradict their predecessors openly, with the result that even after a change in policy, these pronouncements retain their validity as statements of principle—and naturally, supporters of the TLM can and do appeal to them regularly, even after *Traditionis custodes*.

In this context, it is worth noting that UNESCO provided for the inclusion of the religious community in decision-making processes, i.e., the inclusion of the views of non-state actors other than experts. In the Statement on the Protection of Religious Properties within the Framework of the World Heritage Convention (UNESCO Statement 2010) “the role played by religious communities in the creation, maintenance, and continuous shaping of sacred places, and the custodial role played by them in caring for these as living heritage” was recognised. Within the same Statement, “enhancing the role of communities and the avoidance of misunderstandings, tensions, or stereotypes” was called for. Additionally, the text of the 2003 UNESCO Convention itself recognises the role of communities in the “production, safeguarding, maintenance and re-creation” of ICH, calling for a renewed dialogue between communities. As Lixinski (2020) notes, the promise to include communities more centrally in the safeguarding process has yet to be fulfilled (see also Jacobs 2020; D’amico Soggetti 2020).

Recourse to international law could therefore mediate the aforesaid tensions by focusing on heritage values rather than religious values (Lixinski 2020). The examination of the case of this repressed yet outstanding heritage by an external, non-partisan forum (UNESCO) deciding on the inscription of heritage elements on the ICH list for the benefit of mankind could become an important advocacy tool for the TLM (Lixinski 2015). The registration of the TLM as ICH would be a recognition by UNESCO of the very position made so clear by successive Popes themselves: that, as a matter of principle, the TLM has value in itself, both as part of the life of the Church and for humanity as a whole, because of the cultural depth and richness of this ritual.

9. Conclusions

While most countries have only recently recognised the need to protect disappearing and endangered traditions, crucial to the identity of the cultures concerned, to the extent of giving this protection a legal framework (at state and international level), the Catholic Church, the only organisation which, with the status of a sovereign entity, covers the whole world, has not only abandoned the extremely effective mechanism for the protection of her heritage (Sacred Tradition), but has clearly dissociated herself from this mechanism, as reflected in the official documents promulgated by the current Pontiff (e.g., “the liturgical books promulgated by Saint Paul VI and Saint John Paul II, in conformity with the decrees of Vatican Council II, are the unique expression of the *lex orandi* of the Roman Rite”) (Francis 2021) and in his numerous unofficial statements. By failing to provide factual and legal

protection for its intangible heritage, and by failing to embrace in a more open way the cultural diversity manifested by the different ways in which Church members may wish to express their religion (Tsivolas 2014; Lixinski 2020), the Holy See is clearly out of step with the spirit of the times and the spirit of the world. However, the situation is unusual in that typically this backwardness of the Church has been criticised by her enemies or environments outside her community. In the present case, it is lamented by the most faithful members of her community, who are eager to be the bearers and carriers of this intangible heritage and to pass it on in a sustainable manner to the next generation, if only the highest ecclesial authorities would allow them to do so freely.

The 2003 UNESCO Convention definition of intangible heritage also covers religious practices and rites. Catholic religious traditions constitute a significant part of the UNESCO ICH of religious provenance. The TLM also meets the UNESCO criteria for being listed as heritage. The only peculiarity of this cultural and religious practice is that it is united by the common set of rules set out by the Holy See. Therefore, unlike other transnational intangible heritage, such as falconry, there is an undisputed central body responsible for the rite. In the case of the TLM, this central body (The Holy See) remains outside the UNESCO intangible heritage system.

However, the Convention does not allow a transnational listing upon the motion of only one entity. So, just like in the case of falconry, multiple motions for listing would be required to grant the TLM protection. Support from the Holy See would be most welcome, although not (as we have shown) required. Notwithstanding, given that it was UNESCO that inspired the Vatican's accession to the 1972 Convention on Cultural and Natural Heritage, perhaps it would be possible for UNESCO to extend a similar invitation to the Holy See to sign the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, with a view to jointly safeguard the Church's intangible heritage, the TLM.

The right to exercise religious freedom is one of the fundamental human rights. Therefore, protecting the TLM as ICH would fit well into the UNESCO convention's human rights dimension. Furthermore, it is compatible with the mutual respect principle. The Holy See also recognizes and regulates various local variations in the Roman rite (such as the so-called "Zaire rite" approved for Africa), and even in the case of the TLM, it recognizes its cultural importance for the faithful. Although the Holy See's policy towards the TLM appears to be unstable, it does not change the fact that the TLM is still part of the cultural and religious tradition of the Roman Catholic Church.

Listing the TLM as an ICH practice will not and cannot be used to "protect" it against the Holy See's policy changes. Religious freedom allows the faithful to cultivate it even without pontifical consent. There are communities outside the structures of the Church that do so. Additionally, it will not be possible to use secular powers to convince the Pope to be more Catholic or more traditional than he sees fit to be. The policy effect of protecting the TLM as an intangible heritage will be, instead, of a more persuasive nature: it will show the Holy See that traditional Catholics are not just a group of nostalgic people who cannot move with the times or who simply enjoy pomp, ceremony, and Latin. It will be a clear sign that the TLM is a living and important religious practice—so important to them, indeed, that the faithful are able to convince their governments to protect it as a part of the intangible heritage of humankind.

Author Contributions: Conceptualization, P.K., I.P., J.S., P.S. methodology, P.S.; formal analysis, P.K., I.P., J.S., P.S.; writing—original draft preparation, P.K., I.P., J.S., P.S.; writing—review and editing, P.K., J.S.; visualization, I.P. All authors have read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Data Availability Statement: Not applicable.

Conflicts of Interest: The authors declare no conflict of interest.

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