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# CULTURE AND PROPERTY

## An Introduction

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It is an axiom of reflexive scholarship that our theories come back to bite us. Cultural evolutionism is perhaps the most poignant example, given its ineradicable presence in a number of public discourses since Edward B. Tylor and his followers first formulated the approach. Franz Boas's early twentieth-century response to this theory, cultural relativism, has similarly ossified, with numerous actors within or on behalf of indigenous groups instrumentalizing this theory-turned-concept in order to assert rights. Culture and/as property, the topic of this special issue, contains fragments of both of these and more. Ethnological analyses of the cultural distinctiveness of regions and nations and the foregrounding of folklore as an index of local genius in the nineteenth and twentieth centuries helped to foster a patrimonial regime in the twentieth and twenty-first centuries, that converts artifacts and expressions to cultural property and heritage. Ethnological museum practices likewise helped build this regime. Exhibiting conventions metonymically invoked regional, ethnic, and national identities through the display of artifacts. Thus reformed and resignified, artifacts and expressions became instrumental in acting on the social field, organizing populations, orchestrating allegiance, and drawing boundaries.

At once legal and ethical, economic and emotional, scientific and sensory, the patrimonial regime is in rapid expansion both across and within global societies. The articles in this issue explore this regime from various vantage points with theoretical sophistication and richness of detail, analyzing invocations of cultural heritage and cultural property from

around the European continent – Italy, Belgium, Spain, Norway, Denmark, Estonia – and beyond.

Cultural property joins two terms, culture and property, that appear to enjoy each other's company these days as the circulation of practices and objects that ethnologists have defined as cultural is increasingly brought within the purview of markets and state regulative systems. The notion of cultural property is sometimes used synonymously with cultural heritage, but the two concepts nonetheless have distinct connotations and are associated with separate legal regimes and different manners of staking claims to culture. While there are certainly many overlaps between the two, cultural property and cultural heritage nevertheless constitute parallel rather than identical modalities within the patrimonial regime. In turn, they are supplemented by intellectual property in traditional expressions and knowledge, a third modality that has emerged in recent years.

The concepts of cultural property and cultural heritage were both coined and canonized in the wake of the Second World War as part of the new world order that was institutionalized in the organizations of the United Nations. The United Nations Educational, Scientific, and Cultural Organization (Unesco) was established in 1946 and one of its first accomplishments was to adopt, in 1954, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, often called the Hague Convention for short. "Recognizing that cultural property has suffered grave damage during recent armed conflicts", the Hague Convention begins, and "Being convinced that damage to cultural property

belonging to any people whatsoever means damage to the cultural heritage of all mankind”, the states that are party to the Convention agree to take on the obligations the Convention imposes, to protect cultural property from theft and destruction. As is evident from these sentences from the preamble, cultural property and cultural heritage both emerged in international law through the Hague Convention and they are already recognizably distinct: here, cultural property belongs to a people, cultural heritage to mankind.

In the half century following the adoption of the Hague Convention, Unesco developed separate legal instruments and bodies for what it terms the protection of cultural property and the safeguarding of cultural heritage. In his contribution to this volume, Martin Skrydstrup theorizes cultural property in relation to restitution. He mentions the pivotal role of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in 1970, and of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, established in 1978. As the name of the Convention and the title of the Committee make clear, cultural property is a national concept at its inception, used in the context of claims for the return of restitution of historical artifacts from one state to another.

Cultural heritage, on the other hand, is the preferred term in contexts that stress the general safeguarding of artifacts, buildings, sites, and, most recently, cultural practices. Unesco is today best known for its 1972 World Heritage Convention and its associated World Heritage List; in 2003, it added to its legal arsenal the Convention for the Safeguarding of the Intangible Cultural Heritage, armed with a Representative List of the Intangible Cultural Heritage of Humanity. As Chiara Bortolotto notes in this volume, the 2003 Convention expressly avoids the use of the term property altogether so as to distinguish cultural heritage clearly from cultural property. Actors in the social world, however, do not always read convention texts. Rather, they participate

in new opportunities offered by both concepts, and shape new options in politics and markets that have come to be imaginable through instruments such as inscriptions and lists.

If conflicting national claims and the settlement of disputes over transfer are the primary focus of conventions for protecting cultural property, then legal instruments for safeguarding cultural heritage organize international cooperation around the common objective of keeping safe those objects and expressions that are considered of value to humanity as a whole, regardless of where they may be located or who may use them. Thus one might say that cultural property belongs to an exclusive “us”, whereas cultural heritage belongs to an inclusive “us”. In other words, claims staked within both regimes help to constitute collective subjects, but the subject of cultural property is by default exclusive, subject to misappropriation and entitled to restitution; the subject of cultural heritage tends rather to be an inclusive subject, a collective “we” that is entreated to stand together to prevent degradation and loss rather than theft by an other.

Of course, the terms are not unequivocal and we must be careful not to reify them. In practice, the distinction is often blurred. Indeed, the parallel development of the two terms on the international stage illustrates the continued intermeshing of their semantic domains and the practices associated with them. The distinction is rather clear-cut, nevertheless, in the international legal instruments that are at the center of both modalities of the patrimonial regime. The term cultural property gained currency worldwide following the adoption of the Hague Convention in 1954, not the other way around, and likewise the ascendancy of cultural heritage in recent decades only gained momentum in the wake of the adoption of the World Heritage Convention in 1972. In recent years, intangible cultural heritage has exemplified how international conventions, when successful, can act as catalysts; in spite of its etymological roots in bureaucratese, this term concocted in the assembly halls of Unesco in the 1990s has rapidly gained acceptance following the adoption of the Convention dedicated to safeguarding it.

In his article in this volume, Martin Skrydstrup suggests that cultural property is constituted through claims to objects that colonialism, capitalism, and science have transported in their common luggage. These claims propose now to reverse their trajectories and return the objects to their countries of origin or to their rightful owners within settler colonial societies. Cultural property is (re)claimed in the aftermath of war or colonial rule as an assertion of sovereign powers and an affirmation of cultural integrity vis-à-vis foreign invasion and foreign rule, or else in the face of globalized markets and the universalist aspersions of foreign science. In other words, claims to cultural property are a technology of sovereignty.

Claims to cultural heritage on the other hand may be said to be a technology of governmentality. Teaching people to have a heritage, to value it, and keep it safe, requires the intervention of outside experts and training of local ones to reform the practices of local populations and reframe their relationships to habitat and habitus in terms of heritage. Thus projects of safeguarding connect agendas in political centers to those dispersed sites where operations of power connect with the population; its experts, councils, committees, museums, workshops, awareness raising, and grassroots organizations help establish lines of communication between the calculations of authorities and the aspirations of free citizens. Cultural heritage, in other words, is among other things a technology for what Michel Foucault aptly termed “the conduct of conduct”. Kristin Kutma examines this dynamic in her contribution, focusing on how different actors inside and outside a community transform the habitual practice of singing into an empowering asset by reframing it as intangible heritage. Yet in endorsing and executing the rules of regulative systems, individual actors invariably experience the impact of codification. Cultural practices turn into potent representations of ethnicity, indigeneity or nationality, but this move toward a lasting collective claim reduces opportunities for flexibility and innovation.

The World Intellectual Property Organization (WIPO) is the latest and thus far least researched

stage on which collective claims to culture are voiced. The Hague Convention, following on the heels of a major war, sought to enforce a global ethics of respecting ownership of cultural achievements. Subsequently, Unesco has broadened the scope and stressed an ethics of collective responsibility to safeguard selected human cultural achievement through its series of heritage conventions since 1972, designed to raise awareness, pride and investment in the legacy of diverse artifacts and expressions. Actors turning to WIPO may bring with them pride in their cultural achievements, but it is the potential claim of exclusivity of ownership and the attendant rights to market or protect cultural expressions that are at issue in this forum. Culture has been a dynamic resource lodged in the commons since time immemorial. Selected expressions and artifacts have long been carried to market, and the colonial encounter was certainly not the first encounter in human history that contributed to the economic viability of cultural practices. However, a postcolonial politics recognizes both the economic power and the identity-formation potential lodged in cultural resources and seeks to regulate access and use rights for the collectivities who bring forth cultural goods.

WIPO, like Unesco an institution acting under the umbrella of the United Nations, responded to indigenous requests to take up this realm, albeit recognizing from the beginning the difficulty of seeking intellectual property (IP) regulations for a good that by definition is communal and thus does not fit the criteria generally applied in the primary IP domains of copyright and patent law. An inter-governmental committee was formed in WIPO to find internationally viable solutions for handling property rights in the realm of traditional cultural expressions, traditional knowledge and genetic resources. The half-yearly committee meetings began in 2001. Unesco heritage conventions take a great deal of time to arrive at a form which member nations are willing to ratify. WIPO's intergovernmental committee, concerned ultimately with who has which rights in marketing intangible cultural elements, has made little progress in nearly a decade. Indeed, a careful analysis of this committee's pub-

lily available self-documentation as well as participatory observation at its meetings shows difficulties even in finding mutually agreeable definitions of the matter being discussed. Heritage ultimately requires big investments, before a nation or location might see some profit due to tourism and attendant sales. Traditional expressions and traditional knowledge as discussed within WIPO have already proven to be profit-making goods (in the realm of ethnic and indigenous music, knowledge in medicinal plants, or foodways), but the lack of clarity concerning ownership and attendant rights have led to a broadly acknowledged need for international regulations. There are many actors interested in the outcome of such negotiations, be this to ensure the continuity of the status quo, or be this to assert national, ethnic, minority and/or indigenous claims that fly in its face. Delegates and observers voice their positions in an atmosphere saturated with global history, past and present power relations within and between nations and continents as well as economic alliances.

Sitting in on the negotiations, one is thoroughly disabused of any illusion that the meaning of property is constant; gradually, one finds that property dissolves into relations between people, yet simultaneously property obscures such relationships. Social relationships define cultural property and regulations thus ultimately concern relationships and the value structures emerging through interaction. Whether cultural artifacts and expressions are returned to their owners, whether they are carried to market or protected from commoditization, it is less the cultural property than the nature of the relationship between owners, thieves or potential buyers that is at stake. The same may be said for heritage as well: the value of heritage arises from the interests and desires of those who maneuver within the parameters of the patrimonial regime.

The papers assembled in this volume bear testimony to the different kinds of claims that the patrimonial regime allows and how the modalities of heritage and property intersect. While the terms tend to overlap on the ground, they delineate different sorts of recognition for cultural practices. By virtue of the technologies devised to install them, both cultural

property and cultural heritage reconfigure relationships between actors and transform attitudes towards sites and traditions.

The collection opens with Stein Mathisen who unfurls gently and perceptively the changing meaning and proprietary claims surrounding sacrificial sites and sacred stones among the Sámi in the northern Fenno-Scandinavian border zone. Working throughout with narratives told at different times, by different actors, from different vantage points, Mathisen shows the invasive and long lasting power of patrimonial regimes. Sámi sacred stones constitute or represent inherited helping spirits. As clearly localized stones, a non-native could, however, easily consider them tangible, territorial candidates for safeguarding – a view held by some actors within the string of stories that constitute this history. This outside or colonial perspective classified sacred stones as cultic objects, relics of a pagan past and deserving of exhibition as ethnographic objects. Local actors, however, emphasized in their narratives the stones' spiritual, intangible aspect, and the social relationship maintained with the stone's helping spirit, a relationship based on exchange (regular sacrifice in exchange for good fortunes in fishing). Recovering sacred stones turned museum exhibit required a collective effort. The repatriated stone thus is no longer simply owned by those whose ancestors engaged in sacrifice for its spirit; rather, the stone is repatriated as valued indigenous heritage, and as such it has turned into a property of the Sámi. Ownership is thus not only context-bound, but depends on actors' ability to position themselves within such a context and harness sufficient power to legitimate their narrative.

Kristin Kuutma focuses on how actors inside and outside a community transform cultural practices into an empowering asset. She thematizes the passage from "habitus to heritage", that is, the decontextualization of elements within self-understood cultural practice and their recontextualization in the heritage framework. Once resignified, such elements are available as ethnic or national representations – which in turn, depending on the political context, may result in questions of ownership. Her

example is the Seto, a minority affected in the course of history by the policies of different states. The Seto community lives in south-eastern Estonia as well as the Pechory district of the Russian Federation and has successfully participated in the gamble for recognition through a Unesco nomination. As one Seto individual stated, “If you are inscribed on this world register, it means that your culture is mighty in this world”, and this global recognition of the *leelo*-singing tradition could now be used as a means to further claims for Seto autonomy. The essay also traces the changes Kuutma has observed in the handling of repertoire that has occurred with the increase in international interest and recognition. Recourse to printed sources for particular songs has become more common and these are then certified as communal rather than individual repertoire. As skill in (individual) composition has been part of this intangible heritage, the borderline between individual and collective property has shifted toward the collective as a result both of the political interest on the community level and the heritage nomination.

In her essay entitled “Hardscrabble Academies”, Dorothy Noyes takes her departure from the question of how to conceptualize cultural invention. The IP regime, developed with the capacities and interests of the individual at its core, has difficulty in conceiving of a collective innovation entitled to special market rights. Working with network theory, she formulates a concept of vernacular invention based on scarcity, inflexible networks and playfulness generated within the strictures of such a system. “The result is cultural invention both complex and stable, layered with meanings, multifunctional, and sacramentally resonant with everyday life. Though the conditions of these hardscrabble academies tend not to favor individual fulfillment, they work to the benefit of the cultural forms within them.” She perceives analogies to an open source ethos in this dynamic characteristic of how folklore is generated and criticizes regimes that label populations as “folk societies”, reducing their capacities to mere curatorship while incorporating their “goods” into the global economy in the form of “world culture”, “heritage”, “cultural property”, or “controlled appellation”.

Martin Skrydstrup’s contribution clarifies the emergence of global regimes that label facets of the cultural property complex. He carefully delineates what he labels R-terms – restitution, return and repatriation – and compares them on sliding scales of obligation and reciprocity. In mapping their respective genealogies, he arrives at a further R-term: recognition, which appears constitutive within these three modalities of addressing the transfer of cultural artifacts between a current holder and a claimant. Working with a pending case between Italy and Denmark concerning Etruscan artifacts, Skrydstrup re-examines anthropological exchange theories. Bringing these together with insights on the politics of recognition, he suggests that new light might be shed on the institution of cultural property by conceiving of it as a postcolonial potlatching.

Markus Tauschek explores how some citizens of Binche, Belgium, recognized the resource-potential of their carnival. While researching how Binche became one of the first communities to gain Unesco recognition for its intangible heritage in 2003, Tauschek found a far longer history of Binchois efforts to guard access to what they felt to be specifically “theirs” – in particular the masked figure of the Gille – and in the process began to foreground what George Yúdice has termed “the expediency of culture”. Without discrediting the deeply felt ritual experience of these Belgian carnivalists, Tauschek analyses their efforts since World War Two to make use of legal instruments to procure exclusive rights for the Binche variant of the carnival. Registering the carnival association, and trademarking the label “Carnival de Binche” constituted moves to secure local property rights for this yearly ritual practice. The exclusivity gained in an extensive history promoting the carnival internationally then emboldened local and national actors to seek recognition for it as a heritage of humanity. While Tauschek chronicles this story of a successful use of two modalities of the patrimonial regime, he also observes its impact on local ritual. The world heritage status, much as Binche’s earlier branding practices, is conducive to fixing form and content and generates anxiety over whether changes in costumes and pro-

ceedings might jeopardize the place on the heritage list. Other, perfectly similar carnival revelers in the region may be plagued with envy, but they may also go on as creatively as ever to reshape or even change their annual festivities.

Craftsmen in the village of Gravina in Apulia have produced colorful clay whistles for a long time. Chiara Bortolotto observed the increase in size of these hen-shaped figures called Cola Cola and took local artisans' strategies of working with their craft as a point of departure to examine the Unesco Intangible Heritage Convention and to draw out the differences of such local points of view and the "universal" interests encoded in the Convention. Her article illustrates how, ultimately, international doctrines and local practice can point in opposed directions. Thus, although Unesco has evacuated earlier notions of property (associated with the Hague Convention) and monumental heritage paradigms (associated with the World Heritage Convention) from its convention, concept, and programs of intangible heritage, both return with a vengeance in the practices of local actors. Turning craft to monument, Bortolotto demonstrates how (some) people of Gravina endeavor to use the Cola Cola to make themselves visible – literally, by adorning the entrance to their town with a colossal representation of this small clay artifact. She sees here not only the claim to heritage via craft, and thus the successful employment of techniques of governmentality to teach people to have a symbolic, artisanally calibrated heritage. She also observes a learning process on the part of Gravinians parallel to that of Unesco, a slow habituation to ethnological insights that emphasize the link between identity and foregrounded, treasured elements of culture.

Taken together, these essays illustrate how patri-

monial regimes lend themselves to different kinds of claims. They allow divergent sorts of recognition that enable different options and come with different downsides in how they refigure or transform traditions and the relationship of people to practices. The question of culture and/as property deserves further documentation and analysis. Crucial areas of research are, from our perspective, the development of cultural perspectives on the fields of law and economics as they both wield a far greater influence on cultural property formations than what research thus far would seem to acknowledge. In addition, the culture and dynamics of negotiation are crucial foci for ethnographic documentation and analysis. The more than thirty-year time span between Unesco's 1972 World Heritage Convention to its 2003 Intangible Heritage Convention illustrates the slow transformation in outlook of this dominant international organization in the heritage realm. Understanding how such transformations occur, observing the incremental steps occasioned by successive transfers from different areas of knowledge production into this process will further enlighten what role cultural research has played and can play in the harnessing of the hottest resource the planet currently features: culture.

With the present collection we hope to stimulate further interest in the triad of culture, politics and economics. Most of the papers were initially presented in June 2008 at the ninth Congress of the *Société Internationale d'Ethnologie et de Folklore* (SIEF) in Derry, Northern Ireland. We would like to thank the contributors for expanding their papers for publication, Dorothy Noyes for allowing us to include her paper among them, and the reviewers whose critical reading assisted the revision of this special issue.