

NOTES ON NEW BOOKS

Editorial note

International Heritage Law for Communities: Exclusion and Re-Imagination Lucas Lixinski

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Over many years, there has been a call in cultural and heritage studies for more engagement by communities in decision-making about their own heritage, and while action has been taken on many fronts, the international arena has always seemed rather impervious to this call. In this book, Dr. Lucas Lixinski, Associate Professor at the Faculty of Law, UNSW Sydney, takes on the challenge of understanding why communities do not have a greater say in international heritage processes.

To blame state sovereignty, Lixinski argues, only provides part of the answer. Instead, he argues that each of the regimes adopted under UNESCO for the safeguarding of different types of heritage has over time presupposed the expertise in such matters lay in the hands of state agencies rather than with indigenous institutions or interested parties with the result of effectively excluding communities that live in, with, or around heritage sites from effective participation in their preservation.

He suggests that, because of the operation of these five key treaties, their intention to safeguard heritage is ultimately compromised, since without local communities a lot of conservation and protection does not happen. Therefore, regimes designed for protecting heritage for future generations can, in their operation, lead to the disappearance of the very heritage they set out to safeguard.

The five treaties Lixinski engages with are well-known: the 1954 Hague Convention on cultural heritage in times of conflict; the 1970 Convention on movable cultural heritage; the 1972 World Heritage Convention; the 2001 Underwater Cultural Heritage Convention; and the 2003 Intangible Cultural Heritage Convention. Instead of treating each of these treaties as their own silo, however, the book innovates by addressing them as part of a “discursive continuum”. That way, Lixinski suggests, the blind spots of the regimes and their exclusionary effects can be better traced. This treatment therefore adds to the literature and strengthens the book’s claim to re-appraising the field of international heritage law.

The book’s reappraisal of the field is structured over seven substantive chapters, plus an introduction and conclusion. The introduction sets out the basic thesis of the book, as well as charting the development of international heritage law in response to heritage studies and what Lixinski terms the “conservation paradigm”, central for understanding the exclusionary and restrictive effects of the present legal environment resulting from the conglomeration of the five treaties. Each component of the current law is concerned with conserving heritage at all costs, and in giving in to this understandable imperative it can in consequence push aside stakeholders, like communities, whose engagement with heritage can on the surface be seen as problematic but could potentially result in an ongoing engagement with heritage that keeps it alive and safeguarded.

The substantive chapters can roughly be divided into three parts. The first part maps the “what”, the “who”, and the “when” of international heritage law. Chapter 2, on the “what”, undertakes an archaeology of the concept of cultural heritage, and the shift from cultural property in international law, by looking at the drafting history of each UNESCO treaty with respect to the definitions of protected culture in each of them. This chapter suggests that the shift, while welcome for introducing certain values that sit uncomfortably with certain readings of property, had the effect of divorcing communities from their heritage by isolating the legal category that best allows for community control. Further, property need not be based only on individual economic attributes, as many readings of property law and property rights carry with them a range of responsibilities to society at large. Therefore, property should be revisited with respect to culture, but in a reading that accommodates its social function.

Chapter 3, on the “who”, identifies stakeholders in the field. The main stakeholders, Lixinski shows, are states and experts, with “communities” being an elusive concept that makes it harder to give these actors a role, even if it is a necessary effort. Other involved stakeholders are particularly those in the private sphere, like collectors, museums, and corporations, to which the chapter also devotes some energy. Chapter 4 unpacks the “when” by focusing on the temporalities of international heritage law. Much is made of the fact that the 1970 Convention, for instance, does not retroact, and the consequences of that choice for source nations in decolonizing countries. But international heritage law’s relationship with time is

more pervasive, and can have dire consequences. Using the relationship of culture and cultural heritage to genocide, Lixinski shows the roles that cultural heritage can play before, during, and after genocide, even if the law seems primarily concerned with freezing a past in the present, with relatively little regard for its future uses.

The second part of the book examines specific spheres of operation of international heritage law, mapping its exclusionary effects on communities. Chapter 5 focuses on the economics of international heritage law, and the ways in which economic uses of heritage are demonized or seen as a threat to heritage by the law, with the effect of not excluding the market, but moving it elsewhere, either underground (the black or grey market), or to international regulatory fora that are less attuned to culture and its sensitivities and idiosyncrasies (like the World Trade Organization and investment arbitration). The effect, once again, is to untether communities from heritage and the possible benefits they may accrue from their own culture, which may foster engagement with heritage and its safeguarding.

Chapter 6 focuses on a specific facet of development via heritage, sustainable development, and uses that as a springboard to discuss international heritage law's relationship with nature. With respect to natural heritage (protected in the World Heritage Convention), the relationship to nature means the reinforcement of the expert-driven conservation paradigm. In other domains, nature and sustainable development can make traditional ways of life untenable, when applied only with respect to heritage, as it can place a burden on communities that, unless shared by the rest of the polity, can make the continuing existence of these groups very difficult. Chapter 7 finishes off this part of the book by focusing on the implementation and enforcement of international heritage law and attempts to make sense of the power shifts promoted by making cultural heritage part of the mandate of certain bodies and institutions over others, as well as the effects of listing as a key means of safeguarding heritage in international law.

Chapter 8 and the conclusion together form the third part of the book where Lixinski lays out his proposals for the reformation of international heritage law. Chapter 8 does so through recalling the bright and dark sides of international heritage law, using this juxtaposition to underscore the message that, for every major gain, there are unintended consequences and blind spots that we need to be mindful of. The conclusions then weave together the main strands of argument in the book to make suggestions as to what a community-centric international heritage law might look like.

With this book, Lixinski starts an important conversation, which is being taken up and built upon by a new committee of the International Law Association on Participation in Global Heritage Governance (Lixinski is also the Rapporteur of this committee). The book's key claim can be translated into a call for action: there is a pressing gap in our thinking about heritage in international law that has self-defeating effects, and, if we are serious about heritage, communities need to be a more central part of international law and decision-making in this area.

It is to be hoped that the book's intended readership of scholars and practitioners in law and other heritage disciplines will respond favourably to the change in approach proposed by Lixinski. The realization of the limitations that have been for the most part unintentionally placed on heritage and conservation efforts by the existing statutory instruments is the key to recognizing great future potential for improvement. A revised legal framework could create the potential for the generation of a greatly expanded resource base and by so doing facilitate the direct re-engagement of local communities and populace with their own historic and cultural heritage.