



Cultural Base

Social Platform
on Cultural Heritage
and European Identities

Negotiating Heritage Rights

Vision Document
(cultural memory axis)

Jasper Chalcraft / University of Sussex
31st March 2016

jmc40@sussex.ac.uk

info@culturalbase.eu
www.culturalbase.eu



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No. 649454





Abstract

Heritage rights carry with them many of the ambiguities of human rights. A core difficulty is that in practice they have tended to affirm rights based on *ethnos* rather than *demos*, and academics are not clear whether they represent a possibility or a challenge for more cohesive, diverse and reflective European societies. Despite these difficulties, heritage rights are something Europe will need to continually deal with in pragmatic ways, as these constructs of the past already shape how European identities are being made in the present. Exploring how institutions can support human rights of access to and participation in the culture of the *demos* may be crucial here.

I. Introduction

This document outlines the potential and problems of when human rights issues interact with cultural heritage. This is an old issue developing in new directions, and at the root of these is the **potential for conflict when heritage is used to help construct majority and minority identities** (Silverman and Ruggles 2007, 3).

Academics and policy-makers have presented different theoretical solutions for fostering social cohesion and mutual respect: multiculturalist approaches are being questioned at present, cosmopolitanism remains relatively untested by policy-makers, but a human rights approach to cultural heritage might be a practical solution not least because the legal frameworks and international norms already exist (Logan 2012, p. 241). It is no easy solution however, and academic opinion is strongly divided on the potential of human rights approaches to actually help resolve conflicts over culture (see Meskell 2010). As the four challenges below show, when human rights approaches become part of heritage, their social impacts need to be carefully evaluated.

II. Challenges for the Future

Challenge 1: Culture is increasingly 'owned' by groups who use heritage to assert



their identity

The idea that culture is 'owned' has increasingly become established. In part this is due to how indigenous groups and minorities have used culture for self-representation and control over their pasts. Alongside land claims and repatriation requests, heritage has become a tool to assert claims to a unique (and sometimes marketable) identity. At the same time, heritage rights have developed around minority cultural rights, something we find in Article 5 of the Council of Europe's (CoE) 1995 *Framework Convention of the Protection of National Minorities*. In fact, approaches to what has come to be called 'intangible heritage' (*patrimoine immatériel*) are particularly tied to how indigenous and minority cultural rights protections have evolved since the 1948 *Universal Declaration of Human Rights* (Vrdoljak 2005, p.24). But whilst the legal framing of rights to culture often developed from indigenous claims,¹ the right to culture now extends far beyond indigenous groups.

Things have shifted, with the CoE's 2005 *Framework Convention on the Value of Cultural Heritage for Society* (the *Faro Convention*) clearly linking together heritage as both a human right, and a means to promote them. The implications of this are most notable in the Convention's Preamble and in Article 4 (Bonnici 2009), though it is significant that the Convention has been ratified by only 17 member states (notable exceptions being France, Germany, the UK and Spain).

Recognition for marginalised groups is desirable and socially progressive. But, with heritage it carries a downside. Because cultural rights have emerged as part of attempts by minorities to seek recognition, **a human rights approach which identifies 'owners' of culture ('rights holders') risks privileging ideas of heritage based on *ethnos*** – membership of an ethnic group or nation, defined by distinct culture – rather than by *demos*, political democratic citizenship (Högberg 2015, pp.48-9). This way of viewing heritage identifies people as having a heritage because of their origins, rather than as developing their own heritage shared with other citizens of the political space they live in. **Is 'ownership' of cultural heritage a risky strategy that perpetuates minority status as a concrete reality?**

¹ See Vrdoljak 2005 on the development of these international instruments.



However, focusing on 'ownership' draws us away from the intent of some of these legal instruments. In 2011 Farida Shaheed, the previous Special Rapporteur on cultural rights for the Office of the United Nations High Commission for Human Rights (OHCHR), highlighted **the importance of access to cultural heritage as both a cultural right, and as something that would more generally help protect human rights** (Logan 2012, p.231). And there are positive examples of where social cohesion has been improved by the use of human rights to access heritage and to determine its cultural expression.

For example, Norway's little known and long-persecuted historic Romani/Tater minority were almost invisible within Norwegian society, yet Norway's signature of the CoE's *Framework Convention for the Protection of National Minorities* in 1995 (ratified in 1998) catalysed a national process of recognition and reconciliation in which museums played a key role (Brekke 2013, p. 184). The Glomdal Museum became a crucial 'contact zone' where relationships and trust were slowly built. These were based on the principle – derived from the *Framework Convention* and its precedents – of rights to access and participate in one's own culture. Those involved with this process and what eventually resulted in a permanent exhibit **attribute its success to its informal nature and the lack of a clearly defined objective for the museum.**

Convincing funding agencies and politicians to support such open processes is hard work, but cases like this demonstrate the value of using museums as 'contact zones'. Might this kind of exchange naturally help groups (and even states) shift from an *ethnos* focused view of heritage to a shared *demos* comfortable with its own diversity?

Challenge 2: European institutions put human rights-based approaches at the core of how they manage, teach and represent heritages

For the last few decades the needs of most heritage sites, places and practices have been seen as connected to conservation and management, and the sector has (for the most part) ignored issues of 'rights' (Logan 2012). Now, with the mainstreaming of cultural rights into legal frameworks, increased attention is being paid to integrating rights into heritage management and education. What



benefits does increased attention to rights bring to the representation and management of heritage?

Firstly, **rights are not all the same**: a common distinction in human rights discourse is to distinguish between first and second order rights. This distinction was not clear in the 1948 UDHR, but was later delineated in two documents in 1966, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*. In most cases of international law, civil and political rights are considered more important than second order rights like culture.

Nevertheless, the situation has developed, with heritage now seen to clearly overlap with other human rights. UNESCO's 2003 *Declaration Concerning the Intentional Destruction of Cultural Heritage* is explicit about this,

“cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights”.

Whilst these international and European legal instruments have fed into one another, a more basic problem is that **what exactly counts as heritage is unclear and poorly defined**. Critics of ‘heritage’ argue that it has started to become a catch-all term similar to ‘culture’ itself. This wide application and undefined meaning reduces the effectiveness of any policies designed to improve how it works in practice.

For example, a 30,000 year old Aurignacian cave painting in southern France represents a categorically different kind of cultural phenomenon from The Mediterranean Diet, yet both are ostensibly ‘World Heritage’. The Grotte Chauvet is indisputably a work of human genius, and one with contemporary relevance, as in Werner Herzog's 2010 film *Cave of Forgotten Dreams*; in contrast, sceptics saw The Mediterranean Diet as little more than a marketing exercise pursued by the governments of France, Greece, Italy, Spain and Morocco. Could one apply a single human rights approach to the management, understanding and representation of these two very different examples? The problem may be one of expectations, for,



“In an ideal world ‘heritage rights’ would include rights of self determination and expression, rights of access and management, rights of veto, and rights to accrued benefits whether social, economic, spiritual, and so on. ... [Currently] those rights *to* heritage are, more accurately, repositioned as expectations *from* heritage ...” (Meskell 2010, p. 842).

Here the archaeologist Lynn Meskell (2010) is discussing post-apartheid South Africa and the expectations that culture would rebalance years of inequality by creating sustainable livelihoods through cultural tourism. Europe too has a legacy of states misshapen by repressive ideologies, and places similar hope in the transformative power of heritage: **is hope being placed in heritage to stimulate regeneration and social cohesion naïve?**

In contrast to heritage as a panacea, Meskell (2010, p.243) emphasises there is a real risk that promoting universal human rights increases conflict by creating hierarchies of cultures. Heritage can be used to substantiate the claim of one group over another. A well-known example of the dangers of poorly managed archaeology was the case of the Babri Mosque in Ahodya, India. Its destruction in 1992 by Hindu extremists was fuelled by evidence from the Archaeological Survey of India that the mosque sat on top of a Hindu religious building, claimed to be the birthplace of the Hindu God Rama. Within Europe, some of these conflicts have been pragmatically managed (e.g. the Hagia Sophia being presented as a secular space in Istanbul),² but others have failed. Would placing human rights at the centre of how heritage sites and practices are managed focus attention on how to reduce the risk of such clashes and ideological appropriations?

Challenge 3: Ideologically-motivated destruction of cultural heritage increases

“There were never any mosques in Zvornik” said the Mayor of this previously Muslim-majority Bosnian-Serb held town in 1993. There were certainly very few mosques left standing when the war in Bosnia and Herzegovina ended in 1995.

² Though in 2015 debate opened up once more as the Turkish establishment made noises about reconverting it into a functioning mosque, as a riposte to the Pope’s recognition of the Armenian Genocide.



This conflict demonstrated not only the inability of European (and other) institutions to prevent war, it also showed how **heritage became part of the toolkit of ethnic cleansing**. It also marked a clear moment when cultural heritage became bound to human rights. Helen Walasek (2015) details how 95% of mosques in areas under Bosnian Serb control were either destroyed or massively damaged. Significantly, the Dayton Peace Agreement that marked the end of the war in 1995 also considered the role of heritage: Annex 8 (Agreement on Commission to Preserve National Monuments) “guaranteed the right to reconstruct, rehabilitate and protect national monuments”. However, the post-war period has not seen the directives of Annex 8 used to create effective legal instruments (Walasek 2015, pp. 186-98), and in fact it is hard to argue that the region’s cultural heritage has been properly restored, even 20 years later.

The significance of Dayton’s Annex 8 is twofold. First, it makes clear links between how human and minority heritage rights, together with education, should enable reconciliation. Second, in the light of recent ‘cultural atrocities’ in Syria and Iraq (and the 2003 Iraq War), it demonstrates the failure of UNESCO, the EU or anyone else to meaningfully apply the legal instruments at their disposal. **Do heritage rights on paper mean little for human rights on the ground?**

Today’s heritage destruction in the Levant is doubly meaningful for a Europe committed to considering the right to a cultural life as a core part of human rights. The traffic in looted antiquities takes place through Europe, and is often sold in European cities (echoing earlier practices which swelled European museum collections). Significantly, in February 2016 the newly appointed Special Rapporteur on Cultural Rights, Karima Bennouna, issued a new document that explicitly engages with these issues. The document advocates preventive action and education as crucial, and demands not only that states “engage in awareness-raising”, but that they also deal with the markets where these objects are sold. She also pays significant attention to the rights of those who put their lives on the line for heritage, what she calls ‘cultural first responders’; she suggests that they should receive international cooperation, assistance and even asylum (OHCHR 2016, pp.17-18).

Post-conflict societies offer numerous lessons. Considering the Northern Ireland Human Rights Commission and the careful work undertaken around the activities



promoted in Derry/Londonderry as UK Capital of Culture 2013, successful reconciliation seems to depend on all parties being involved in establishing a new symbolic landscape. **Working on culture together as an open process may ultimately be more useful than simply identifying and managing discrete heritages.** This has clear implication for the other two axes of this Social Platform, Inclusion and Creativity. The **human rights of access to and participation in culture, in the culture of the *demos*, may be crucial here.**

Challenge 4: Should Europe promote heritage sites linked to human rights issues?

The scenarios above show that human rights approaches to cultural heritage are sometimes problematic, with impacts on society that are hard to predict. Might museums, sites and networks actually representing human rights issues be a more straightforward way to work with human rights in a heritage context? For example, World Heritage designated sites like Robben Island and Auschwitz-Birkenau give witness to brutish pasts we like to think we have overcome, and their value is rarely contested.

Nevertheless, in the years following the 1948 *Universal Declaration of Human Rights*, a critique has developed of human rights. Some see them as ethnocentric, tied to Western (Enlightenment) ideals, and also to a particular notion of liberal democracy that places rights at the very centre of its legitimacy (Perry 2009). In other words, human rights are another part of the power that Western countries have exerted over the world, and over the pasts of their minorities.

Despite this, there are numerous sites that recognise and promote the heritage of human rights itself. A key player here since 1999 has been The International Coalition of Sites of Conscience,³ which has brought together diverse sites “in order to envision and shape a more just and humane future”. They work with over 200 sites globally, and many within Europe.

³ See the chapter by one of its founders, Liz Ševčenko, 2011. For the list of affiliated institutions in Europe: <http://www.sitesofconscience.org/networks/europe/>



Though sites like Robben Island and Auschwitz-Birkenau are almost universally recognized, some 'dark heritage' can also be hugely contentious. One famous example is Japan's struggle to get Hiroshima's Genbaku Dome inscribed onto UNESCO's World Heritage List. Similarly, as William Logan (2012, p. 236) observes, we should be asking **why are there almost no sites commemorating the end of colonialism, or of other major genocides?** Would technical and financial support for a diverse range of human rights museums – or 'sites of conscience' – be challenged by those European nations unwilling to face up to their pasts? Might such memory institutions actually help challenge some of the problems linked to the idea of 'heritage rights' by demonstrating what real abuses look like?

III. Keys of Change

Evaluate the effectiveness of heritage knowledge:

Some academic disciplines may have more social capital and credibility than others in challenging claims to the past that exclude and essentialise difference. For example, the empirical evidence that archaeology uncovers, and the more community-focused way excavations are now undertaken, make it adapted to engaging diverse stakeholders (Comer *et al.* 2015, pp. 166-7). Of course, sometimes this can backfire (the Babri Mosque), and the challenge is to create and maintain a public understanding of the discipline's objectivity.

Explore the relevance and reach of existing legal instruments:

Focus on the Council of Europe's 2005 *Faro Convention*, and why some major states have yet to sign it. Are their rejections of the Convention ideological, practical or geopolitical? Similarly, consider the advice set out in the 2015 Namur Declaration, in particular the issues and guidelines identified under the Heritage and Society theme.

Educate on how heritage can fuel divisive identities:

Working against *ethnos* based understandings of cultural heritage is extremely difficult. Favouring a human rights-based approach to cultural heritage uses ideas of 'ownership' of culture could develop in dangerous ways. The case of heritage in the aftermath of the Balkan Wars demonstrates that despite good intentions,



Europe still fails to learn lessons, or to meaningfully help other countries in need undergoing similar 'cultural genocide'.

Support recording and repatriation of looted heritage:

Does a human rights approach to heritage imply Europe should actively criminalise and prosecute those who trade in and buy looted cultural heritage? Furthermore, should it also – as recommended by the Special Rapporteur Karima Bennouna – offer assistance, education and even asylum to heritage professionals in conflict zones? Addressing these issues will further reignite repatriation debates, but this is unavoidable and possibly key to enacting meaningful change.

Use and invest in existing networks:

Europe already has a number of 'Sites of Conscience' and networks of museums related to social justice. Museums like Romania's Sighet Memorial Museum to the Victims of Communism and Resistance prefigured the much belated official condemnation of Communism by the Romanian state in 2006.⁴ Even here though, in a rights-focused institution, one dominant narrative excludes others: Sighet has no mention of the town's Jewish history, or deportation of its ghetto. Migration museums are also a logical place to focus attention. Public interest in these sites has to be developed; Holocaust tourism proves that this can be successful, but this requires investment and education, and achieving balanced representations is a continuous process.

Use knowledge of our dark pasts to help deal with the difficult present:

How Europe's own historic minorities (like Romani peoples) have been treated should directly shape understandings of how Europe can positively use human rights approaches to cultural heritage with new migrant communities. Taking inspiration from the Northern Ireland Human Rights Commission, citizens can be helped to build a new symbolic landscape within which people have the space to represent themselves, but also the tools to constantly remake their identities if they so choose.

Help heritage practitioners develop sensitivity to human rights approaches:

⁴ See Cristea and Radu Bucurenci 2007.



Heritage professionals are crucial to helping heritage be a social good rather than a source of conflict. However, practitioners rarely see their work in terms of human rights, instead focusing on site and object conservation and management (Logan 2012). Institutions that train heritage professionals (e.g. ICCROM) should more clearly support awareness about these issues in all accredited courses and in the work of professional bodies.

IV. Conclusions and Key Questions for a Research and Policy Agenda

This document describes how human rights-based approaches to heritage are likely to increase in importance: the question is whether they offer a possibility or a challenge to European society? As a *possibility* could they be – as for Norwegian Romani – a means to develop socially useful and conciliatory representations of heritage? As a *challenge*, **do rights-based claims made over the past risk re-ethnicising identities?** Europe saw this happen two decades ago, watches it happen now, and appears not to want to use its already adequate legislative tools. Do the current migration crisis, trade in blood antiquities, increased racism and scapegoating of minorities represent a resurgence of Europe's long heritage of intolerance and human rights abuses? Instead, **could a focus on heritage rights open discussion and foster a more ethical and empathetic heritage sector, and citizenry?**

Bibliography

Arokiasamy C (2012) Embedding shared heritage: the cultural heritage rights of London's African and Asian diaspora communities. *International Journal of Heritage Studies* 18(3): 339-345

Bonnici UM (2009) The human right to cultural heritage – the Faro Convention's contribution to the recognition and safeguarding of this human right. In, Council of Europe *Heritage and Beyond*. Strasbourg: Council of Europe Publishing



Borelli S and Lenzerini F (2012) *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*. Martinus Nijhoff Publishers.

Brekke AA (2013) A question of trust: addressing historical injustices with Romani people. In, V Golding & W Modest (eds.) *Museums and Communities: curators, collections and collaboration*. London: Bloomsbury

Craig E (2010) The framework convention for the protection of national minorities and the development of a 'generic' approach to the protection of minority rights in Europe, *International Journal on Minority and Group Rights* 17(2): 307-325

Cristea G and Radu-Bucurenci S (2007) 'Raising the Cross. Exorcising Romania's Communist Past in Museums, Memorials and Monuments'. In O Sarkisova and P Apor (eds.) *Past for the Eyes. East European Representations of Communism in Cinema and Museums after 1989*. CEU Press: Budapest.

European Court of Human Rights (2011) *Cultural Rights in the Case-Law of the European Court of Human Rights*. Council of Europe. Online. Location: http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf

Högberg A (2015) The heritage sector in a multicultural society: a discussion from a Swedish perspective. In, PF Biehl, DC Comer, C Prescott and HA Soderland (eds) *Identity and Heritage: contemporary challenges in a globalized world*. pp.47-53. London: Springer

Meskill L (2010) Human rights and heritage ethics. *Anthropological Quarterly* 83(4): 839-859

Forrest C (2012) *International Law and the Protection of Cultural Heritage*. Routledge.

Kapchan D (2014) *Cultural Heritage in Transit: Intangible Rights as Human Rights*. University of Pennsylvania Press.

Lai JC (2014) *Indigenous Cultural Heritage and Intellectual Property Rights: Learning from the New Zealand Experience?* Springer Science & Business Media.

Langfield M, Logan W and Craith MN (2009) *Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice*. Routledge.

Lixinski L (2013) *Intangible Cultural Heritage in International Law*. OUP Oxford.



Logan W (2012) Cultural diversity, cultural heritage and human rights: towards heritage management as human rights-based cultural practice. *International Journal of Heritage Studies* 18(3): 231–244.

Northern Ireland Human Rights Commission (2014) *The Derry/Londonderry Report on Upholding the Human Right to Culture in Post-Conflict Societies*. Belfast: Northern Ireland Human Rights Commission

OHCHR (2016) *Report of the Special Rapporteur in the Field of Cultural Rights*. A/HRC/31/59. United Nations. Online. Location: <http://www.ohchr.org/EN/Issues/CulturalRights/Pages/AnnualReports.aspx>

Perry MJ (2009) *The Political Morality of Liberal Democracy*. Cambridge: Cambridge University Press

Silverman H and Fairchild Ruggles D (eds) (2007) *Cultural Heritage and Human Rights*: Springer New York.

Vrdoljak AF (2005) Minorities, cultural rights and the protection of intangible cultural heritage. In: *ESIL Research Forum on International Law, Conference on Contemporary Issues, Graduate Institute of International Studies, Geneva*, pp. 26–28.

Walasek H *et al.* (2015) *Bosnia and the Destruction of Cultural Heritage*. Farnham: Ashgate

Walasek H (2016) Ethnic cleansing, war crimes and the destruction of cultural heritage: not Syria, but Bosnia twenty years ago. *Open Democracy* 22 February 2016. Online. Location: opendemocracy.net



**Cultural
Base** Social Platform
on Cultural Heritage
and European Identities

Negotiating Heritage Rights

Author

Jasper Chalcraft is currently Research Fellow in the Department of Sociology at Sussex University. His work on heritage began with fieldwork at three UNESCO World Heritage rock art sites in Italy, Libya and Tanzania. He has subsequently worked on issues of culture and identity as a researcher on the EU-funded *Eurofestival* project, where he focused on the role of music festivals in helping create a cultural public sphere. Prior to his involvement with Cultural Base he was exploring heritage's potential in helping to rebuild post-conflict societies, as project manager for the University of Leicester's Cultural Heritage and Peacebuilding project. Encompassing all of the above is an interest in trying to understand what 'universal' heritage means for broader transnational identities *and* local realities. These are issues he explores in a recent book co-edited with Camila del Marmol & Marc Morell "The Making of Heritage: seduction and disenchantment" (Routledge 2015).

* * * *