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HERITAGE VS. PROPERTY

Contrasting regimes and rationalities in the patrimonial field

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A persisting problem for the critical study of cultural property is how to conceptualize differences in the ways in which national and indigenous claims are shaped and legitimated. The coupling of identity and indigeneity with ownership and rights mobilized in claims have been read analytically as identity politics (Handler 1988), nation building (Li 2001), resistance (Miller 1995), postcolonial mimesis (Bhabha 1994), alternative modernities (Coombe 2003), forms of ethno-commodification (Comaroff and Comaroff 2009), and as a “provincializing move that destabilizes our certainty about what is local and what is global” (Geismar 2013). It seems to us that such readings hinge on how we analytically configure “case studies” vis-à-vis larger processes of state formation; that is, how we relate biographies of contested artifacts and the lives of intellectual properties to the distinct regimes of governmentality, which perform the work of (non-)recognition of such claims.

In this chapter, we cut a different pathway through these conundrums. We present a sustained argument, which reframes the debate about how to read claims. Our argument is based on contrasts between property and heritage and between distinct technologies of governmentality, which we argue are associated with these terms. Thus, specific technologies of governmentality produce distinct set of claims. The stepping stones in our argument are the following: firstly we set out the nominal distinctions between property and heritage, then we show how *property* is associated with technologies of *sovereignty* and *heritage* with technologies of *reformation*, and finally we discuss how these technologies of governmentality can co-exist in single case trajectories.

Nominalism

In an article published in the first volume of the *International Journal of Cultural Property* in 1992, Lyndel V. Prott and Patrick J. O’Keefe contrast the terms cultural property and cultural heritage. Whereas cultural property denotes ownership and exclusivity, they contend, cultural heritage denotes a relationship of responsibility, custodianship, and sharing. The thrust of their argument is that the time had come for the latter concept to supersede the former (Prott and O’Keefe 1992).

Eight years later, Janet Blake, legal scholar and long-term UNESCO consultant, suggests that although the “relationship between ‘cultural property’ and ‘cultural heritage’ is unclear,

appearing interchangeable in some cases, ... 'cultural heritage' has now become the term of art in international law since it is capable of encompassing [a] much broader range of possible elements" (Blake 2000: 67). In a book on *International Cultural Heritage Law* from 2015, Blake reaffirms that "cultural property" is "far too limited a term" and therefore now "much less widely used and the alternative cultural heritage is generally favoured" (Blake 2015: 8).

On the other hand, Manlio Frigo, another legal scholar, observes that "the concepts of cultural heritage and cultural property practically never appear simultaneously as complementary notions in the same legal text" (Frigo 2004: 376), which may be taken to indicate that in fact they have distinct functions and relate to legal regimes that are at least partly separate. Frigo suggests that this relationship is further complicated by different national terminologies (2004: 370), a claim which legal anthropologist Rosemary Coombe dismisses, along with any attempts to draw a legal distinction between the two concepts:

Such interpretive difficulties now seem provincial. In any case, these promise only to proliferate as these categories expand, their distinction implodes, and their subject matter and fields of reference proliferate.

(Coombe 2009: 394)

As we understand them, these concepts operate within a global patrimonial field with a proliferating variety of actors: states, intergovernmental organizations, transnational NGOs, indigenous peoples, local communities, museums, archives, institutions, universities, scholars, and experts. The patrimonial field is governed by national and international regimes, some of which gravitate towards a rights-based approach to protection and dispute management under the sign of cultural property, while others gravitate towards an ethical approach to conservation and safeguarding under the sign of cultural heritage. Rights-based regimes of cultural property come with their own set of national laws and international conventions, committees, discourses, and forms of expertise, and while there are certainly overlaps, these can be distinguished from corresponding institutions of the ethical regimes of cultural heritage operating in the same global patrimonial field. We will argue in the following pages that the two correspond to distinct governmental rationalities and modes of subject formation: that cultural property is a technology of sovereignty and cultural heritage a technology of reformation.

Cultural property as a technology of sovereignty

When she and Patrick O'Keefe set out the contrast between cultural property and cultural heritage, Lyndel V. Prott had recently been appointed Chief of the International Standards Section in the Division of Cultural Heritage of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), where she was in charge of conventions for cultural property and cultural heritage. Since its founding in 1946, UNESCO has developed a series of such legal instruments, beginning in 1954 with the Convention for the Protection of Cultural Property in the Event of Armed Conflict, often referred to as 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*" (our emphasis), the states parties to the convention agree to take on various obligations to protect cultural property from theft and destruction. As is evident from the preamble, cultural property and cultural heritage both emerged in international law through the Hague Convention, already recognizably distinct: in the sentences quoted above, cultural property belongs to a people,

whereas cultural heritage is attributed to mankind. Cultural heritage and cultural property were thus coined as international legal concepts within a decade of the end of the Second World War and as part of a new world order represented by the United Nations.

Since its inception, UNESCO has been the engine driving the development of regimes of cultural property and cultural heritage. Up until the 1970s, its efforts focused on the legal protection of cultural property. Following up on the Hague Convention, UNESCO's member states adopted in 1970 the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (based on UNESCO's Recommendation of the same name from 1964) and founded in 1978 an Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. As the titles of the convention and the committee make clear, cultural property is at its inception a national concept, used in the context of claims for the return or restitution of historical artifacts from one state to another. UNESCO's instruments, binding for states that ratify them, lend to such claims the force of international law. At the national level, some regimes of cultural property also provide legal grounds for peoples, tribes, or communities within national borders to stake claims on state institutions for the repatriation of artifacts from their collections to their original holders. In the patrimonial field, the very term "repatriation" was first inscribed into law by the passage of the National Museum of the American Indian Act (NMAIA) in 1989, followed by the Native American Graves Protection and Repatriation Act (NAGPRA) one year later. The term repatriation – literally meaning back to the father's land – has since then diffused into a general designation for acts of return, albeit its legal use is restricted to the national domains of settler-colonies. Historically, NMAIA and NAGPRA may represent the apex of the idea of cultural property, as the exclusive property of lineal descendants or tribes (*patria*) through a technology, which produces and asserts the sovereignty of its claimants.

The claims that regimes of cultural property recognize and validate are claims to objects which 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. Claims to cultural property are usually staked in the aftermath of violence: of war or colonial rule, or both. The claims assert sovereign powers and they affirm cultural integrity in the face of foreign invasion and foreign rule, globalized markets and foreign science. Cultural property claims thus help form sovereign subjects, whether independent peoples or semi-autonomous social collectives such as communities and tribes. In other words, claims to cultural property are a technology of sovereignty.

Sovereignty is typically understood as a property of nation-states, often taken to mean that a state is sovereign when it governs its own *dominium* independently; what Hannah Arendt called "uncompromising self-sufficiency and mastership" (Arendt 1958: 234). The various congruencies between notions of liberal individualism and Arendt's modernist notion of sovereign state agency became – not surprisingly – the target for postmodern critiques of various bents. Perhaps most famously, Giorgio Agamben argued that sovereignty is in fact indistinguishable from a permanent state of exception (Agamben 1998), drawing on Carl Schmitt's idea of sovereignty as the exception to rules (Schmitt 2005 [1922]). Less well known is the intervention by Jacques Derrida, who argued that "sovereignty" designates "unconditional expenditure" (Derrida 1978), drawing on George Bataille; that is, sovereign action is a form of agency undertaken without any expectations of reciprocity/compensation. Michael Brown's critique of the "talismatic properties" of the principle of sovereignty (2003: 224), which he finds antithetical to "complex cultural flows" (*ibid.*: 225) and which according to

him “has led proponents of Total Heritage Protection to focus on customary law as the solution for conflicts over intellectual property” (op.cit.), clearly leans on Arendt’s modernist notion of sovereignty.

Our concept of “technologies of sovereignty” builds in part on Haidy Geismar’s argument that “property is an implementation of sovereignty everywhere, whether or not it is acknowledged as such” (2013: 18). However, where Geismar aims to capture indigenous aspirations to sovereignty – where property is the necessary medium and recognition sets the terms for acknowledgement – our analytical prism anchors sovereignty in *technologies of governmentality*. By this we mean sovereignty *through* the technology of recognition, infused by expertise. Contrary to Brown’s modernistic concept of sovereignty, technologies of sovereignty remain open to ethnographic surprises and historical transformations.

A small but telling example of how claims to cultural property are enlisted in the formation of sovereign subjects may be gleaned from a statement by Alex Salmond, Scotland’s First Minister in 2007, in which he deplores the fact, unacceptable in his view, that the Lewis Chessmen (a medieval collection of 93 chess pieces) are still “scattered around.” “And you can be assured,” Salmond declares, “that I will continue campaigning for a united set of Lewis Chessmen in an independent Scotland” (qtd. in Fincham 2010: 679). Salmond’s demand for the return of cultural property is inseparable from his claim to national sovereignty; the former is a technology to produce the latter.

The case of the Parthenon sculptures also lends itself as an instructive touchstone for our argument. The case has generated its own comprehensive scholarship, which has predominantly focused on the historical trajectories of the monument (Clair 1998), the justification or not for Lord Elgin’s removal of the sculptures in the opening decade of the nineteenth century, and contemporary arguments pro and con return (Hitchens 1987; Greenfield 2013 [1989]; Webb 2002). Much less has been written about the shifting history of the claim, since Greece was recognized as a sovereign nation-state in 1830 and restoration work began on the Acropolis. The first formal claim to the sculptures was filed through official diplomatic protocols as late as 1983. It referred to a UNESCO recommendation in favor of return adopted in Mexico City in 1982 and was justified by recourse to three ideas: 1) the aesthetic argument that the sculptures are integral to the monument; 2) the political argument that the sculptures belong to the cultural context in which they were created; and 3) the legal property argument that the sculptures had been removed during occupation. A year later, the British government responded only to the last part of the claim, which they formally declined on the grounds that the sculptures were “secured” by Lord Elgin “as the result of a transaction conducted with the recognized legitimate authority at the time” (Greenfield 2013 [1989]: 87). Subsequently, Greece filed a formal claim to UNESCO’s Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origins or its Restitution in Case of Illicit Appropriation.

Throughout the 1990s, UNESCO (which carries a picture of the Parthenon as its emblem) has adopted a series of recommendations to encourage bilateral negotiations and ultimately return or restitution of the sculptures, which have led nowhere. In 2002, the directorship of the British Museum changed and so did the response to the Greek claim. The museum along with eighteen sister institutions now reinvented itself as a “universal museum” housing encyclopedic collections embodying all the arts of all the civilizations, which could only be justly appreciated under one single roof. In the meantime, the Greek claim has caught up, so to speak, with the idea of universalism. Thus, in 1983 the British Museum made the case for retention on the basis of legalities recognized by the (Ottoman) authorities at the time of acquisition. The contemporary Greek claim, as well as the British Museum’s current case for

retention, is couched in very different terms. In March 2008, the Hellenic Ministry of Culture and UNESCO convened the Athens International Conference on the Return of Cultural Objects to their Countries of Origin, in conjunction with a pre-opening of the New Acropolis Museum, its partly empty galleries making clearly visible what marbles are considered to be “in exile.” At this world event, Michalis Liapis, Greece’s Minister of Culture, reiterated the aesthetic claim from 1983 for return as a “re-unification of the Parthenon sculptures.” According to Liapis, however, that claim is not made merely as a property claim on behalf of the Greek nation, but “in the name of the world’s cultural heritage; a universal demand and a global debt to Greece.” The Minister closed his inauguration speech contending that the best supporters for the claim would be the thousands of visitors, who would see the New Acropolis Museum and “will be thinking that some pieces of these artefacts are 4,000 miles away from their destination point” (conference recording on file with the authors). Partly through extravagant expenditure on this event in the shadow and light of the Acropolis, a nation-state asserted its sovereign right. Interestingly, from our point of view, the rhetorical tactics of the claim have shifted from Minister Mercuri’s claim for the restitution of cultural property in the course of the 1980s to Minister Liapis’ claim for the return of the “world’s cultural heritage” as a “global debt” to Greece. After all, the very premise of European Enlightenment thinking upon which the British Museum’s appeal to universalism and encyclopedic collections rests is Hellenic. Nevertheless, although the Greek government of late deploys the term cultural heritage, we maintain that at its core the case still turns on the congruence between the artifacts and the territoriality from which they were removed and involves centrally the production of sovereignty of the claimant. In other words, claims made under the sign of cultural property produce and assert territoriality and sovereignty, even when they are cast in the language of world heritage.

The event in Athens closed with a moving case, which projected the same technology of sovereignty couched in the same evocative language of original wholes, scattered parts and contemporary need for re-unification as in the aforementioned Scottish and Greek cases. To build an international precedent for returns, Andrea Sanborn from the Kwakwaka’wakw First Nation was called to present a temporary loan of a transformation mask, which was formally held by the British Museum:

Our story begins with the creation of our ancestors in our territories. . . . We have come to understand that the very soul of our culture remains fragmented until all the pieces can be reunited, repatriated and returned home. . . . Give us back our cultural ceremonial masks and regalia. . . . Only then can the spirits of our ancestors be at rest, as we will have *u’mista* [*historically, Kwakwaka’wakw people who were held captive by neighboring tribes and then returned to their homes were said to have u’mista*] and we can continue rebuilding our culture and our lives and become whole again.

(Sanborn 2008, Athens)

What we have here is the same assertion of territoriality, sovereignty, and origins as in the Parthenon case; spiritual wholeness has merely replaced aesthetic integrity. Common cause makes the Greek nation and the Kwakwaka’wakw First Nation contemporary subaltern allies set against the same institution. This alliance between nation-states and First Nations illustrates the affinities between claim-making as a technology of sovereignty at different scales, which enables new types of alliances across the world. Extending the analogy to other settler-colonies, NAGPRA (Native American Graves Protection and Repatriation Act 1990) could be viewed as a machine that produces sovereignty at the sub-national level. That is apparent in Hawai’i

where repatriation claims are often coupled with notions of “Native Soil,” the “Hawaiian cultural renaissance” and the various movements for sovereignty, both royalist and otherwise. The same goes without saying for Native Americans on the mainland or “Lower 48 States”; claims staked through NAGPRA assert and help produce tribal sovereignty in the various configurations (“homelands,” “shared sovereignty,” and “shared tribal management of repatriation/burial sites”), which Thomas Biolsi (2004) has outlined vis-à-vis the federal government.

Cultural heritage as a technology of reformation

Starting in the 1970s, UNESCO began developing a separate regime, with its own legal instruments and bodies, for what it calls the safeguarding of cultural heritage (as opposed to the protection of cultural property). Cultural heritage is the preferred term in contexts that stress the general safeguarding (as opposed to legal protection) of artifacts, buildings, sites, and, most recently, cultural practices. UNESCO is today best known in many parts of the world for its Convention Concerning the Protection of the World Cultural and Natural Heritage (a.k.a the World Heritage Convention) from 1972, the associated World Heritage Committee, and especially the World Heritage List. Rather than acknowledging the rights of states, the World Heritage Convention recognizes their responsibilities to current and future generations and to humanity as a whole. In Article 5, states parties are urged “to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community,” while the following article makes plain their responsibility:

Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage . . . is situated . . . the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

With respect to cultural heritage, UNESCO’s regime is thus not so much rights-based as it is ethical: World Heritage is designed to mobilize international opinion and to create state practice through moral and rhetorical pressure, dangling the prospect of a place on the List before states as an incentive, while removal from the List, even the threat of removal, is an effective form of shaming.

If the primary concerns of UNESCO conventions for protecting cultural property are conflicting national claims and the settlement of international disputes over transfer, then conversely, conventions for safeguarding cultural heritage organize international cooperation around the common goal of keeping safe and bequeathing to posterity those monuments and expressions that are considered of value to humanity as a whole, regardless of where they are located or who may use them. One way to put this might be to say that under UNESCO’s respective regimes, cultural property belongs to an exclusive “us” but cultural heritage belongs to an inclusive “us.” In other words, while claims staked within both regimes help to constitute collective subjects, the subject of cultural property is exclusive, subject to misappropriation and entitled to restitution; the subject of cultural heritage tends rather to be inclusive, a collective “we” that conventions entreat to take responsibility and stand together to prevent degradation and loss, rather than theft by an other. Compared with cultural property, we might say that cultural heritage is subtler in both its perpetuation and its disruptions of state hegemony.

This distinction is clearly recognized by Prott and O’Keefe, who contrast the ownership and exclusivity of cultural property with the responsabilization, custodianship, and sharing

characteristic of cultural heritage (1992). One is left wondering, therefore, after teasing out the different uses of the two concepts and their associated regimes, why the authors argue for dropping the one in favor of the other.

Of course, the terms are not unequivocal and we should be careful not to reify them. Indeed, their distinction is often blurred, as we saw above in the shifting language in which Greek claims to the Parthenon sculptures have been couched. As anthropologist Haidy Geismar has recently noted, cultural heritage, “like its older sister, cultural property, is a tangle of ideology and expectation; an analytic term and a tool of governance; . . . [and] a foundational category for a political economy, the ‘heritage industry’” (Geismar 2015: 72). Social actors across the globe participate in new opportunities offered by both concepts, and help to shape new options in markets and politics that have come to be imaginable through instruments such as inscriptions and lists. But even so, in the international regimes the distinction is fairly clear-cut, and one should not underestimate the importance of these regimes in diffusing a conceptual matrix and shaping local practices. The term cultural property gained universal currency following the adoption of the Hague Convention in 1954, not the other way around, and likewise the proliferation of cultural heritage in recent decades only gained momentum as a result of the adoption of the World Heritage Convention in 1972.

In recent years, intangible cultural heritage exemplifies how international conventions, when successful, can act as catalysts; this term, concocted in the assembly halls of UNESCO in the 1990s, has rapidly gained acceptance following the adoption in 2003 of the convention dedicated to safeguarding it. Its widespread use is in some ways confounding, considering its negative semantics and bureaucratic etymology, not to mention that it is enough of a mouthful that it has in many contexts been replaced with the acronym ICH. And yet in tens of thousands of scattered places all over the world, people now refer to their traditional practices as intangible cultural heritage, or as ICH, and in so doing they make claims that are recognizable with reference to an international regime and validated by a proliferating production of expert knowledge on intangible heritage.

Based to a large extent on the World Heritage Convention, the Convention for the Safeguarding of the Intangible Cultural Heritage from 2003 extends the reach of the international heritage regime to a new domain of cultural practices and expressions, and comes complete with an Intangible Heritage Committee and a Representative List of the Intangible Cultural Heritage of Humanity, to match the World Heritage List. With thirty years of world heritage under their belt, UNESCO’s member states proved ready to take a much larger step away from state sovereignty over heritage and toward the responsabilization of populations, conceived of in the Intangible Heritage Convention as “communities, groups, and in some cases individuals” and entrusted with identifying and managing their intangible heritage in cooperation with state institutions and experts.

Deferring even the definition of its subject matter to the populations that it addresses (“The ‘intangible cultural heritage’ means the practices, representations, expressions, knowledge, skills . . . that communities, groups and, in some cases, individuals recognize as part of their cultural heritage”; Art. 2), the Intangible Heritage Convention testifies to an important development in the regime of heritage. From the reference to the “function” of heritage in “the life of the community” (Art. 5) in the 1972 convention, “participation” has come to play an ever-larger role in the discourse and practice of heritage from the 1970s to the present time. The Intangible Heritage Convention of 2003 prevails on states to ensure “the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management”

(Art. 15). Two years later, with the Council of Europe's Faro Convention on the Value of Cultural Heritage for Society, states undertook to:

a) encourage everyone to participate in: the process of identification, study, interpretation, protection, conservation and presentation of the cultural heritage; public reflection and debate on the opportunities and challenges which the cultural heritage represents; b) take into consideration the value attached by each heritage community to the cultural heritage with which it identifies; c) recognise the role of voluntary organisations both as partners in activities and as constructive critics of cultural heritage policies.

(Art. 12)

And in 2011, UNESCO's General Conference adopted the Recommendation on the Historic Urban Landscape, calling on all parties to develop "civic engagement tools" to "involve a diverse cross-section of stakeholders, and empower them to identify key values in their urban areas, develop visions that reflect their diversity, set goals, and agree on actions to safeguard their heritage" (Art. 24).

Starting in the 1970s, a turn to "participation" may be observed in widely disparate fields of policy and practice, from urban planning to international development and from environmental protection to humanitarian aid, at international, national, as well as municipal levels. As anthropologist Ellen Hertz notes, the "participatory approach is at the center of a semantic field filled with familiar if vague notions: 'engagement,' 'ownership' and 'empowerment,' are the desired or imagined results of administrative and political processes that range from 'capacity building' and 'consultation' to the use of 'focus groups,' 'lay experts' and 'hybrid forums' in the formulation and application of policy" (Hertz 2015: 25). While deferring to an "unimpeachable political subject – 'the community'" (ibid.) – the turn to participation has effectively compelled states and intergovernmental organizations to identify, label, and organize these new subjects as political partners. In this way, heritage regimes reconfigure cultural agency and assist in a "proliferation of the social" (Callon, Barry, and Slater 2002), populating the patrimonial and the political field with heritage communities (and "groups and, in some cases, individuals") charged with identifying and safeguarding their own heritage. In objectifying their practices and expressions as "intangible heritage," for example, through the intervention of experts and administrators deployed from metropolitan centers, population groups are invited to subjectify themselves as communities that identify with their cultural heritage and take responsibility for keeping practices and expressions "safe" from change. Government can then act on the social field through communities and by means of, among other things, heritage policies.

This parallels recent developments in environmental conservation, where there is widespread preoccupation with community, and programs proliferate that devolve to communities the responsibility for putting environmental policy into practice. Political scientist Arun Agrawal coined the term "environmentality" to describe this governmental rationality in which communities are interpellated as "environmental subjects" (Agrawal 2005): populations learn to conceive of their habitat as "the environment" and to appreciate the need for its conservation, and – through an infusion of expertise and in cooperation with state, non-governmental, and intergovernmental organizations – they are charged with administering themselves and their environmental practices (e.g. Agrawal and Gibson 2001; Li 2001; McDermott 2001).

In much the same way, cultural heritage may be described as a technology of reformation. Teaching people to have a heritage, to value it, and keep it safe is a project of *Bildung* or

self-cultivation, fostering new forms of subjectivity and cultivating the capacity for action. It is a transformative process, calibrating people's relationship with their practices and their built environment and, as a consequence, their relationships with one another (mediated through those practices and that environment). Thus, for example, UNESCO convened an "Expert Meeting on Community Involvement in Safeguarding Intangible Cultural Heritage" in 2006, which urged that: "the community should be provided with the means to elaborate safeguarding measures aiming at maintaining or improving their capacity of transmitting their ICH, rather than having plans elaborated by external experts in the first place" (UNESCO 2006). Nevertheless, the Expert Meeting recognized the necessity of involving experts from outside the community in the task and the role played by state institutions. Cultural heritage, in this sense, requires both the intervention of outside experts and the training of local experts. Their task is always in part pedagogic, their goal to reform the practices of local populations and reframe their relationships to their (tangible) habitat and (intangible) habitus in terms of heritage. By means of such interventions, populations learn to conceive of buildings and practices as their heritage and to appreciate the need for safeguarding them from change or destruction. Through an infusion of expertise and in cooperation with state, non-governmental, and intergovernmental organizations, they are consequently charged with administering themselves and their cultural heritage.

In such ways, projects of safeguarding connect agendas in political centers to those dispersed sites where operations of power connect with the population. The experts, councils, committees, museums, workshops, awareness raising, and grassroots organizations that the heritage regime summons into being or summons on site all help to establish lines of communication between the calculations of authorities and the aspirations of free citizens, to mold the ambitions and shape the desires of the latter to safeguard their heritage of their own free accord and initiative. Appealing to their civic duty and moral responsibility for maintaining a particular alignment between the past and the present, in which strong emotions and identities are vested, projects for safeguarding cultural heritage thus are designed to modify behavior, sensitivities, and ideas about preservation and history. As a technology of reformation, then, safeguarding is part of the arts of governing by means of what Michel Foucault called the "conduct of conduct."

From Kutiyattam theater in Kerala, and Vimbuza healing in Malawi, to the Jemaa el-Fna marketplace in Marrakesh, the recognition of traditional practices as intangible heritage across the globe and their inscription on the Representative List of the Intangible Cultural Heritage has brought into being new collective subjects and institutions to represent them, involving (some) local actors in new capacities, making them responsible for safeguarding the practices and making sure they continue, and in many cases vesting them with power to make decisions that was previously distributed among other social actors or else was simply unthinkable before the practices came under the sign of heritage. In Malawi, for example, the Ministry of Culture has "convened an official body, the National Intangible Cultural Heritage Committee that comprises cultural workers, academics, and ethnic association members among others" (Gilman 2015: 214). Moreover, the inscription of Vimbuza on the Representative List occasioned the creation of a Vimbuza Healers and Dancers Association of Malawi, which immediately established a code of conduct for its members with the proclaimed purpose of countering "the negative image of Vimbuza caused by inappropriate practice" (ibid.: 206).

In 2008, when presenting the first Representative List of the Intangible Cultural Heritage of Humanity, Koichiro Matsuura, UNESCO's Director-General, declared his confidence that "with time, this List – designed to give more visibility to our living heritage – will contribute to raising awareness of its importance and instill a sense of pride and belonging to

custodian communities” (UNESCO 2008). The prestige of international recognition that comes with listing is thus designed to elicit the self-recognition of communities as custodians of their own heritage. It is supposed to induce in people a desire to have a heritage and to take care of it; to curate their own practices, or those of other segments of the local population.

Kutiyattam Sanskrit theater was among the first cultural practices to be inscribed on UNESCO’s Representative List in 2008, but had previously been recognized in UNESCO’s Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity in 1999, a pilot program that helped pave the way for the Intangible Heritage Convention. Making good on India’s commitment to safeguard Kutiyattam, a national center (Kutiyattam Kendra) was founded in Kerala’s capital in 2007 to administer an action plan for safeguarding the theatrical tradition (Lowthorp 2015). Moreover, its recognition and listing has led to the founding of four new teaching institutions, the coordination of a Kutiyattam network that holds regular meetings, the organization of public awareness raising workshops and seminars, and public promotion activities including an annual performance festival, documentaries, and school outreach programs (ibid.: 164). According to folklorist Leah Lowthorp, the greatest impact of the recognition is felt in the way Kutiyattam artists relate to their art. In an interview with Lowthorp, one of these artists seems to confirm Matsuura’s prediction: “The greatest effect was that working artists had an awakening, they found a belief in themselves. That was the greatest. Now we’re really proud to be in Kutiyattam. It has gained value” (ibid.: 167). At the same time, the recognition of Kutiyattam as intangible heritage prompts increased administration, surveillance, and accountability, shaping the conduct of Kutiyattam performers as well as their social organization. In this it provides a textbook example of cultural heritage as a technology of reformation, reforming both the subjects and objects of intangible heritage, the practices themselves as well as the practitioners and their communities. Another artist whom Lowthorp spoke with reflects: “Now we have a condition of normal working people. It is good for an office but bad for art” (ibid.: 170).

The president of UNESCO’s first jury for the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity was Juan Goytisolo, the Spanish novelist and Nobel laureate. Goytisolo spearheaded an effort in the second half of the 1990s to protect Jemaa el-Fna, a busy marketplace in Marrakesh that is the site of myriad performances – storytelling, snake-charming, fortune-telling, preaching, acrobatics, and musical performances, to name a few (Kapchan 2014). At the time, the city and its contractors were planning to get rid of the marketplace and kick out the peddlers and performers to make way for a shopping mall and a parking lot. Goytisolo and likeminded intellectuals in Marrakesh enlisted the aid of UNESCO and its “critical gaze” (Foster 2015: 229) to save Jemaa el-Fna. In Goytisolo’s analysis, the key to saving the square was to change the relationship of the local population (in particular its wealthier, more powerful elements) to Jemaa el-Fna:

The bourgeois “society” of Marrakesh looks at the square with disdain and has on various occasions attempted to do away with it because they think it is a symbol of backwardness and decay. . . . Well, what we are attempting – and UNESCO’s decision will help us in this – is to change the way that many of Marrakesh’s own inhabitants look at the square. So that they feel a justified sense of pride.

(Espada; our translation)

By means of new social institutions and using genres of display characteristic of intangible heritage (lists, festivals, brochures, competitions, exhibitions, school programs, etc.), Jemaa el-Fna has been reformed from a rogue element to a public theater of power and Marrakesh-ness.

Existing practices and expressions have become objects of safeguarding. As part of UNESCO's proclamation of Jemaa el-Fna, Moroccan and international experts drew up a ten-year safeguarding plan and local authorities created a special commission to implement this plan, which included an urban planning study, a research facility, the identification and inventorying of traditional knowledge holders and their skills, weekly storytelling sessions, prize competitions, and festivals. To ethnomusicologist Tom Beardslee, it "is no surprise that the first of the larger, more formalized multi-genre [associations] . . . the *Association des Maitres du ḥalqa*, was formed in 2002 following the first of these festivals, in part as a way of negotiating collectively over the pay for the festival and anticipated benefits coming from the UNESCO designation" (Beardslee 2014: 276). In addition, several smaller associations have formed on the square, "dedicated to a particular genre or ethnicity – one Berber association, two Aissawa, two with assorted musicians and other performers, four Gnawa, and one of storytellers. Most ḥlayqiya [i.e. performing artists] claimed to have membership in an association" (ibid.: 266–7; cf. Beardslee 2016). Thus, as Beardslee recognizes, intangible heritage has proved to be an effective technology of reformation in Jemaa el-Fna, "fostering the growing sense the ḥlayqiya have of themselves as being a community – a body that is more readily able to act upon and be acted upon by government than would be a population of ungrouped individuals" (Beardslee 2014: 224).

Different patrimonialities

This is our principal argument: that while their boundaries are often blurred and there are certainly overlaps and overflows between cultural property and cultural heritage, the two represent nonetheless fundamentally different approaches to subject formation, produce distinct bodies of expertise, and belong to different rationalities of government in the patrimonial field, or different "patrimonialities."

Protecting cultural property is a technology of sovereignty. As such, it forms part of the order of the modern liberal state. Regardless even of whether or not they are recognized within legal regimes of cultural property, claims to cultural property help to form sovereign subjects with their own exclusive cultures and autonomous histories: nations, peoples, tribes, etc. Conversely, safeguarding cultural heritage is a technology of reformation, cultivating responsible subjects and entangling them in networks of expertise and management. The historical ascendancy of the cultural heritage regime coincides with a shift in political economy, from the liberal capitalism of the modern state to neoliberalism with its projects of responsabilization, its delegation of tasks of governance from the state, and its cultivation of "self-governing capabilities" (Rose 1996). It is therefore a small step from describing heritage as a technology of reformation to linking the regime of cultural heritage to neoliberal politics and forms of subjectivity (Coombe and Weiss 2015).

Hence, when Prott and O'Keefe suggested in 1992 that it was time for cultural heritage to supersede cultural property as a term of art, this represents in our view a political position that reaches well beyond semantics. One might add that this position points in the direction that UNESCO has been heading since the 1970s, with a focus on developing regimes of cultural heritage with an ever more pronounced emphasis on participation, bottom-up approaches, and community involvement. Indeed, we would suggest that this is part of a larger turn to governmentality in the politics of the past decades.

This larger turn, as well as its inherent contrasts, could be exemplified at the case level with reference to the historical trajectories of cultural property/cultural heritage in the North Atlantic. The transfer of medieval manuscripts from Denmark to Iceland (1971–1997)

featured prominently in Greenfield's magisterial work *The Return of Cultural Treasures* (2013 [1989]) as an "outstanding example of a major state-to-state return of cultural property," which Icelandic editorial opinion hailed as "a unique step in Nordic and world history – an example and incentive for the rest of the world on how to resolve sensitive disputes" (Greenfield 2013 [1989]: 46). This case spans several decades, from the first official requests in the 1930s to a political agreement in 1961 about a partition of the collection, followed by two court cases in the Danish Supreme Court about constitutional breach and compensation to the holding institution. Then, in 1971, the first two manuscripts were handed over to Iceland as "priceless gifts," while the holding institution in Denmark flagged at half-mast to signal its dismay with Danish politicians as the final arbitrators of the case. Like the Parthenon, the case has generated its own bibliography (Davíðsdóttir 1999; Nebelong 2002; Prott 2009: 343–346; Ólason 2002; Kjær 2002; Sigurðsson and Ólason 2004), but what is significant for our argument here is that the Icelandic claim for archival materials in the course of the first half of the twentieth century falls squarely within the technology of sovereignty, as a cultural property claim for everything Icelandic held by Danish institutions (documents, manuscripts, letters). More specifically, the case trajectory begins with a more or less informal request in 1837 for archival documents, which is formally asserted again in 1907 (Iceland having gained home-rule in 1904) and in 1925. In between, Denmark formally recognized Icelandic sovereignty in 1918 and the substantial claim for all medieval manuscripts in the holdings of the former colonizer was articulated in 1930 by a sovereign government. Denmark's occupation by Germany during WWII interrupted the negotiations (and the Republic of Iceland was founded in 1944), but in postwar Denmark the case took on certain urgency and became an object of domestic debate, which roughly pitted progressive liberals (*kulturradikale*) in favor of repatriation against conservatives and academics advocating retention. Roughly, the former argued for return on the basis of moral rights and Nordic solidarity and the latter were against return with recourse to the loss for science, the legitimacy of the acquisition and the lack of international precedence (Davíðsdóttir 1999).

These debates sparked an intricate process, which culminated in a Danish proposal to Iceland for the partition of the collection according to scholarly criteria of provenience and the idea of "common stewardship" of the collection. However, to Icelanders in the first half of the twentieth century, the only acceptable outcome was that all medieval manuscripts were returned to Iceland and the proposed "common stewardship" notion did not sit well in postcolonial Iceland. In the course of the 1960s, the parties eventually reached an agreement, which ultimately led to the adoption of a law that circumvented the question of ownership, but instead introduced the notion of "Icelandic cultural heritage." The parties agreed to form an expert committee, charged with partitioning the collection according to a set of criteria for what constituted "Icelandic cultural heritage." Those manuscripts that met the criteria would then be transferred to the Árni Magnússon Manuscript Institute in Reykjavik, newly created for this purpose and named for the same seventeenth–eighteenth-century collector as the Arnemaganean Institute in Copenhagen, a sister institute that houses most of the manuscripts still in Denmark. Scholars and technicians at the new Manuscript Institute, by and large trained at the Danish Arnemaganean Institute and the University of Copenhagen, were charged with curating and administering the manuscripts after their arrival in Iceland, and special travel grants and scholarships were set up to encourage exchange and cooperation between the sister institutes.

From 1972 to 1983, the expert committee convened 41 times to resolve the issues relating to the partition and their work came to an end in 1997, when the last manuscripts were transferred and Iceland signed a protocol in which it accepted that the case was closed. In the fall of 2002, a comprehensive exhibition entitled "The Manuscripts of Iceland" opened in

the Culture House in Reykjavik. As Vésteinn Ólason states in the accompanying catalogue: “When Iceland had recovered a great part of the ancient manuscripts that had been kept in Danish libraries for centuries and it had established an institution dedicated to preserving and propagating this treasure, it was only natural for the nation to take an interest in seeing them” (Ólason 2004: IV).

What we have here is a case trajectory that shifts from a technology of sovereignty to a technology of reformation; that is, from a sovereign claim for “cultural property” to a partition of the collection, which is associated with the infusion of expertise and institution building around the notion and definition of “Icelandic cultural heritage.” Although the Icelandic government officially accepted the manuscripts as gifts, the local interpretation of their transfer is still very much under the sign of cultural property – as the return to a newly sovereign people of its rightful property from a former colonial ruler (Hálfðanarson 2015).

This case trajectory exemplifies the complementarity of these two technologies of governance. The Icelandic case then delivered a blueprint for the so-called UTIMUT case (1984–2001), which comprised the transfer of more than 35,000 ethnographic and archaeological objects from the National Museum of Denmark to the National Museum of Greenland, according to curatorial criteria worked out between the two institutions (Pentz 2004). Unlike the Icelandic case, no political or legal claims were ever raised in the Greenlandic case. It unfolded within formal and informal networks in the museum sector. Greenland had to meet a number of conditions with regard to professional curatorial standards, before the National Museum of Denmark would consider any deposits or returns of artifacts. This museum then facilitated “capacity building” in Nuuk, which resulted in a National Museum and an associated archive, with all the necessary expertise. After these infrastructures had been put into place, the UTIMUT project of return could commence. Significantly, the physical return of objects was accompanied by a new research centre (SILA) established in the year 2000 at the sending institution in Copenhagen. In connection with the return of the last object in June 2001, a binding document was signed, which set out the regulations for continuous collaboration and mutual access to the divided collection (Pentz 2004). Moreover, the physical return of objects was accompanied by all available archival information, including excavation reports, letters, field reports and the like, which effectively means the transfer of Danish expertise about Greenland to Greenland. In a jointly penned article the two museum directors at the time state that: “This continued cooperation between Denmark and Greenland in the museum field expresses the recognition that the return of the quantities in question involves an obligation for both parties” (Rosing and Pentz 2004: 29). By now it should be clear that the “capacity building” was part of UTIMUT and shows how the technology of reformation responsibilized and formed a new Greenlandic subjectivity, and taught it to have a heritage, to value it, and to care for it in particular ways that instilled “obligations” to the Danish State. More generally, UTIMUT embodies the completion of the shift from a technology of sovereignty to a technology of reformation, which is also exemplified by the fact that the Greenlandic case – in contrast to the Icelandic one – never became the subject matter for legal action or parliamentary debates and motions. UTIMUT remains throughout confined to archaeological expertise within museum networks.

As such, this case seems to corroborate the suggestion by Prott and O’Keefe in 1992, that cultural heritage would supersede cultural property, later affirmed as fact by other legal scholars. We propose, however, to complicate such linear, teleological narratives by moving from a legal to an historical definition of cultural property and cultural heritage as distinct, if overlapping, formations within an overarching patrimonial field, developing under distinct historical conditions (the one in the aftermath of World War II, the other in the aftermath of

decolonization) and producing separate regimes (the one proceeding from the Hague Convention, the other from the World Heritage Convention) and distinct forms of expertise (the one primarily legal, the other primarily curatorial), which belong to different rationalities of government (the one liberal, the other neoliberal) and take a very different approach to the formation of patrimonial and political subjects (the one producing sovereign subjects in the mold of the liberal modern state, with rights, territories, borders, and property, the other producing subjects entangled in dense networks of neoliberal/postcolonial forms of governance). The one employs return, restitution and repatriation as a technology of sovereignty, the other employs capacity building, education, collaboration and the infusion of expertise as a technology of reformation.

The transfer of the manuscripts from Denmark to Iceland and the non-transfer of the Parthenon sculptures from the British Museum to Greece illustrate how particular case trajectories may shift back and forth from rights-based claims and resolutions under the sign of cultural property to ethical claims and solutions under the sign of cultural heritage. Far from portraying such shifts in terms of either linear progress (as legal scholars like Prott and O'Keefe or Janet Blake propose) or as an implosion of any meaningful distinction (as anthropologists such as Coombe and Geismar seem to suggest), we argue that there is significant analytical purchase to be gained from an historically grounded and theoretically informed understanding of the distinction between the two terms.

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