AGAINST CULTURAL PROPERTY – HERITAGE AS DESIGN – AND WELLBEING



My argument [Link] that heritage is a matter of creativity and design – work done with, typically, remains of the past (tangible and intangible) – involves an argument that heritage should not be conceived as cultural property.

I made this point, though rather weakly, in my entry on cultural property for *The Oxford Companion to Law* (2008)

Cultural Property

refers to artifacts considered to be of significant cultural or historical value. Typically these are monuments, archives, archaeological finds and sites, works of art and craft, and items of ethnological interest. Their value is related to claims that they have a special connection with a community, such as a nation or ethnic group, that they are integral to the identity of such a group, and that they provide significant information about a group or about humanity. ‘Cultural heritage’, and its close cognate ‘patrimony’, are collective terms for such objects and sites. For example, an ancient Mayan sculpture may variously be valued as cultural property because Mayan civilization is claimed as ancestral precursor to some contemporary communities in central America, because it is part of a history of human artistic achievement and can thereby command a significant price in the art market, because academics study the artifact as evidence of the history and workings of Mayan society, or because such items are collected by museums.

There is disagreement over how old objects and sites need to be to qualify as cultural property. The terms

‘cultural property’ and ‘cultural heritage’ also include and frequently refer to intangible artifacts such as historical events and narratives, myths and legends. Nor is the definition of what particularly constitutes cultural property at all static; the field of cultural heritage is characteristically one of competing claims to significance, value and ownership. For example, a Mayan sculpture legally acquired by a European museum and held in their collections may become subject to a claim of ownership by a community or state in central America, with demands for the repatriation of the work to its claimed place origin or indigenous home.

The most significant recent international instruments dealing with cultural property are the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which has 100 signatory nations, and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage.

Pressing issues regarding cultural property include:
• the loss of ancient sites because of development or deliberate destruction;

• the looting of ancient sites and the associated illicit trade in antiquities;
• repatriation claims for cultural property to be returned to its place or people of origin;
• protective and regulatory legislation dealing with imports and exports of cultural property.

There is considerable disagreement around some key questions such as:
• ownership of cultural property – can anyone own the past?
• sovereignty – is there a place for state involvement and ownership?
• is collective ownership of cultural property defensible?
• stakeholder interests – who can claim ownership and on what grounds?
• cultural identity – how is identity connected with cultural property?
• (professional) ethics and responsibilities – how should museums deal with claims for repatriation or with the art market?

In competing claims to access and ownership, five arguments are used to justify the possession of an item

of cultural property:

• identity – where the property is claimed to be part of cultural, religious or other identity.

• origin – the item is argued to belong where it was made or comes from.

• ownership – the item is claimed as legal property.

• curation – in the absence of any other care, possession is claimed by those who have looked after an item.

• academic expertise – a party may claim an item on the basis that they can make the most of its educational value to inform people of their heritage.

These various arguments are based on different views about the rights and responsibilities of interested parties and imply different regulatory mechanisms. Such views include:

• that collectors have a right to own pieces of the past;

• that the past should be in the care of officially sanctioned stewards or custodians (not private individuals);

• that people generally should have a protected right to preserve, foster and enrich those aspects of culture

that represent their identity;
• that it is right and responsible to maximize the retention and transmission of information about the past and about culture.

The difficulty in achieving settlement of competing claims to cultural property on the basis of clear definition and regulation of such rights, responsibilities, interests and arguments has led to the treatment of cultural property in terms of conflict resolution, with a focus not upon a specific kind of artifact or property but upon diverse local relationships with the remains of the past that beg negotiation around shared human values, such as the significance of the past for the present.

– I end by directing attention to the active process of connecting past and present, and the conflicts and negotiation this always invloves.

Ian Hodder has recently been connecting the critique that heritage is about property, ownership and descent (inheriting what is yours), with an emphasis that a right to heritage is about *rights to participate*:

This focus on the ownership of the past perhaps derives from the longer assumption that nation states have sovereign control of the heritage within their own borders. The discourse is so pervasive that we have

perhaps turned a blind eye to the uncomfortable evidence from anthropology and history about the difficulties of making links between cultures and people. Culture is now seen as hybrid, flexible, in process, contextually changing, and transforming.

…

So the question is not about descent, but about the extent to which people participate in heritage, or rather, how much they have the capability to participate in it (in terms of access, education, performance, appreciation, religious experience, employment, and so on). And it is a question of recognizing that others have capabilities that may require access to the same monuments. I have tried to set cultural heritage in the frame of our rights and duties towards each other. I have tried to move away from the notion that it is the care for the object that is the duty, and to say that the duty is towards other participants.

In turning cultural heritage towards well-being, the capability and functioning approach to human rights as advocated by Martha Nussbaum and Amartya Sen is of

value. In their approach to comparing the wellbeing of people and nations, the focus is not on how many resources people have or on how satisfied they feel, but on what they are actually able to do

So Ian emphasizes that

Everyone has a right to participate in and benefit from cultural heritage that is of consequence to their well-being.

An easily accessible version of this case is – *Cultural Heritage Rights: From Ownership and Descent to Justice and Well-being* in *Anthropological Quarterly*, Vol. 83, No. 4, pp. 861–882 – [Link]

I suggest that

seeing heritage as design, as cultural labor, enables us to address coherently and practically how we deal with pasts that are active in the present



Lindisfarne Castle, 2008 – Tudor Fort turned into weekend home