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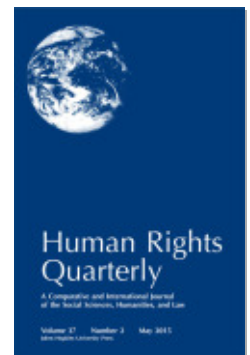
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## **Cultural Heritage in Transit: Intangible Rights as Human Rights ed. by Deborah Kapchan (review)**

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## BOOK REVIEWS

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***Cultural Heritage in Transit: Intangible Rights as Human Rights* (Deborah Kapchan ed., University of Pennsylvania Press, 2014), ISBN 978-0-8122-4594-3, 238 pages.**

### I. INTRODUCTION

By analyzing the unintended consequences of the intangible cultural heritage industry, this important book shows how the ambiguities of culture can be most apparent at its intersection with law. An agreed definition of culture remains elusive across fields of inquiry; however, what is agreed is that culture is dynamic and invented (or reinvented), rather than static or inert. Rather than a product, culture is a process that has no well-defined boundaries and multiple influencers.<sup>1</sup> Contested definitions of culture also impact upon notions of cultural rights within human rights law. As with the concept of culture, scholars have noted that cultural rights are often

messy, ambiguous, and disputed. Partially due to its scope and dynamism, culture is a concept that does not translate well into legal terms.<sup>2</sup>

What then is “cultural heritage”? According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), tangible cultural heritage includes architectural works, monumental sculpture and painting, archaeological structures, inscriptions, cave dwellings, and other features, which are of outstanding universal value from the point of view of history, art, or science.<sup>3</sup> By contrast, intangible cultural heritage includes the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artifacts, and cultural spaces associated therewith—that communities, groups, and individuals recognize as part of their cultural heritage.<sup>4</sup> Scholars have noted that in this way intangible cultural heritage is tantamount to “living heritage embodied in people.”<sup>5</sup> The 2003 UNESCO Convention for the Safeguarding of the Intangible

1. Yvonne Donders, *Human Rights: Eye for Cultural Diversity*, Inaugural Lecture delivered upon the appointment to the chair of Professor of International Human Rights and Cultural Diversity at the University of Amsterdam on 29 June 2012, at 6, available at [http://www.oratiereeks.nl/upload/pdf/PDF-6449weboratie\\_Donders.pdf](http://www.oratiereeks.nl/upload/pdf/PDF-6449weboratie_Donders.pdf)
2. Federico Lenzerini, *Intangible Cultural Heritage: The Living Cultures of Peoples*, 22 EUR. J. INT'L L. 109 (2011); Donders, *supra* note 1, at 6; UN Comm. on Econ., Soc. & Cultural Rts., Day of General Discussion on the Right to Take Part in Cultural Life (Article 15(1) (a) of the Covenant), U.N. Doc. E/C.12/40/13, Cultural Life in the Context of Human Rights Background Paper by Yvonne Donders (9 May 2008) at 2 [hereinafter Donders, Cultural Life].
3. Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted 16 Nov. 1972, 17th Sess., art. 1, UNESCO (entered into force 17 Dec. 1975) 1037 UNTS 151, available at <http://whc.unesco.org/archive/convention-en.pdf>.
4. Convention for the Safeguarding of the Intangible Cultural Heritage, adopted 17 Oct. 2003, 32nd Sess, art. 2, UNESCO, (entered into force 20 Apr. 2006) 2368 UNTS 1, available at <http://www.unesco.org/culture/ich/en/convention>.
5. William Logan, *Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-based Cultural Practice*, 18 INT'L J. HERITAGE STUD. 241 (2012).

Cultural Heritage was designed to protect such heritage. However, this Convention only covers intangible cultural heritage compatible with international human rights instruments.<sup>6</sup>

This book, *Cultural Heritage in Transit: Intangible Rights as Human Rights*, is an edited volume by Deborah Kapchan in which she draws together highly qualified scholars of folklore, ethnography, and anthropology who address contemporary issues of intangible cultural heritage around the world. The volume examines the effects of the cultural heritage industry and legislation by UNESCO—the key international organization on culture—on intangible cultural heritage. The seven contributors focus on the transformation of intangible culture, the role of the heritage industry and the state, as well as the implications for human rights. The contributions address topics including carnival in the Caribbean, Swedish folk life, Romani music, modern paganism in Britain, and performers on Jma' el-Fna in Morocco.

This book builds on prior literature on cultural heritage and human rights, but pays particular attention to the ironies of the heritage industry.<sup>7</sup> The stated aims of the UNESCO Convention include to safeguard and ensure respect for intangible cultural heritage and to provide for international cooperation and assistance.<sup>8</sup> Kapchan uses the focus in the book on

irony to highlight the “often unintended and almost always unofficial consequences of heritage production” that go beyond these stated aims of the Convention.<sup>9</sup> The book poses the important question: if the heritage industry codifies or recognizes certain parts of cultural heritage, then what parts are selected and whose rights are protected? Conversely, what parts are implicitly rejected (or delegitimized) and who is excluded? This is the first crucial theme of the book: to whom does culture belong, who can be its steward or bearer, and who is included and excluded?

A second theme of the book is the reform and commodification of culture through the intangible heritage industry. Contributors tease out how the heritage industry, incidentally or otherwise, can operate as an instrument of reform, method of control, and mechanism of commodification. Hafstein notes in his contribution that the state’s intervention into cultural practices—practices that were previously only of nominal interest to administrators—gives rise to greater regulation of public social life.<sup>10</sup> A number of the contributions focus on the relationship between cultural heritage and tourism, specifically highlighting how the state or private actors can utilize the heritage industry to transform local cultural practices into a commodity and their performers into objects.

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6. Convention for the Safeguarding of the Intangible Cultural Heritage, *supra* note 4, art. 2(1). For further discussion see Lenzerini, *supra* note 2, at 117–18.
  7. See, e.g., CULTURAL HERITAGE AND HUMAN RIGHTS (Helaine Silverman & D. Fairchild Ruggles eds., 2007); CULTURAL HERITAGE, CULTURAL RIGHTS, CULTURAL DIVERSITY: NEW DEVELOPMENTS IN INTERNATIONAL LAW (Silvia Borelli & Federico Lenzerini eds., 2012); SAFEGUARDING INTANGIBLE CULTURAL HERITAGE (Michelle Stefano, Peter Davis & Gerard Corsane eds., 2012); LUCAS LIXINSKI, INTANGIBLE CULTURAL HERITAGE IN INTERNATIONAL LAW (2013).
  8. Convention for the Safeguarding of the Intangible Cultural Heritage, *supra* note 4, art. 1.
  9. CULTURAL HERITAGE IN TRANSIT: INTANGIBLE RIGHTS AS HUMAN RIGHTS 13 (Deborah Kapchan ed., 2014).
  10. *Id.* at 34.

## II. OWNERSHIP/STEWARDSHIP OF INTANGIBLE CULTURAL HERITAGE

The book addresses the issue of who cultural heritage belongs to, but more than that, it looks at circumstances in which the state has claimed ownership or intervened in such a way to take control. The book explores the “ambiguities and intangibilities of the idea of cultural property in general—who it belongs to, who may use it, who ‘should not,’ but does.”<sup>11</sup> These are undeniably key questions, as the ability to determine or define heritage relates directly to who has the authority to write (or rewrite) history.<sup>12</sup> Furthermore, it raises questions of belonging, as by delineating certain practices as cultural heritage, “everything else is in effect severed from that tradition and history.”<sup>13</sup> In one way or another, all of the contributions to the book deal with these difficult issues.

Regarding the role of the state, it is useful to consider discussions at UNESCO on the ability of states to place items of intangible heritage on the lists created by the Convention for the Safeguarding of the Intangible Cultural Heritage. It was debated whether the Convention’s Committee should be able to do so on its own initiative, or whether states should be first required to propose an item for

the list. Some favored the first option, however, others saw this as a threat to sovereignty and stressed that the Committee should not be able to act without the relevant state’s consent.<sup>14</sup> Ultimately, it was agreed that a state’s consent was required, which placed the state in a determinative position regarding the classification of intangible cultural heritage on their territory.

The distinction between a state’s cultural heritage and the cultural heritage on the state’s territory was also stressed during the Convention negotiations. The Hungarian delegate raised, as a matter of principle, that the intangible cultural heritage on a state’s territory is not created by the state but by communities and groups.<sup>15</sup> Granting a state power over listing heritage or not, and what happens to it after listing, necessarily diminishes the power of local communities and groups over their own heritage. This is notwithstanding the Convention obligation for states to “endeavour 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.”<sup>16</sup> This lead Hafstein to ask this question: when is such protection of intangible cultural heritage *not* a means of dispossessing the communities and groups who create or bear culture?<sup>17</sup>

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11. *Id.* at 4.

12. *Id.* at 21.

13. *Id.* at 37.

14. *Id.* at 47.

15. *Id.* at 42.

16. Convention for the Safeguarding of the Intangible Cultural Heritage, *supra* note 4, art. 15, emphasis added. Lenzerini notes that a state-orientated approach to management of intangible cultural heritage may not be effective in safeguarding it as the interests of which may not coincide with those of the state. See Lenzerini, *supra* note 2, at 112.

17. See CULTURAL HERITAGE IN TRANSIT, *supra* note 9, at 30; Mary Taylor, *Intangible Heritage Governance, Cultural Diversity, Ethno-Nationalism*, 55 FOCAL-EUR. J. ANTHROP’GY 42 (2009).

Furthermore, Carol Silverman notes in her contribution that as only nation-states can submit applications to UNESCO for listing, certain groups are necessarily excluded, such as the Roma. Silverman focuses on Balkan Romani music to demonstrate the tension between inclusion and exclusion and how heritage, as configured to represent national folk culture, can exclude Roma and other minorities.<sup>18</sup> As Klein and Silverman both highlight, states use UNESCO to protect the privileged category of “national culture.” Silverman addresses the states’ dubious roles in failing to protect the human and cultural rights of minorities.<sup>19</sup> Sabina Magliocco, in her contribution, flags power as the key issue, and concludes that in the negotiation of intangible cultural heritage all groups deserve a place at the table.<sup>20</sup>

### III. HERITAGE INDUSTRY AS REFORM AND COMMODIFICATION

The reform and commodification of culture through the intangible heritage industry is another central theme of the book. Silverman comments that states, “markets, scholars, activists and international organizations such as UNESCO all play important roles in defining, controlling and evaluating culture.”<sup>21</sup> It is through interaction with such players that intangible cultural heritage can be

utilized, manipulated, reformed, and commodified. Valdimar Hafstein argues that through its intervention, the heritage industry transforms the cultural practices it designates, transforming the communities themselves as well as the way they relate to the practices. Similarly, Kapchan highlights that the heritage industry can transform traditions sometimes unrecognizably in the process.<sup>22</sup> In this way, Hafstein views intangible heritage “as an instrument of reform.”<sup>23</sup>

The intangible cultural heritage industry’s focus on practices gives states a means to intervene in the regulation of social life.<sup>24</sup> Heritage has been, and continues to be, an important instrument for representing the nation-state, used to imagine community, structure allegiance, suppress dissent, and to orchestrate differences.<sup>25</sup> Dorothy Noyes illustrates how heritage becomes a means of control, while Klein observes that the expanding heritage project in Sweden is a contemporary reform ideology. According to Barbro Klein, if having culture was one of the main duties of a modern state in the late nineteenth century, it could be said that today it is a state’s main duty to have cultural heritage.<sup>26</sup> Cognizant of this in his contribution, Philip Scher addresses the notion that it may be “unpatriotic not to do one’s cultural duty.”<sup>27</sup>

In addition to culture’s ability to be employed by the state for purposes such as nation-building, inclusion and exclusion, it can also be used as a source of

18. See also Taylor, *supra* note 17, at 52–53.

19. CULTURAL HERITAGE IN TRANSIT, *supra* note 9, at 137.

20. *Id.* at 174.

21. *Id.* at 146.

22. *Id.* at 20.

23. *Id.* at 33.

24. *Id.* at 34.

25. *Id.* at 46.

26. *Id.* at 123.

27. *Id.* at 93.

wealth. Acknowledging the many layers of heritage commodification, a focus of the book is on the role of the state in nation-branding for development and the impact upon communities. In this way, a state can harness a community's intangible culture, rebrand it for the nation and become its vendor to the foreign public. By the state trading on the creative product of its people, culture ceases being an individual right and "becomes an adjunct to the aspirations of the state as it promotes its cultural brand globally."<sup>28</sup> Reflecting the earlier theme of the book, questions arise again regarding who creates, bears, practices and benefits from intangible cultural heritage?

Kapchan observes the disturbing consequences of commodification in that performances of everyday life become "fodder" for the state's tourism industry.<sup>29</sup> Kapchan uses the example of Jma' el-Fna, the main square in Marrakesh, Morocco, which was being "preserved" by the state via UNESCO listing, and as part of the process, the roles of those who performed and sold their skills or wares in the square were codified. As the herbalists' brand of verbal art and selling was not in the defined categories of intangible heritage, their performance was silenced and the herbalists were reduced to an "object of the touristic gaze, a display item in the outdoor museum . . . an exhibition of himself."<sup>30</sup> This example shows that the

process of "safeguarding" actually contributed to the destruction of intangible cultural heritage and the dispossession of its practitioners.

A similar problem identified by Scher is the appropriation by the state (and sometimes private actors) of "elements crucial to the public presentation of cultural selves" for economic purposes.<sup>31</sup> Using the example of the Caribbean, he notes how the public carnival yields hours of "free advertising" for the state of its national product/brand.<sup>32</sup> As culture can include public behaviors such as celebrating, vending, and dancing, states have endeavored to regulate such practices and to limit behavior deemed antithetical or counterproductive to the national brand.<sup>33</sup> This has clear implications on personal and community choices and actions, and may conflict with the right to *freely* participate in cultural life as stipulated in Article 27(1) of the Universal Declaration on Human Rights.<sup>34</sup> Noting that the right to be cultural "easily slips into the obligation to be cultural," Noyes gives an example from Estonia, where young women in the protected Kihnu area feel pressured to stay and practice agriculture and traditional handicraft rather than go to university.<sup>35</sup>

Hafstein suggests that community is the most fundamental intangible heritage that the 2003 UNESCO Convention was designed to safeguard.<sup>36</sup> But as Scher

28. *Id.* at 88–91.

29. *Id.* at 19.

30. *Id.* at 187–90.

31. *Id.* at 95.

32. *Id.* at 107.

33. *Id.* at 99.

34. It is noteworthy that the word "freely" was left out of the equivalent provision in the International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., art. 15(1)(a), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976), which Donders notes is unfortunate. See Donders, *Cultural Life*, *supra* note 2, at 7.

35. CULTURAL HERITAGE IN TRANSIT, *supra* note 9, at 61.

36. *Id.* at 48–49.

notes, a common element “in the exploitation or misappropriation of heritage . . . is the lack of control over the heritage . . . by its purported beneficiaries”—the community.<sup>37</sup> Noyes concludes that rather than being empowered, local actors and communities often lose control of their own culture via its incorporation in the UNESCO or state regime of governance.<sup>38</sup> These outcomes must be avoided as such dispossession or loss of control by the community can result in the cultural heritage losing its main distinctive and valuable element: its authenticity.<sup>39</sup>

#### IV. CONCLUSION

In sum, this book provides important insights on the nexus between protecting culture, communities, human rights, and the role of the state and international community. Given the adoption of the long anticipated Convention for the Safeguarding of the Intangible Cultural Heritage in 2003, the book illustrates some of its unintended consequences in the first years of its operation. Despite the positive intentions of the international community, the book makes clear that the protection of intangible culture is far from straight-forward. The contributions tease out the ironies of heritage protection and show that the heritage industry also contributes to the reform of culture and can threaten communities by altering their way of life, concept of self, and daily behavior.

While the book identifies the persistent problems in the heritage industry of defining what is to be protected and how it is to be protected, few of the con-

tributions propose alternative solutions. Other scholars have suggested that to avoid such unintended consequences, emphasis should be placed on engaging the relevant community through Article 15 of the Convention, and advocate for centralizing human rights as both “a theme in heritage identification and as a set of policy principles underlying conservation processes.”<sup>40</sup> Evidently, however, challenges will persist regarding how to preserve or safeguard culture through law, without transforming or appropriating it, or dispossessing the creators and bearers. This book is an important contribution in identifying some of the challenges to be overcome in the process and the pitfalls to be avoided.

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**Jennifer Curtis, *Human Rights as War by Other Means: Peace Politics in Northern Ireland* (University of Pennsylvania Press, 2014), ISBN 978-0-8122-4619-3, 283 pages.**

Jennifer Curtis, in *Human Rights as War by Other Means: Peace Politics in Northern Ireland* offers an important and innovative analysis of the peace process

37. *Id.* at 108.

38. *Id.* at 61.

39. See Lenzerini, *supra* note 2, at 113.

40. See, e.g., *id.* at 119; Logan, *supra* note 5, at 233.