

## BOOK REVIEW

Lucas Lixinski, *International Heritage Law for Communities: Exclusion and Re-Imagination*, Oxford, Oxford University Press, 2019, 320 pp, £80.00, ISBN 9780198843306  
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In recent years, cultural heritage has attracted increasing interest from international legal scholars. While the majority of this attention has been devoted to responding to increasingly grim headlines of cultural destruction, the reach of international law in this area extends further than the prohibition of destruction in the course of armed conflict. It is this broader understanding of the scope of cultural heritage protection under international law which Lucas Lixinski sets his sights on in his most recent book, making a powerful argument in favour of the commonalities – in law and scholarship – which unite the field of international heritage law.<sup>1</sup>

*International Heritage Law for Communities* focuses on the challenges of fostering participation in international heritage governance, in particular ‘the possibilities of promotion of community-based governance’.<sup>2</sup> Lixinski concentrates on the five core conventions adopted by UNESCO on the protection of cultural heritage,<sup>3</sup> his chief contention is that these conventions have ‘effectively [prevented] local communities, who bear the brunt of the costs associated with international heritage protection, from having any say in how their protection is managed’.<sup>4</sup> The result is the disappearance of the living heritage which forms the bedrock of contemporary conceptualisations of cultural value.<sup>5</sup>

Lixinski’s book makes an important contribution to current debates amongst heritage lawyers and scholars on the modalities of community participation in heritage protection.<sup>6</sup> On the one hand, the book provides thematic discussions of the various aspects of international heritage law, viewed here as a ‘discursive continuum’<sup>7</sup> united by a common set of rules, stakeholders, and implementation and enforcement mechanisms. The book complements earlier monographs

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<sup>1</sup>The field goes by many names, each with a slightly different emphasis on the subject of study or area of application (such as the law of culture, cultural heritage law, and international heritage law); the present review adopts the terminology employed by Lixinski in his monograph.

<sup>2</sup>L. Lixinski, *International Heritage Law for Communities: Exclusion and Re-Imagination* (2019), 3.

<sup>3</sup>1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 215; 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 823 UNTS 231; 1972 Convention for the Protection of the World Cultural and Natural Heritage, 1037 UNTS 151; 2001 Convention on the Protection of the Underwater Cultural Heritage, 2562 UNTS 3; 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, 2368 UNTS 3.

<sup>4</sup>Lixinski, *supra* note 2, at 1.

<sup>5</sup>See, e.g., the Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013.

<sup>6</sup>See also the ongoing work of the ILA Committee on Participation in Global Cultural Heritage Governance.

<sup>7</sup>Lixinski, *supra* note 2, at 1.

in international heritage law<sup>8</sup> by providing a broader analytical lens through which to view the field as a whole – that of community participation – and a compelling summary of its ‘bright and dark sides’. Simultaneously, it provides food for thought for those outside the field, as it also offers specific analyses of the relevance of other areas of international law to the questions at play, such as the law of genocide, international economic law, and international environmental law.

Lixinski contends that international heritage law remains largely state-centric, and that this inclination lies at the heart of many of the tensions in the field. After all, ‘for all the work UNESCO instruments do to shape disparate domestic practices, they still for the most part leave the ultimate control over heritage and its meanings to states’.<sup>9</sup> Ultimately, cultural heritage law thus ends up acting as the handmaiden to states, rather than challenging their more problematic enactments of sovereignty over cultural heritage. This dominance persists despite the privileged position granted by UNESCO’s cultural treaties to heritage experts, intended to act as a counterweight to the power of the state; these experts generally hold little sway if their views do not ‘serve either to justify turf claims by states or organizations, or simply to justify whatever states or organizations were going to do anyway’.<sup>10</sup>

These assertions are borne out by recent practice, such as the successful inscription of the Al Ahsa Oasis on the World Heritage List by Saudi Arabia in 2018. The expert-led advisory bodies of the World Heritage Convention expressly advised against inclusion on the List, as they considered that the site did not fulfil the Convention’s criteria for inscription.<sup>11</sup> The states parties nonetheless went ahead with inscription, thereby overturning an unwritten precedent which has existed since the early years of the Convention.<sup>12</sup> While perhaps not quite as dramatic as the dissolution of the WTO’s Appellate Body by the United States, the end result is the same: a wilful disregard of expert decision-making.

Nonetheless, this does not mean that the role of experts is to be wholly disregarded: as Lixinski notes, ‘heritage is a highly technical field, meaning it requires understanding and application of concepts such as authenticity, integrity, and conservation’.<sup>13</sup> The pervasiveness of this conservation paradigm,<sup>14</sup> which ‘privileges scientific ways of engaging with or displaying heritage’, and which ‘means preservation of heritage in its original form’,<sup>15</sup> is posited as one of the underlying structures working against community involvement in international heritage protection. As such, tackling its workings presents one of the ways through which to improve the lot of communities. This partly involves a rethinking of the processes through which heritage value is ‘authorized’ by international institutions and experts; the roles which communities can play within these institutions; and the recognition that heritage changes, evolves, and ‘may in fact disappear organically’<sup>16</sup> without this necessarily being a cause for loss. Simultaneously, tackling the conservation paradigm requires us to rethink why international institutions have developed so as to ‘require’ technical understandings of culture in order to privilege its protection at the global level. Is it possible for the law to reflect that heritage value is not purely technical, but also a matter of human emotion?<sup>17</sup>

<sup>8</sup>E.g., C. Forrest, *International Law and the Protection of Cultural Heritage* (2012); J. Blake, *International Cultural Heritage Law* (2015).

<sup>9</sup>Lixinski, *supra* note 2, at 67.

<sup>10</sup>*Ibid.*, at 72–3.

<sup>11</sup>ICOMOS, Evaluations of Nominations of Cultural and Mixed Properties: ICOMOS Report for the World Heritage Committee, 42<sup>nd</sup> Ordinary Session, Manama, 24 June–4 July 2018, WHC-18/42.COM/INF.8B1 (2018), at 56.

<sup>12</sup>UNESCO, Decisions adopted during the 42<sup>nd</sup> session of the World Heritage Committee (Manama, 2018), WHC/18/42.COM/18, Decision 42 COM 8B.16 (2018). See also H. Hølleland and M. Wood, ‘An Emotional Plea for Al-Ahsa: A Case Study on How Discourses of Representativeness, Climate and Discord are Strategized in the World Heritage Regime’, *International Journal of Cultural Policy* (forthcoming).

<sup>13</sup>Lixinski, *supra* note 2, at 7.

<sup>14</sup>See also L. Smith, *Uses of Heritage* (2006).

<sup>15</sup>Lixinski, *supra* note 2, at 18.

<sup>16</sup>*Ibid.*, at 255.

<sup>17</sup>On the field of affective heritage research see, e.g., S. Downes, S. Holloway and S. Randles, *Feeling Things: Objects and Emotions through History* (2018); L. Smith, M. Wetherell and G. Campbell (eds.), *Emotion, Affective Practices, and the Past in*

In stark contrast to states and experts, communities are disconnected from the international protection of 'their' heritage, Lixinski argues. For one, they are not represented within the governance structure of the five heritage conventions: this function is deemed to be fulfilled by the territorial state and various expert bodies. Perhaps more fundamentally, the values which communities ascribe to their heritage are not reflected in the laws developed by the international community.

Lixinski puts forward a number of proposals to deal with this problem. Of particular interest is his argument in favour of the continuing relevance of property as a legal category in heritage protection. This is a notable choice, given that heritage lawyers and scholars have long advocated for a shift away from cultural property to the broader notion of cultural heritage.<sup>18</sup> The reason to not relegate cultural property to the dustbin, Lixinski argues, is because issues of heritage participation are in fact issues of control; '[a]nd control is at its strongest, from a legal sense, when property titling is involved'.<sup>19</sup> In his view, there is a fundamental mismatch between contemporary international heritage law and domestic law: whereas the latter must continue to reckon with the effects of property titling, the former disregards it, resulting in 'less legal certainty, and a further divorce between law and non-law in the safeguarding of cultural heritage'.<sup>20</sup> Lixinski argues that the international law of property<sup>21</sup> has evolved to such an extent that it is now possible to at least displace the 'historical assertion about the impossibility of international heritage law engaging with the theme of property rights',<sup>22</sup> even if the precise modalities of such an engagement remain unfixed.

Lixinski proposes a reimagining of the concept of property which would allow the field to move beyond orthodox conceptualisations of property as 'exclusion' to an understanding of 'property with built-in limitations to accommodate public interests'.<sup>23</sup> By focusing on property, he carves out an important space for heritage lawyers in the debate on community participation, which has thus far been largely led by heritage scholars. However, a welcome addition to this line of argument would have included further reflection on why property titling carries such a 'legal load'<sup>24</sup> and whether it is up to the task that international lawyers expect it to perform, in particular for the case of heritage communities. As Lixinski acknowledges, property law currently 'works to maintain control, rather than help marginalized groups gain access to property'; 'these communities now face an uphill battle to (re)gain control over their heritage'.<sup>25</sup>

The position of communities can also be improved by rethinking their role in heritage law, allowing them to move beyond their current position as 'informants' to international governance mechanisms and instead be seen as 'polyvalent and multi-interested actors'.<sup>26</sup> To achieve this goal, Lixinski argues, requires facilitating their involvement in heritage protection at the international level, for example, by granting them legal standing within the governance mechanisms of the various cultural conventions. Doing so could allow them to nominate heritage to be inscribed on one of UNESCO's international lists or to directly access funding for the protection of that heritage; both privileges are currently limited to states.

However, a number of hurdles remain here as well. The most notable of these is the identification of a community and its members, with the perennial question: who has the power to speak on behalf of whom? While Lixinski does not deny that cultural traditions are inevitably sites of contestation –

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*the Present* (2018); C. Morelon, 'Sounds of Loss: Church Bells, Place, and Time in the Habsburg Empire During the First World War', (2019) 244 *Past & Present* 195.

<sup>18</sup>L. V. Prott and P. J. O'Keefe, "'Cultural Heritage" or "Cultural Property"?', (1992) 1 *International Journal of Cultural Property* 307.

<sup>19</sup>Lixinski, *supra* note 2, at 257.

<sup>20</sup>*Ibid.*, at 28.

<sup>21</sup>J. G. Sprankling, *The International Law of Property* (2014).

<sup>22</sup>Lixinski, *supra* note 2, at 63.

<sup>23</sup>*Ibid.*, at 59.

<sup>24</sup>*Ibid.*, at 57.

<sup>25</sup>*Ibid.*, at 60.

<sup>26</sup>*Ibid.*, at 101.

and that communities are ‘malleable and unfathomable’ entities<sup>27</sup> – this fundamental question will need to be accounted for when shaping the participation of communities in international heritage governance.<sup>28</sup> In this regard, comparisons to already existing mechanisms for community participation in environmental and cultural decision-making could provide a useful starting point.<sup>29</sup>

All in all, the book comprehensively discusses the who, what, where, and when of international heritage protection, but the ‘why’ – which equally shapes the law and its implementation – remains underexamined. In particular, the ‘why’ of community involvement is crucial: why do communities have a privileged claim to how their heritage is dealt with? And how can this claim be balanced with the interests of other stakeholders, such as the state or the international community? The answers to these questions remain crucial to the success of the project which Lixinski outlines. Of course, these answers are also ultimately not to be sought in the law alone, thereby illustrating the limits of international heritage law and the necessity of facilitating interdisciplinary dialogue between the diverse group of scholars and practitioners who populate this field.

Lixinski keenly describes the difficulties of fostering such meaningful interdisciplinary dialogue, in particular for those seeking to challenge the status quo. As he notes, heritage lawyers seeking to adopt a critical approach face the ‘existential challenge’ that, even if they wish to rely upon critical heritage studies, this field ‘largely resists the possibility of engaging with the law. All that heterodox heritage law can do is attack orthodox heritage law from within the disciplinary boundaries of the law’.<sup>30</sup> Furthermore, whereas heterodox heritage approaches might lean towards an emphasis on the granularity of the particular cultural dynamics of each individual situation, a systemic reflection on the law makes such excursions difficult to accommodate. While Lixinski’s approach ultimately remains squarely on the side of international law, this approach is justified: precisely because of the strength of looking at these issues through a legal lens. In this sense, the book is less about providing *the* answer to facilitating community-led international heritage governance, than it is about charting the course of a future research agenda.

Lixinski sets out to not only ‘promote a re-engagement between heritage lawyers and heritage scholars and professionals in other disciplines’,<sup>31</sup> but also to assert the position of international heritage law ‘at the core of international legal governance’.<sup>32</sup> He is successful on both points. By their nature, heritage issues are intertwined with a wide range of sub-fields within international law, such as environmental law, criminal law, economic law, and human rights law. Lixinski argues in favour of this connectivity, asserting that cultural heritage law has much to contribute to general international law which has thus far been overlooked. The accessibility of the book for those working outside the field of international heritage law is hopefully the first step on this path.

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<sup>27</sup>*Ibid.*, at 103.

<sup>28</sup>A recent example of such community contestation is the delisting of the Belgian Aalst carnival from the Representative List of the Intangible Cultural Heritage of Humanity: UNESCO, Follow-up on elements inscribed on the Lists of the Convention, LHE/19/14.COM/12 and LHE/19/14.COM/12 Add. (2019).

<sup>29</sup>See, e.g., 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 2161 UNTS 447; 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society, ETS No. 199.

<sup>30</sup>Lixinski, *supra* note 2, at 12.

<sup>31</sup>*Ibid.*, at 4.

<sup>32</sup>*Ibid.*, at 232.

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