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Refusal and Loss in Cultural Heritage Law

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UNESCO's heritage lists are one of the greatest success stories of the organisation. Even to those unacquainted with cultural heritage law, many will be familiar with the [World Heritage List](#), and increasingly also its younger sibling, the [Representative List](#) of the Intangible Cultural Heritage Convention (although in the case of the latter, it is often only inscriptions such as the French 'culture of baguette bread' that make the [headlines](#), perhaps for their perceived [quirkiness](#)). Such international heritage lists were historically a largely [Eurocentric affair](#), not only due to the fact that most of their inscriptions were located in Europe but also in light of their conceptualisation of heritage value. That being said, recent decades have evinced an [increasing pluralisation](#) of notions of heritage value in the context of UNESCO's cultural conventions.

With 1199 inscriptions on the World Heritage List and 693 inscriptions on the lists of the Intangible Cultural Heritage Convention, the continuing expansion of these lists is deemed self-evident: after all, such expansion allows them to become all-encompassing of the world's cultural diversity. As such, while the notion of heritage value which the conventions rely upon may have been pluralised, the conventions themselves remain deeply reliant upon a set of universalist tenets which posit inscription as an unambiguously positive process which is undertaken in the interests of the international community. However, this narrative is complicated when confronted with communities that explicitly contest inscription and its consequences. In light of the theme of this symposium (see [Botha, Viswanath and Wiseman](#))- the bridging of epistemic divides in heritage law and policy – this raises the question: whose contestations does cultural heritage law acknowledge as valid?

Deletions

These tensions can emerge at the moment of inscription when intergovernmental bodies are confronted with communities who may not wish to articulate the value of their cultural heritage in a [universalist register](#) (see also [Mattez](#) in this symposium). Indeed, certain communities may not wish to see their heritage inscribed at all, viewing the label of 'cultural heritage' as [inappropriate](#) or fearing the [violence and displacement](#) that may accompany inscription. However, contestations surrounding the merit of international heritage inscription are not limited to the nomination process. Increasingly, certain actors are pushing back against international heritage labels post-inscription, leading to the removal (or 'deletion') of sites or practices from these lists.

Neither the World Heritage Convention nor the Intangible Cultural Heritage Convention initially contemplated the possibility of inscriptions being removed. Instead, deletion procedures have [developed over time](#) as a result of the practice

of the conventions' governing bodies. In the case of the World Heritage Convention decisions on deletion are taken by its governing body, the World Heritage Committee, and must occur in consultation with the State Party concerned ([Operational Guidelines](#), paras. 192-198). Similarly, in the case of the Intangible Cultural Heritage Convention, the ultimate decision on removal is made by the Convention's Intergovernmental Committee ([Operational Directives](#), paras. 40.1-40.3).

Whereas the system of the World Heritage Convention simply allows for non-state actors to provide information that the World Heritage Committee can draw upon in the making of its decision to delete an inscription, the Intangible Cultural Heritage Convention allows communities, groups and individuals to directly submit a removal request. Nonetheless, in both cases, the information and removal request are subject to an initial filtering process by the conventions' secretariats, and are submitted to the State Party concerned for verification rather than being presented directly to the governing bodies of the conventions.

Although deletion procedures are now in place for both conventions, deletion is still very much perceived as an ultimatum to be issued to states by the conventions' governing bodies, a last-ditch effort to [shame them into compliance](#) with international heritage standards. As such, [only three sites](#) have been deleted from the World Heritage List, and [only two](#) inscriptions have been deleted from the Representative List of the Intangible Cultural Heritage Convention. Those inscriptions that have been deleted almost all conform to the same mould: they concern sites or practices located in the Global North, with vocal majorities who feel at ease in rejecting the claim of the global community to 'their heritage'.

An example in point is the [deletion of Aalst carnival](#) (Belgium) from the Representative List of the Intangible Cultural Heritage Convention. The deletion flowed from a heavily criticised edition of the carnival in March 2019, during which the carnival procession featured a number of [antisemitic floats](#). UNESCO quickly [condemned](#) the incident; shortly afterwards, the Bureau of the Intergovernmental Committee [proposed](#) that the next Committee meeting should include an agenda item to discuss the potential deletion of the inscription. Although there were attempts to establish a [dialogue](#) on the future of the carnival and its place on the Representative List, many residents of Aalst [bristled](#) against the idea that they should make changes to their traditions (particularly in response to international pressure). In their eyes, what others saw as a form of discrimination was an integral element of the satirical nature of the carnival and an expression of community members' right to free speech.

The situation escalated to such an extent that the city of Aalst formally distanced itself from the position of the carnival on the Representative List in a [letter](#) to the Director General of the Flemish Department of Culture, Youth and Media (which was subsequently forwarded to the Secretariat of the Convention, alongside a request from the Belgian government to remove the inscription). This letter was in part precipitated by a gathering of Aalst carnival practitioners in September 2019, at which 58% of attendees had voted against continued inclusion of the carnival on the Representative List. In submitting the removal request, the city sought to pre-empt

the decision of the Intergovernmental Committee to delete Aalst carnival from the List. And indeed, several days later, the Committee formally deleted the inscription on the grounds that it was incompatible with the requirement set out in article 2(1) of the Convention that inscriptions should foster 'mutual respect among communities, groups and individuals'.

As noted above, despite the fact that the deletion of heritage inscriptions is theoretically intended as a sanction, in the case of [Aalst](#) and several [other examples](#) of deletions from international heritage lists, deletion was in fact framed within local public discourse as a victory. Although these deletions (and the practices that led to them) [undoubtedly remained heavily disputed](#) within the communities in question, the point is that these contestations of international heritage value were at least eventually accepted by the conventions' governing bodies, by virtue of the fact that the heritage in question was ultimately 'de-inscribed'. By disengaging with certain forms of heritage, intergovernmental bodies thus paradoxically grant this heritage some form of authority: the authority to exist beyond the realm of international heritage law.

It is perhaps important to emphasise at this point that I do not wish to argue that bodies such as the World Heritage Committee or Intergovernmental Committee should refrain from critiquing racist or discriminatory heritage practices. Instead, my main argument is that the response of the governing bodies of UNESCO's cultural conventions to situations of non-compliance is often problematically inconsistent. The experience of communities who have been able to successfully contest inscription—such as Aalst—stands in stark contrast to that of other communities elsewhere around the world, for whom a lack of compliance with international heritage standards does not mean the deletion of an inscription, but instead their subjection to increasingly [extensive monitoring procedures](#). Particularly in the case of the World Heritage Convention, this effectively results in the [securitisation](#) of their day-to-day lives.

Examples in point are heritage sites such as [Hampi](#) (India), [Petra](#) (Jordan), or [Angkor Wat](#) (Cambodia), where residents have faced evictions as a result of heritage inscription. In these cases, disagreement amongst local communities on the nature of heritage value becomes a matter to be corrected through the application of international heritage governance to 'educate' communities on the value of their heritage and how best to protect it. Existing (property) rights are often marginalised in these debates. Moreover, this differential approach to non-compliance often intersects with existing boundaries of race, class and indigeneity, and is predicated on the prioritisation of certain forms of heritage expertise over others. For these communities, deletion of the heritage inscription does not appear to be on the table.

Refusal

Why do those operating within the '[authorised heritage discourse](#)' view deletion as a threat to be imposed upon states rather than as a legitimate choice which may be exercised by communities such as those of Hampi, Petra, or Angkor Wat; perhaps even as an expression of communities' [right to self-determination](#), in the case of Indigenous peoples? While there has been increasing emphasis within

academia and civil society on the importance of [community participation](#) in heritage governance, the idea that certain communities simply may not wish to become part of UNESCO's heritage universe is often left unspoken. Or, to rephrase Sherry Arnstein's famous work on [citizen participation](#): shouldn't we grant communities the opportunity to ['jump off'](#) the ladder of participation and pursue alternative forms of heritage governance if they so desire?

In part, the answer seems to be that there is something ostensibly dangerous about the notion of heritage refusal: it draws into question the very logic of heritage protection. Yet, as anthropologists such as [Audra Simpson](#) and Carole McGranahan have argued, refusal is about more than 'saying no': as [McGranahan](#) posits, '[t]o refuse can be generative and strategic' (319-22), an exercise in building community in ways that circumvent existing state structures, which—particularly in the case of Indigenous peoples—are often embedded within broader histories of oppression.

It is for this reason that power-sharing arrangements within heritage law, such as Indigenous [co-management](#) of heritage sites and concepts such as [free, prior and informed consent](#), have been increasingly drawn into question. As [Grey and Kuokkanen](#) have argued, co-management often 'offers mere participation in lieu of actual control' (920) over heritage and thereby runs the risk of '[eclipsing] consideration (or even awareness) of other alternatives' (931); ways of protecting heritage which are not predicated on international inscription and the [language of universalism](#).

This is not to state that the ability of local communities to engage in practices of refusal within international heritage governance has not taken important steps forward in recent years. This is particularly the case when one looks at the evolution of the Intangible Cultural Heritage Convention; although local communities cannot propose inscriptions, the Convention's [Operational Directives](#) grant these communities the ability to at least initiate deletion procedures (a privilege denied to them under the World Heritage Convention), as noted above. Yet even so, claims made by communities seeking to refuse intangible heritage status will still need to be filtered through the decision-making procedures of the Convention's governing body, where their authority is minimal. Progress thus remains marginal.

Of course, the foregoing certainly does not mean that we should do away with international heritage listing. After all, many communities explicitly seek out international heritage status as a way to bolster their claims for heritage protection against more powerful actors, thereby fulfilling an important counterhegemonic function. Indigenous communities, in particular, have [used international heritage status](#) as a way to force the hand of the state to facilitate the protection of their culture. However, these attempts [have not always been successful](#) precisely because states have the power to derail such claims by simply refusing to inscribe heritage due to the [state-centric nature](#) of heritage law.

Letting go

Finally, while the varying outcomes described above can be partially explained with reference to the different levels of epistemic authority granted to certain communities

within cultural heritage law, they are also a symptom of the broader inability of the field to cope with questions of [heritage loss](#). It thus seems almost [unimaginable](#) and unbearable to think that we should have ‘less’ heritage tomorrow than we do today—even though this is almost inevitable in an era of compounding crises. It is apparent that once something has been acknowledged as the ‘heritage of humanity’, this rhetorical sleight of hand can only be undone [with great difficulty](#).

Cultural heritage law thus has a problem with letting go. While heritage scholars and practitioners have become increasingly nuanced in their approach towards heritage loss—be it in the form of debates on [deaccessioning museum collections](#) or coming to grips with the [effects of climate change](#)—these discussions do not seem to have yet had a meaningful impact on the core values of cultural heritage law. This law seems to remain centred around a curious logic of accumulation, in which the entire system of international heritage management is geared towards wanting to have more and more rather than learning to make do with less. This calls for a much-needed rehabilitation of deletion procedures within heritage law, alongside consideration for the fostering of a multiplicity of voices within them.

