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Between Society and Culture: Recognition in Cultural Heritage Contexts¹

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1 Introduction

This article is an examination of the relation between individual subjects and collective identities in democratic constitutional states and its bearing on anthropological debates on cultural heritage. In light of arguments for or against collective rights to cultural property (Carpenter, Katyal, and Riley 2009; Brown 2010; Smith 2007; Smith 2010; Waterton and Smith 2010; Meskell 2005) and international processes strengthening the role of collective identity, it investigates how and why the notion of communities as stakeholders in heritage processes introduces a number of analytic problems in the European context. The centering of collective identities leads to conflicts in the recognition of cultural heritage. Here, I argue that these conflicts obfuscate heritage processes, and that is necessary to rethink the relation between individual rights and collective identities by retaining a focus on subjective rights. This extension of heritage debates enables the productive inclusion of other sociopolitical debates on collective identities and subjective rights.

¹ This article is based on research I carried out as a member of the DFG research unit on cultural property, Göttingen. It draws from presentations from a workshop on “Local Vocabularies of Heritage,” Évora, Portugal (02/2012) and a workshop on “Institutions, Territoires et Communautés: Perspectives sur le Patrimoine Culturel Immatériel Translocal,” Villa Vigoni, Italy (10/2012). I would like to thank the participants and the members of the Göttingen research unit for comments that have helped in shaping this article.

1.1 Conflicts in Heritage Research: Reified Identities, Isolated Interests, and Normative Gaps

One of these conflicts in the regulation of cultural property is the reification of collective identities and culture. It is argued in scholarly debates that in the course of heritage processes – such as UNESCO certifications or other administrative fixations of cultural practices – culture and social relations are codified to an extent that bounds creativity, constrains scopes for development and imposes ascriptions to groups that limit their autonomy (Noyes 2010; Meskell 2005). On the analytic level, this conflict results from a primary focus on tradition and collective identity instead of on intersubjective and dialogical processes. This is not to say that heritage debates necessarily essentialize culture or subscribe to notions of culture as holistic wholes. However, the debates understandably favor a foregrounding of cultural objects or practices and their relation to collectivities. This superordinated focus restricts the ways in which a critique of heritage processes is possible, and much speaks for a realignment of the said debates towards socially embedded individuals, rather than towards their productive efforts in creating and shaping cultural property.

A second conflict concerns the registers available for interpreting power relations in cultural heritage debates. While heritage and collective identity – read: supra-individual phenomena – are predominantly taken as a starting point, power relations and questions of legitimacy are often framed in terms of particular interests. “Motivations,” “interests” and “intentions” are keywords in this area discussed regarding their political, moral or economic content situated “in” individual actors. Instead, more attention needs to be paid to the relation between individual motives and intersubjective discourses, and thus, to the trajectories of ascriptions to cultural goods and practices embedded in social value frameworks. I argue that, in order to grasp the thrust of sociocultural heritage processes – as they are, for example, entailed in the notion of the “authorized heritage discourse” (Smith 2006) – it is necessary to find a model that both theoretically and empirically incorporates the entangled spheres of individual autonomy and “intersubjectively shared contexts of life and experience” (Habermas 1997: 255). Consequently, I propose a distinctly relativist contextualization of cultural heritage debates, while maintaining a universalist theory of subjective rights in order to balance these two nodes.

Following from these first two conflicts is a normative conundrum fluctuating between a critique of authentic culture and its economic transformation, manifesting itself in terms such as “propertization” or “heritagization.” This concerns the evaluation of heritage processes that should not stop at enumerating conflicts or perceived injustices arising from these processes, but should instead mediate between ethically charged life-worlds (or “culture”) and the distribution of entitlements based on individually granted rights. I will contend that it is necessary, from

a normative perspective, to differentiate between these two levels to formulate a critique of heritage processes and to analytically approach such claims for collective rights.

These conflicts are not only of interest in scholarly debates, but also crucial for public discourse on cultural heritage. The misconceptions of community heritage that have been critiqued in anthropological debates can benefit from prior debates in social theory and shed light on the public perceptions of heritage and tradition by grounding them in the context of broader discourse on notions of individual rights and shared life-worlds.

1.2 Necessary Shifts: From Heritage to Action, from Communities to Legal Subjectivity, and from Regulation to Value Frameworks

The article proposes three analytic shifts to circumvent these false conflicts by drawing from debates on social struggles in democratic constitutional states over the last two decades (Honneth 1994; Habermas 1997; Benhabib 2002).

Firstly, it argues for the necessity to decenter cultural heritage by reconceptualizing its specificities and eliminating non-constitutive residuals. Heritage is a common social process that gains its characteristics from its reference to shared experience and its specific perception of a subjective stance.

Secondly, it proposes a move away from communities and collective identities as superordinate analytic categories and lays more weight on the individual as the constitutive element of society and as a focal point in heritage debates. In doing so, it opposes the view in heritage debates to move towards collectively-based rights (e.g. Carpenter, Katyal, and Riley 2009).

Thirdly, it suggests the embedding of debates on cultural heritage in a normative theory of recognition based on intersubjective interaction. By normative, I do not refer to a prescriptive or activist approach offering “right” or “just” solutions to deliberative claims, nor do I limit my analysis to a critique of the shortcomings of heritage regimes. Rather, normative relates to the “values and ideals [...] actually embodied in the reproductive conditions of a given society” (Honneth 2008: 18, my translation). This situates normativity in social reality and interaction: Normative frameworks and values efficacious for a given society are of major interest, and these frameworks are accessible by studying social interaction (see Groth 2011, for normative stances regarding traditional knowledge in international negotiations). Thus, this article proposes to connect debates on cultural heritage with an analysis of sociocultural value frameworks.

2 False Conflicts in Heritage Research?

Heritage research, especially when focusing on community involvement in processes of certifying, protecting or preserving heritage, is challenged by a number of complex divisions creating conflicts on different levels. They concern the transformation of cultural artifacts and practices, as well as attributions of value and power to actors in the field of heritage. In the following, looking at three such core conflicts, I will show that these are partly based on a negligence of individual legal entities in heritage processes, and that these conflicts can be rephrased and approached from a different angle by integrating or foregrounding the notion of intersubjectivity into heritage debates.

2.1 Heritage and Collective Identity between Fundamental Rights and Administrative Measures

Issues of collective identity are at the core of heritage debates. This holds true for situations where minority groups claim rights for culture as well as for social majorities, assuring themselves of shared cultural practices. The notion of collectively held cultural inventories is also put forward in UNESCO heritage conventions and other legal instruments pertaining to cultural heritage or cultural property²: Transmission, creation and interaction are described as processes involving communities or groups. Individuals are at the center of heritage debates only in exceptional cases, and if they are, then with reference to or as surrogates for groups or communities. The common view is that heritage is based on collectivities, and that the power of heritage rests on collective memory and identity.

Questions of distributing entitlements to culture and heritage are subsequently framed as problems between collective identities or collectivities and legal or other regulatory frameworks. Questions about the ownership of native culture or cultural practice (Brown 2003; Noyes 2006) are questions about collective rights, about the distribution and regulation of knowledge and materialities between groups of actors or communities. Collective rights to culture are one of the central problems in national and international legal regimes.

One example of such types of conflict comes from the World Intellectual Property Organization's committee on traditional knowledge. Established in 2000, this committee deals with the question of how to deal with traditional knowledge, traditional cultural expressions and genetic resources linked to traditional knowledge within the frameworks of intellectual property (IP) legislation (see Groth 2012). Existing IP rights posit individual legal entities – organizations or

² The World Intellectual Property Organization's (WIPO) "Intergovernmental Committee on Intellectual Property and Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources," the Convention on Biological Diversity (CBD) with its Working Group on Article 8(j) of the convention, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) are of particular note.

individuals – as holders of rights with clearly defined boundaries. A person or a corporation holds a patent, and the legal attribution is clearly defined based on subjective rights to property. This legal ascription of property to individuals has a long-standing history in Western thought (MacPherson 1963) and is pervasive in most legal systems. Democratic constitutional states that are of import here, especially incorporate this conception that rests on well-established views of individual creativity and communal reproduction:

Creativity and originality were the privilege of the bourgeoisie, while the masses were unoriginal and could only transmit the songs and tales of earlier generations. The art of the common people consisted only of copies. (Hafstein 2004: 79)

This dichotomy is constitutive for international (intellectual) property legislation as well (Groth 2012, 2011), despite current processes in international bodies dealing with cultural heritage and cultural property. Within these processes, the acknowledgement of collective cultural innovation and creation by “indigenous and local communities”³ or “communities [and] groups”⁴ is discussed and promoted by conventions. However, the central term – “community” – indicates the wariness of states to make more substantial concessions to the sovereignty and autonomy of these groups. The term indexes their weak legal position regarding the distribution and administration of rights to cultural property (Socha 2013).⁵ Communities are not clearly defined as legal entities capable of holding rights. Their structures – legal status, administration, decision-making processes, election of representatives – are largely incompatible with the structures of IP legislation. This creates legal uncertainty as to who is allowed to draw and benefit from collectively held traditional knowledge or traditional cultural expressions, and as to how entitlements and benefits should be shared. Consequently, indigenous groups in South Africa, among other countries, have successfully established corporations to administer

³ The term “indigenous and local communities” stems from discussion of the CBD; while its scope is not defined, it is part of Article 8(j) of the convention: “Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.” WIPO’s committee has adopted the term in its working documents, albeit without a consensual definition of scope.

⁴ UNESCO’s 2003 “Convention for the Safeguarding of Intangible Cultural Heritage” uses the phrase “communities, groups and individuals.” The latter term is in all cases but one in the convention prefixed with modifiers, such as “in some cases” or “where appropriate,” signaling the convention’s focus on the *collective* dimensions of heritage.

⁵ There have been new developments in the CBD towards the inclusion of “indigenous peoples” as a phrase, with a majority of member states to the convention signaling their willingness to adopt this term that implies a greater autonomy or sovereignty of indigenous groups. No decision has been made on this, though, and recent discussions of the WIPO committee show the reluctance of many states to adopt the term on the international level (author’s fieldnotes from February, 2014).

their cultural and natural resources in a more organized manner (Comaroff and Comaroff 2009). Furthermore, so-called “Biocultural Community Protocols” (UNEP 2009) have emerged in the context of United Nations debates on environmental protection and biodiversity negotiations. They aim to regulate the interface between international processes and collective resources, such as traditional knowledge about medicinal qualities:

While international regulatory frameworks are important for dealing with modern global concerns such as biodiversity loss and climate change, their implementation requires careful calibration at the local level to ensure the environmental gains and social justice they are intended to deliver. The local implementation of environmental legal frameworks is most likely to lead to environmental and social benefits when ILCs have the right of free, prior and informed consent (FPIC) over any activities undertaken on their lands or regarding access to their traditional knowledge, innovation and practices (also referred to collectively as TK) and when they are able to ensure that any activities or benefit-sharing agreements reflect their underlying bio-cultural values. (ibid.: 9)

Community protocols and the economic corporealization of indigenous groups and other communities are solutions to problems of representation and accountability. They provide the legal and administrative requirements to gloss over the misfit between collective culture and legal frameworks based on subjective rights. In part, they also reshape the relation between creative individuals and their community by introducing new sociocultural dynamics based on these tools.⁶ They allow new forms of cooperation in the realm of shared cultural practices, knowledge or properties, vividly illustrated by the exchange of common-pool resources (Groth 2013; Dedeurwaerdere 2010). However, these measures seldom introduce new fundamental categories of rights.⁷ They are mostly based on the form of private contracts between legal entities and are not framed as constitutional rights for groups. The kind of tools and measures introduced by heritage conventions is, in this regard, more an administrative step than a move towards the acknowledgement of collective rights to culture. The fundamental concept of subjective rights is not challenged by these measures. As this is partly seen as insufficient, there are, accordingly, claims to introduce collective rights to cultural property both in scholarly debates (most prominently Carpenter, Katyal, and Riley 2009) and in international negotiations.⁸

⁶ Part of this dynamic reshaping concerns the complex relations between indigenous artists, custodial communities and the art market; see Myers 2002.

⁷ Exceptions to this are the constitutional amendments in national law in Latin American countries, such as Bolivia or Ecuador. An overview of the constitutional recognition of indigenous peoples around the world is compiled by the Australian NGO “Recognise” and can be downloaded at <http://www.recognise.org.au/downloads/d4fd6f97faacb62d4f7f.pdf> <accessed February 25, 2014>.

⁸ Such claims are, however, disputed in international settings. The rationale behind this rejection is the concern that the sovereignty of states would be impeded by granting autonomy to indigenous

2.2 Imagined Communities: Politically Useful, Analytically Constricted

At the same time, anthropologists and folklorists argue that collective identities are constructions and that heritage and tradition are always socially made (Bendix 2009: 255; Kirshenblatt-Gimblett 2006: 194–195) and are not primordial categories. This argument references social processes affixing identities to groups of people and, by doing so, rejects essentialist views of culture as constitutive for individuals: It is argued that as heritage or culture are not natural categories but constructs, they do not accordingly constitute, predetermine or limit worldviews and practice. The notion of the community has, consequently, been aptly critiqued in scholarly debates about cultural heritage and cultural property (cf. Povinelli 2002; Noyes 2006). The negative aspect of the construction of communities is also illustrated in research on the impact of processes of heritagization on cultural performances (Tauschek 2010; Noyes 2006). The gist of many recent studies on heritage processes is that they are prone to elicit conflicts amongst bearers, holders or practitioners of “culture,” as well as between them and the state (Bendix, Eggert, and Peselmann 2012). The political power and pragmatic usefulness of the community category for identifying groups of actors is only one aspect in this, albeit a central one. It facilitates the communication between collective identities and instruments such as UNESCO conventions and creates possibilities for groups to self-represent, either in the form of corporations or, to some extent, codified communities.

What results is a discord between the political usefulness and the analytic constriction of the notion of community. This discord is situated between the ontological status of communities as fixed entities and its function in political discourse. The former concept has been discarded by an anthropological critique of essentialism, but the latter maintains its function in heritage debates: Without collective identities, there are no normative claims to heritage or property based on collective identities.

There are two main scholarly thrusts in dealing with this discord. The first, mentioned above, postulates the necessity of collective rights to culture (Carpenter, Katyal, and Riley 2009; Meskell 2005) based on the argument that biocultural community protocols or the transformation of communities into corporations do not suffice the normative requirements of the situation. Proponents argue for a departure from an individual rights approach to cultural property and a shift from “personhood” towards “peoplehood” (Carpenter, Katyal, and Riley 2009: 1046) to meet the political claims of indigenous groups. This argument is challenged, however, by many of the negative dynamics outlined by scholarship about cultural heritage processes (Bendix 2009; Hafstein 2004; Noyes 2006). Moreover, the introduction of collective rights is a fundamental shift in legal practice that is – as will be shown below – not necessary.

groups beyond soft law instruments. Such a granting of autonomous status would go well beyond the currently widely found model of recognition of identity politics.

The second thrust proposes a relational perspective on cultural property. Drawing from the long-standing Hegelian thesis of mutual recognition, it poses that property concerns less the relation between individuals and objects, but rather the relation between individuals by means of objects (Hegel 2006; Kojève 1969: 3–30). By doing so, it aims to deconstruct heritage processes by pointing to pitfalls of legislation, outlining potential conflicts and power inequalities. A central reason for this shift from object to relation lies in the largely undefined quality of cultural heritage or property.

2.3 Externalities: What Is Needed for Cultural Heritage to Be Special

Research on heritage is challenged by the fact that “cultural heritage” is a vague and undefined concept that only gains meaning when it is being explicated and contextualized. Otherwise, it runs the danger of remaining an ambiguous set phrase. There is an indeterminacy of the notion of culture, and respectively of cultural heritage, both in transnational and local processes, making it necessary to approach the “content” of heritage from this relational perspective. On the international level, cultural heritage is negotiated in terms of ambiguous and universal principles or requirements; on the “local” level, what can be observed is primarily a self-referential definition of culture that specifies cultural heritage by alluding to a vague and popular concept of culture. While this partial knowledge and unspecificity about what cultural heritage is or can be is sufficient for the meta-cultural and political operations of cultural heritage production, such as the UNESCO certification processes, this approach is highly problematic from an analytic perspective. Problems arise especially in cases where cultural heritage is not negotiated between minority groups and society, but primarily from within society, as is the case for most western societies.

One problem concerns the fact that in order for something to become a specifically marked and valued practice or object, it needs to be “special” or different from more common objects or practices. Seeing that the production of heritage, thus, always entails the construction of difference, in cases where cultural heritage is negotiated within a society, this difference needs a point of reference that is different from common processes or structures in this society. Recourse is often taken to perceptions of “authentic” and non-corrupted traditions in contrast to complex and irrational life-worlds. In this instrumental relation to traditional objects and practices, tradition is constructed as something absolute that is not dynamic and changing, but essential, stable and authentic (Groth 2009: 37–38). This conception implies the false conclusion that the cultural object or practice has an “original” or “authentic” quality that is transformed into something else in heritage processes.

If the difference between special and common objects and practices cannot be produced by pointing to social inequalities or the misrecognition of minority groups, as is the case for many struggles for recognition, also in relation to cultural

heritage, it can be done by recourse to romanticized surrogate notions, be it of a cultural object or practice, or traditional patterns of social organization. Essentially, this misconception is visible in the notions of “heritagization” or “propertization” that point to some kind of transformative process with a beginning – romanticized notions of authentic traditions – and an end point – a transformed or vulgarized cultural heritage or property in current society.

However, one should, from an analytic perspective, avoid this ontological fallacy that sees heritage as a change in essence and that also creates a false dichotomy of culture and economy as separate spheres, that is, a differentiation of genuine or authentic cultural objects or practices, on the one hand, and the cultural object or practice changed by economic or political processes, on the other hand. What I mean by ontological fallacy is that culture is constructed as being external to social totality and authentic, and thus, external to the circulation of goods, to power relations, and so forth. Therefore, describing, or rather deconstructing, a process or processes having their origin in a state of dynamic, subversive or uncommodified culture, is then, in one way or another, appropriated and ends up as a coagulation of cultural heritage; this deconstruction then entails the essentialization of the object and rids it of a critical observation that is then used for its perceived commodity form.

Thus, the object to critique is the process of making something heritage and the result – cultural heritage, but the input, the origin, and the conditions and specificities that apply to it are not critiqued. However, culture does not have the potential to become a commodity, it has always been a commodity, at least in the context of industrialized nations. What has to be critiqued then is not only the end form or the process that leads to it, but also the imagined or constructed fluidity of culture as not-commodity. My point is not to contest that UNESCO or other institutions set in motion problematic processes and implications of safeguarding measures. My point is that neither UNESCO on the international level, nor actors on the local level commodify culture and give way to injustices and inequalities; rather, what I am claiming is that these processes, by way of their discourses of authenticity, legitimacy, universality, and originality, rationalize social conditions under which these injustices and inequalities are reproduced.

2.4 Decentering Heritage: The Relational Approach

I would argue instead that it is necessary to decenter cultural heritage by understanding it as a common social process. This follows the insight of heritage studies that social relations are key for an understanding of heritage processes, and that they have more to do with the relation between subjects, mediated by objects or practices, than with these objects or practices themselves. The demarcation between what is mine from what is yours has primarily a social dimension – without that demarcation there is no attribution of cultural heritage to start with, so that it is less the relationship between people and things but rather the relationship of peo-

ple with people by means of things or practices: To draw the distinction between oneself and an object, one needs to be self-conscious, but in order for this self-consciousness to exist, one needs to recognize other self-conscious subjects as such.

Accordingly, it is necessary to shift the focus away from a cultural object or practice as the center of heritage debates to the social actors and relations between them that are mediated by a cultural object or practice. Such an approach is grounded in the assumption of mutual recognition as the basis of socialization and society. The focus should be on social actors or groups of social actors and the processes they are part of and entangled in. What is needed is the analysis of a socially mediated notion of culture that reflects the specific embeddedness of culture and tradition in a given society. This means that the unspecificity of the notion of culture or cultural heritage needs to be countered not with definition, but with an explication of these notions in their specific context, meaning that it is necessary to trace the values and sociopolitical denotations in a specific context. This can be done, for example, against the backdrop of the specific genealogies of cultural heritage in the context of western societies, primarily because there are a number of ideational factors and presuppositions – enlightenment, the development of civil society, second modernity – that influence the course of cultural heritage processes. It has to be asked what the meanings and social implications of culture, and accordingly of cultural heritage, are in specific contexts. The analysis of cultural heritage processes has to take into account the relevant discourses and ideologies about culture, heritage and tradition, that is, it has to broadly contextualize the notion of cultural heritage in its social dimension. One then also has to refrain from employing a very broad and semiotic notion of culture to the benefit of a situated, much narrower notion, one of culture and cultural heritage in society.

An analysis of phenomena under negotiation and certification in the framework of “culture conventions” and other fora poses the challenge for ethnologists to then reformulate the cultural, and its specificities as well. If the social distinctiveness of culture is not taken into account, a critical perspective on culture as heritage is impossible without the danger of the fallacy of constructing a certified or appropriated cultural object as external to a social totality. This would lead both to the fallacious notion of culture as not-commodity and external to social power relations, and to a positive approach that looks at nomination after nomination without getting to a critique of underlying social processes and dynamics.

3 The Normative Blindness of the Relational Approach to Cultural Heritage

3.1 Can Deconstructed Communities Make Normative Claims to Culture?

The relational approach to cultural heritage and property is, in this regard, capable of grasping the complexities of its object. However, it makes it difficult to position itself vis-à-vis the normative claims of the communities involved. The reason for this is twofold: Firstly, the notion of communities as cultural entities is constricted to its political dimension. Communities are not conceptualized as social entities with *a priori* legitimization and practices or artifacts bound to their “essence.” Rather, they are viewed as products of specific historic trajectories leading to social configurations of actors with political interests and shared cultural perceptions. The mediation of community relations by means of cultural heritage and cultural property has, in this regard, no substantial presupposition (such as a spiritual connection between bearer and object). The contribution of practices or artifacts to the social cohesion of communities has no added normative rationale which could be called on to justify claims for recognition. In this case, it becomes hard to argue for special rights for collective identities as their basis – both in terms of social cohesion and cultural practice – is de-essentialized. The normative rationale for any special protection can, thus, no longer reside in the cultural, but must rather be grounded in social or economic inequalities. In addition, as the focus is on the relation between actors, cultural heritage or property, and its relation to ethically shaped life-worlds remains largely undefined, leading to the ambiguity of culture outlined above. This ambiguity is caused by the disconnection between individuals and cultural practices or artifacts. If the notion of communities as meaningful entities is dismissed and their cultural heritage or property is conceptualized as being a social construction, cultural artifacts and practices lose their ties to those communities.

Of course, claiming rights on the basis of sociopolitical or economic inequalities can be understood as being an advancement in contrast to communities being limited to their culture in social struggles (Noyes 2010). However, this is problematic both from a pragmatic and from an analytic perspective. The concept of cultural rights, i.e. the right of groups or individuals to practice the culture they choose, the right to non-discrimination based on cultural identity, and so forth, resonates strongly in many societies and cannot be easily dismissed (Porsdam 2009). Furthermore, the relation between communities and cultural heritage is, despite their social construction, not arbitrary, but meaningful practice. There are, to refer to Jürgen Habermas, “identity frameworks” (1997) available for processes of socialization and enculturation, or “life-worlds” (Habermas 1981) constituting

interaction in cultural, social and personal spheres.⁹ From an analytic perspective, the dismissal of both a normative and meaningful grounding of cultural heritage in communities would lead to a situation where the enumeration of conflicts or perceived injustices arising from heritage processes are the main scholarly statement. It would not be possible to evaluate claims for heritage based on collective identity, as there would be no criteria for such an evaluation (because “authenticity” of tradition and collective identity are viewed as social constructions).

3.2 Subjective Rights as Guarantee for Cultural Distinctiveness

Therefore, from a normative perspective, it is necessary to differentiate between an empirical and a theoretical level. The empirical level consists of ethically charged life-worlds – or “culture” – with communities claiming cultural heritage as being important to their identity. This level entails the perception of the social construction of such claims, but does not presuppose an *a priori* connection between communities and culture. From this perspective, communities are products of specific historic trajectories, resulting in configurations of actors with motivations. The main focus in scholarly debates on cultural heritage has been on this empirical level, making it difficult to evaluate normative claims to cultural heritage. Accordingly, much of the debate critiques the pitfalls of heritage processes, such as the construction of categories of “authentic” heritage and collective identity, but ultimately stops short at explicating the normative reasons for this critique. The other way round, if empirical findings draw heavily on normative claims, how can these findings be understood and analyzed without making reference to normative arguments?

It is essential to pay attention to the theoretical implications of the argument. The theoretical level concerns the distribution of entitlements based on individually granted rights. This is the key foundation of democratic constitutional states.¹⁰ Subjective rights are central to normative claims, from this perspective. Such rights guarantee individual freedom and equality in democratic constitutional states on the basis of law. Subjective rights, and thus also democratic inclusion and equality, have been given priority over the preservation of cultural distinctiveness (Benhabib 2002) in debates in social theory on multiculturalism: They are not meant to guarantee collective identities. This does not, however, mean that the law does not take cultural rights into account. Rather, subjective rights guarantee individual choice (and not collective identity) to maintain cultural identities and practices not by collective rights, but precisely by prioritizing the individual and its subjective rights:

⁹ The relation between a Habermasian life-world/system differentiation and the culture concept in European ethnology demands further attention.

¹⁰ While I would limit my analysis to western states, this is of importance to settler nations as well, but will have to be contextually evaluated in further research.

[C]oexistence with equal rights for different ethnic groups and their cultural forms of life need not be safeguarded through the sort of collective rights that would overtax a theory of rights tailored to individual persons. Even if such group rights could be granted in a constitutional democracy, they would not only be unnecessary but questionable from a normative point of view. For in the last analysis, the protection of forms of life and traditions in which identities are formed is supposed to foster the recognition of their members; it does not represent a kind of preservation of species by administrative means. [...] Cultural heritages¹¹ and the forms of life articulated within them normally reproduce themselves by convincing those whose personality structures they shape, that is, by motivating them to appropriate and continue the traditions productively. The constitutional state can make this hermeneutic achievement of the cultural reproduction of worlds possible, but it cannot guarantee it. For to guarantee cultural survival would necessarily rob the members of the freedom to say yes or no, which nowadays is crucial if they are to remain able to appropriate and preserve their cultural heritage. (Habermas 1994: 222)

Thus, subjective rights as a central principle also imply the protection of collective identity, and not the other way round. As Habermas argues, along with scholars like Seyla Benhabib (2002), the constitutional state allows for the differentiation of collective identities on the basis of subjective rights capable of providing the potential to maintain them, but not by constricting individuals to them.

3.3 Do Subjective Rights Imply Isolated Interests?

Issues of collective identity are at the core of cultural heritage debates, but it is crucial to situate the analytic thrust behind heritage movements not as the specificity of communities and collective identity, but within subjectivities. While a shift to an “intersubjective, dialogical understanding of the individual” (McQueen 2011: 2) in framing communities and “their” cultural heritage is essential, this shift does not only concern the level of subjective rights, entitlements or attribution of culture or tradition, but also the ways in which motives in heritage processes are framed. This is also laid out in the conception of life-worlds, as, although they prioritize subjective rights, they stress the mutual recognition of individuals in the realm of cultural heritage. However, by shifting the focus to social actors and the relations between them, in the case of cultural property mediated by a cultural object or practice, there is also the danger of using an atomistic model of society where separate actors or groups of actors pursue their specific interests or have specific motivations with regard to cultural property. It is, of course, a very compelling approach to ask why actors do what they do, or to ask what political or economic motivations guide them in their actions. As it is necessary to focus on the social genealogies and

¹¹ Note that Habermas uses a notion of “cultural heritage” (*kulturelles Erbe*) that is situated in an earlier debate on multiculturalism rather than in more recent debates on heritage.

embeddedness of cultural property in social dynamics, interests (or motivations) are not adequate categories for the analysis of social dynamics: They lead to a very utilitarian constriction of the behavior of actors, which is not at all conducive to the study of heritage processes (or any other processes). The premise of subjective interests (whether they are economic, social, political, or cultural) is too narrow and misses the intersubjective entanglements of subjects. As such it is not able to connect to the “everyday mesh of moral emotive attitudes” (Honneth 2008). Therefore, in the last instance, this premise is also unable to take a critical stance toward heritage dynamics, as it necessarily stops at positive description or “deconstruction” of heritage processes where networks of actors and interests are mapped, without making recourse to their entanglement in social values and dynamics. In the face of claims for heritage or specific heritage processes, such an approach is limited to stocktaking, and research on cultural heritage is at risk of restricting itself to the surface of heritage dynamics.

4 Towards a Normative Theory of Heritage

As an alternative approach that integrates the separation between the empirical and theoretical levels as well as the situatedness of cultural heritage, I propose to introduce the notion of “recognition,” as used by Axel Honneth (1994), to the study of heritage processes in order to provide an analytic framework with which to make sense of competing claims for recognition. This model is able to provide a critical stance and a better analytic approach to heritage processes by redefining heritage as entangled in the social dynamics of mutual recognition.¹²

The central assumption of the theory of recognition is that the fundamental principle of society is that of mutual recognition: In order to become a subject, one has to be recognized by other subjects, and this relation is grounded on reciprocity, meaning that one has to recognize other subjects as well. In this sense, recognition has a double character, insofar as it both enables and restricts subjective identity (Honneth 1994: 20–53).

4.1 Honneth’s Theory of Recognition: An Overview

There are three principles of recognition, and they can have both negative and positive manifestations.

The sphere of love or partnership includes so-called primary relations – between a parent and child or other intimate relationships (Honneth 1994: 153); they

¹² Unlike Nancy Fraser’s understanding of recognition and redistribution, Honneth does not conceptualize recognition and redistribution as separate but entangled spheres, but argues that recognition relates to both cultural and economic status. Furthermore, Honneth uses recognition as an analytic notion in social philosophy, immanent in theory, and not as a political one for the support of social struggles as Fraser does, who sees the reason for the centrality of recognition in the increase of social struggles: the normative dimensions are fundamentally different (cf. Fraser and Honneth 2003).

are the place for learning the ability to take the perspective of someone else, where affection functions as a leap of faith of recognition (140). This sphere enables the subject to develop a fundamental self-consciousness that is a prerequisite to build social relations, to be a member of society; “being with oneself in the other” (*Sein-selbstsein in einem Fremden*, Hegel cited in Honneth 1994: 170). The positive aspect is that of self-confidence (Honneth 1994: 174), while mistreatment, such as torture or rape, can lead to the disruption of or damage to the self-consciousness (Honneth 1994: 214).

The social function of the second sphere – law – is to balance the relations of recognition between the members of society. The balance of mutual recognition can only be maintained by introducing legal relationships that guarantee individual scopes of action, insofar as individual subjects can express their autonomy without conflict (Honneth 1994: 176). In this second sphere of recognition, the social or common will claims its influence or restrictive power over the individual will. Contrary to many liberal contract theories, Honneth does not see law as something external to society that is introduced to a primal condition, but as already extant forms of recognition in the relation between individuals (Honneth 1994: 175–176). There is, thus, no atomistic idea similar to that in contract theories, but an embeddedness of subjects as moral actors in relations of recognition that are key for socialization. The guiding principle of this sphere is that of equality (Honneth 1994: 187), the positive aspect self-respect (Honneth 1994: 209), and, if violated, it leads to legal or social exclusion (Honneth 1994: 216–218).

The third sphere of social appreciation or solidarity relates to individual specificities, that is, to what makes subjects different from other members of society, such as special talents or characteristics; while the second sphere relates to general principles, specific characteristics are emphasized in the third sphere. In order to evaluate these differences, a shared system of values in a society, or a cultural self-conception is needed – a *Wertgemeinschaft* (Honneth 1994: 198) – which is exactly why the notion of cultural heritage needs to be related to social dynamics. The guiding principle of valuation for market societies is that of individual achievement or merit: The more the individual subject achieves, the more likely the increase in social and economic status (Honneth 2008: 16). Similar to the legal sphere, that of social appreciation constitutes the overcoming of traditional estates-based societies, where the individual is expected to comply to predetermined ways of living of typical social groups, and the ability to comply with the standards of social groups is valued. Instead, the individual subject in modern societies is evaluated by its specificities and individual achievements, and not by collective expectations that have to be fulfilled. Thus, modernity opens value statements up for disposition, as the social status of a person is no longer determined by the characteristics of the social group to which it belongs, but by their qualities as an individual (Honneth 1994: 199–210). The processes of individualization in modernity enable the pluralization of ethical standards and allow for the recognition of difference.

The principle of achievement in modern societies is introduced as a fundamental norm, alongside human rights and the recognition of basic needs. However, in contrast to the other two norms, it is also a legitimation of inequality: Differences in income, status or access are explained by individual achievements. While this principle is, of course, often perverted and not fully realized, for example, because of an inequality of opportunities, it marks a fundamental difference to estates-based societies, where social and economic status is predetermined (Honneth 1994: 198–199).

The sphere of social appreciation is always contested, as the cultural self-understanding of society is subject to constant change because the principle of achievement is open to interpretation. Thus, individuals and groups contest this frame of interpretation to claim recognition for their contribution, setting in motion social dynamics in the sphere of social appreciation that reinterpret social values and aims. (Honneth 1994: 197–198)

In this sphere, self-esteem is the positive manifestation of recognition (Honneth 1994: 209). If one is recognized for one's individual achievements, this leads to self-esteem. In contrast to traditional societies, the reciprocity of this relation of recognition is the reason for social solidarity that does not only tolerate the individual characteristics, but also has an active interest in their development for the purposes of superordinated social goals. The negative manifestation of recognition – the misrecognition of individual characteristics – would be that of insult or humiliation (Honneth 1994: 212).

4.2 Heritage and Recognition: Equality and Appreciation

The two latter spheres of law and social appreciation are of central interest to the relation between heritage and recognition. Following the assumption of cultural heritage as a mediator for social dynamics, claims for recognition in cultural heritage contexts in western societies are, thus, both about the principles of equality and cultural appreciation, that is, they are both about legal or procedural fairness of heritage instruments; and about social status. These two spheres are also entangled with one another.

Firstly, the sphere of law in cultural heritage contexts mainly concerns cases where there is a situation of recognition causing inequality between different social actors or groups of social actors. Here, claims for recognition are about compensating this inequality, and – in line with the principle of legal equality – about adjusting the legal sphere in order to rectify situations where inequality systematically occurs. This can be the case where heritage regimes have an influence on the legal status of a cultural object, practice or product, creating, for example, according to legal principles, unfair competitive advantages. Geographic indicators are one example of this, where heritage regimes might influence the market to an advantage for goods specifically flagged as being traditional or produced in a traditional way.

These claims can be framed as claims for social appreciation, but are, in the last instance, not so much about the construction of difference, but about equality, and thus, also about a rights-based approach to heritage.

While the sphere of law is certainly intriguing for the study of cultural heritage processes, especially seeing that claims for rights to counter inequalities are a major factor in cultural heritage and cultural property debates, the third recognition sphere of social appreciation is specifically suited to contextualize the notion of cultural heritage as part of social dynamics. What is special for claims for cultural heritage in western societies is a direct connection to the community of values, and this is one reason why it is such a successful concept. Heritage is construed as being typical, authentic or characteristic for a society, or better, for prior achievements of this society, in an original or better form. However, in order to claim special social appreciation, there needs to be the construction of difference, making the cultural practice or object special in some way. The discourse of heritage has found its criteria to specify these differences in the form of UNESCO conventions and other instruments that define the qualities that an object or practice needs to have in order to be considered heritage. This construction of difference within market societies is achieved by seemingly pointing to society itself – meaning that heritage is identical to society – and not to something else, something external. This conception entails the notion of cultural integrity, so that cultural heritage necessarily – and this is the first point – needs to be portrayed as authentic and – the second point – different from contemporary society. While the first point, the portrayal of authenticity or originality, reflects back to society, the second point, the difference from contemporary society, is externalized to “foreign” factors, such as globalization, homogenization and commercialization. This simultaneous internalization of positive difference – the original cultural heritage – and externalization of negative difference – the social circumstances in which it can be different – is a false dichotomy and dangerous fallacy as it stops its critique at mainly external factors, whereas both positive and negative differences are implicit parts of social dynamics. There is no reason why cultural heritage should be external to commercial processes, unlike any other aspect of social dynamics.

The recognition of difference in the sphere of social appreciation has its limits: It has the potential to be very successful as long as the legal sphere is not concerned and individual freedom is not touched. In cases where the principle of equality is violated, it reaches its limits, which is reflected in the “soft language” of cultural heritage-recognition: It is less about a rights-based approach and much more about recognizing, appreciating, etc.

4.3 Cultural Heritage and Individual Merit?

Nonetheless, the way that cultural heritage claims construct difference in the sphere of social appreciation in market societies is paradoxical, because the claims rely on traditional structures and expressions in the individualized sphere of social

appreciation that is fundamentally made possible by the acknowledgement of individual autonomy, and not of traditional groups or structures. Social appreciation in market societies is based on the principle of individual merit, and not on communal merits. However, cultural heritage processes justify the claims for recognition with recourse to traditional groups, necessarily including non-modern forms of social organization. Therefore, they challenge the very basic principle of the sphere of social appreciation: the centrality of the individual actor. While far-reaching claims that would also affect the sphere of law are likely to be denied in western society as they would violate the principle of equality, they can be successful in the sphere of social appreciation, and, considering the rise of cultural heritage claims, they actually are.

Nevertheless, in the context of cultural heritage, recognition in the sphere of social appreciation is shifted from being based on individual merit – the central principle of social appreciation in market societies – to the value of traditional practices. The legitimation of difference, in this case, is therefore, not based on the principle of individual merit and the acknowledgment of individual autonomy, but takes a communal shift to premodern structures or achievements. While the principle basically stays the same, the actors to whom it attributes value change, and the principle of equality are essentially violated by attributing merit or value to some sort of traditional social group. If the traditional practice of a group is specifically highlighted by the heritage regime, this difference – the thing that makes the group special and better and legitimizes their better social status – is not grounded on individual achievements, which is the guiding principle of market societies, but on communal achievement. This communal achievement, however, cannot be legitimized under the principles of market societies; therefore, struggles for recognition between different actors arise because the principle of equality is violated. There is no evaluative and valid principle in market societies that has the potential to regulate the hierarchization of different forms of cultural heritage, and thus, the attempt to integrate traditional organizing principles with market societies inevitably fails, and for a good reason.

It is indeed a paradoxical situation: A principle that is based on the individual subject is transformed to be applicable to a constructed group of traditional structure, but at the same time, the reason for this failed integration is not the market – or commercialization – but the fundamental principles of modern societies.

4.4 From Merit to Rights: Cultural Heritage as Legal Equality

This is the reason why it is not sufficient to look for individual interests or motivations, or to critique commercialization efforts in heritage processes. In this sense, commercialization is not a danger, but necessarily always already part of the cultural. Of course, commercial interests are part of claims for recognition, mainly in the sphere of law, according to Honneth's model, but the sphere of social appreciation plays a crucial role in heritage debates as well. It is, thus, important to analyze the

social circumstances that change the dynamics of recognition in a manner that merits not individual achievements, but takes recourse – or regresses – to premodern aspects in order to construct difference. Central to such an approach is the diagnosis of what Honneth calls social pathologies that facilitate such a shift to “communities” or “communal achievements”: Homogenization, globalization, contingencies, insecurities, and risks are certainly some of the central factors that bring about a reorientation away from the individual subject and toward communal relations. In this sense, tradition under the conditions of modernity and in market societies fulfills a certain instrumental function as consolation for insecurities, and it is used to relate with the past in a way that makes the present appear more rational and lets one take comfort in the face of irrationalities, contingencies and risk – “tradition covers the wound in which it rubs the salt” (Adorno 1986: 313). However, it should be noted that the “suffering” as the reason for this re-orientation to the communal is not abolished by cultural heritage, but rather reproduced by replacing individual with communal achievements, while diminishing the centrality of individual difference. Therefore, discussions on cultural heritage should be less about the influences that cultural heritage regimes can have on culture, and much more about the very social conditions that facilitate the construction of difference with recourse to communal merit while, at the same time, constructing something external as the main threat to cultural integrity.

Honneth’s model of recognition allows for two things useful for an analytic perspective on cultural heritage: Firstly, it facilitates an evaluation of normative claims to cultural heritage by referring to subjective rights rather than to collective identities. Insofar as claims for heritage are situated in the sphere of law and directed at legal equality, it is possible to evaluate these claims on the basis of fundamental principles of democratic constitutional states. This includes, as outlined above, the function of subjective rights as choice to practice or maintain a tradition, and following Benhabib and others, also the right to collective identities. Nevertheless, such an approach to collective identities is not based on essentialized conceptions, but on subjective rights. Secondly, insofar as claims for heritage are situated in the sphere of social appreciation, Honneth’s model, by means of contextualization and an analysis of historic trajectories, allows for a normative evaluation of such claims on the basis of fundamental social principles of recognition.

5 Conclusion

Starting with the observation that there is a mismatch between collective rights to cultural heritage and legislation and legal philosophy in constitutional states, this article sought to demonstrate a discord between different conceptions of communities in heritage debates. Collective identities are a key foundation for heritage processes to function, but problematic from an analytic perspective. The discord between these two perspectives is what makes it difficult to formulate a substantial

critique of such processes, because the usefulness of the concept in political discourse is evaluated against its ontological shortcomings. Critique of heritage processes, therefore, often find itself in a normative conundrum between the empowerment of disadvantaged minority groups and the refusal to essentialize these groups. There are two main scholarly thrusts to counter this discord. One accepts the political necessity of quasi-essentialization and calls for collective rights to cultural heritage and property; the other, in a relational approach to cultural heritage, stresses social dynamics and relations of cultural heritage rather than its objects. However, this second notion of communities as social constructions, dynamic and evolving in nature and with equally constructed ties to cultural practices requires an extension towards a subjective theory of rights. Drawing from debates on multiculturalism over the last few decades, this article argued that such a reference to subjective rights is necessary to make sense of normative claims in the realm of cultural heritage without taking the step of claiming collective rights, leading to a political quasi-essentialization of communities. Rather, it argued that subjective rights guarantee individual choice (and not collective identity) to maintain cultural identities and practices not by collective rights, but by prioritizing individuals and their subjective rights. In order to avoid an atomistic framing of normative claims as interests alongside this subject-centered view of heritage debates, an approach that is grounded both in the empirical and ethical life-worlds of actors is needed. This will take into account the centrality of subjective rights, and this article accordingly proposed to draw from Honneth's theory of recognition to evaluate normative claims to cultural heritage in constitutional states. This reframing of heritage debates in terms of recognition allows for a contextualized analysis of claims for culture in current society.

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