

Dimensions of Heritage and Memory

Multiple Europes and the Politics of Crisis

**Edited by Christopher Whitehead,
Susannah Eckersley, Mads Daugbjerg
and Gönül Bozoğlu**

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3 The instruments of European heritage

*Anthony R. Zito, Susannah Eckersley and
Sam Turner*

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Introduction

This chapter differs from others in this monograph in its focus on two political organisations, the EU and the COE, and their top-down efforts to engage with issues of heritage and identity. These organisations represent the two most visible post-1945 political efforts to transform Europe as a region, by promoting further integration; both are driven by a fluid collective memory of the impact made by world wars, genocide, economic deprivation and other forms of societal disruption. By their very nature, both organisations have sought to engage with the construction and reconstruction of history and identity, both to pursue a vision of a common Europe and to build a sense of purpose and value in their organisational efforts to build integration (and therefore justify their existence). They have selected particular policy *instruments*, which Hood (1983) defines as the tools by which actors implement their governance strategies. The core research question is: how do these two institutions seek to intervene and make people engage with memories, histories and identities by creating cultural heritage institutions and instruments?

In this chapter, we explicitly focus on governance and public policy instruments, making the central point that the EU and COE efforts to build cultural heritage for Europe and its societies/citizens necessarily functions within the political and social context of their wider mandate and organisational focus. Such an analysis lays bare the reality that this active and ongoing effort to construct memory and heritage enshrines a set of heritage tensions within a wider set of governance tensions. We define these heritage efforts as involving the active creating of the ‘culture of history’ consisting of the totality of artefacts, rituals, customs and assertions with reference to the past that enable people to link the past, present and future (Aronsson, 2015, p. 586, see Chapter 2 this volume); the framing of culture that results inevitably combines a range of contradictions: e.g. does the celebration of history celebrate commonality at the expense of diversity? At the same time, however, there are wider political tensions as to how these systems govern and the values that they represent that further compound these tensions of identity. Understanding how the EU and COE govern through the use of instruments will allow us to see how these

tensions arise and are reinforced. Our specific analytical purpose is to explore the impact of these European regional institutions on culture, but we acknowledge the more complex governance reality in that both institutions sit among cultural heritage efforts at the national, sub-national and also international levels. The EU itself acknowledges, for example, the close interplay between its governance efforts and those of the United Nations Educational, Scientific and Cultural Organization (UNESCO), but space constraints prevent us from exploring the implications (European Commission, 2016a).

We organise the chapter as follows. The second section provides a brief overview of political architecture of both the EU and COE, focusing on how both organisations create public policy with respect to cultural heritage. In exploring this architecture, the chapter notes the inherent governance tension within both systems. The third section provides a framework for assessing the cultural heritage instruments, taking particular note of the tensions that underlie these choices. The fourth section provides a succinct overview of the different kinds of instruments that the EU and COE deploy to achieve their cultural heritage objectives. The fifth section offers two cases studies as illustrations of the inherent cultural and governance tensions that result in the top-down efforts. The core argument centres on how the institutions and instruments reinforce core tensions within the cultural heritage project.

Overview of the European Union and Council of Europe governance systems

There is no scope in this chapter to provide a detailed examination of the history and evolution of both political organisations. Rather, by comparing the structure, main decision-making processes and core objectives of the two organisations, we will tease out some of the core attributes of both that shape the cultural policies. At the same time, we must not lose sight of the fact that there is a strong co-operative and interactive dynamic between the two organisations, a close linkage that is underlined by the EU and COE sharing the cultural symbols of the same official anthem (COE, 2018e).

In May 1949, the ten founding states created the Council of Europe in London. In the London Treaty, the states assert their ‘...devotion to the spiritual and moral values which are the common heritage of their peoples...’ (COE, 1949, Preamble) and their aim to ‘...achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage...’ (Ibid, Article 1a). Bond (2012, p. 6) quotes a former COE Secretary General as arguing that the COE is concerned with ‘the quality of life’ whereas the EU is concerned with ‘the standard of living’. Thus, the Treaty created an international organisation with a very explicit focus on the preservation of the values of western society, however defined.

The core COE decision-making concerning budget issues, strategy and policy-making is held in the Committee of Ministers (CM) consisting of the Ministers of each member country and various specialist steering committees.

Consequently, and despite its other consultative bodies, the supporting Secretariat and the court system (the European Court of Human Rights – ECtHR – most notably), the COE decision-making is intergovernmental, i.e. functions between Member State governments (Stivachtis and Habegger, 2011). The COE governs by creating international treaties or conventions to address issues of common concern and recommendations from the CM. A key reality here is that each state must ratify each convention for it to operate in that country. Member State failures to adhere to the European Convention on Human Rights can be taken to the ECtHR, but the essence of the COE approach beyond human rights is to monitor Member State behaviour, publicly shame states into compliance and rely on unanimity to take decisions (Bond, 2012). A total of 47 Member States constitute the COE. To join the COE these countries and their representatives must explicitly subscribe to the tenets of the London Statute and certain core conventions, most especially the European Convention on Human Rights. Nevertheless, as a number of countries wishing to join over the years have not been able or willing to make the full immediate commitment, the COE provided associate status by having them join certain conventions. The COE agreed the European Cultural Convention in 1954 and made it open to non-member European states (COE, 1954); thus culture became the ‘easy first step’ for other European states to integrate into the broader COE integration process, and on a more limited basis the EU integration process as well (Bond, 2012, pp. 86–87, 91).

Founded later with the treaty creating the European Coal and Steel Community in 1951, the integration process creating the EU is more familiar, and so we minimise the overview and focus more on critical differences with the COE. In the EU Treaty (EU, 2007, Preamble) the signatory states note how they draw inspiration from the ‘...cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law...’ Although the EU bears similar aspirations to promote unity, peace, democracy and other values, the scope of the EU aims and governance is far more complex than the COE. It has a much more complex set of institutions including supranational bodies with considerable policy power to sanction and fine Member States (Commission and the European Court of Justice) and a directly elected and powerful European Parliament, and this reflects a far wider range of political and policy values and priorities over which the EU governs. Enlargement states wishing to join the EU must accept the EU treaties and the overall *acquis* comprised of legislations and other instruments that the EU system has put into place.

Three further comparisons particularly interest us. First, the EU has a much more limited set of Member States (28 including the United Kingdom as of May 2019) and to some extent the COE has performed the role of helping to prepare many of the current EU Member States for EU integration. Second, the other core founding treaty (signed in 1957 to create the European Economic Community) only made low-key references to the issues of culture: Article 36, which had a focus on allowing states to restrict exports and imports of ‘national

treasures possessing artistic, historic or archaeological value', and Article 131, which operated to allow the Community to support cultural development in third countries (Craufurd Smith, 2004). Nevertheless, an explicit treaty basis to pursue cultural activity did not occur until the Maastricht Treaty of 1992 enshrined the EU activity of supporting the health of Member State culture (now article 167 of the Lisbon Treaty (EU, 2007)). This has the direct governance consequence that cultural values and issues have been inserted into an institutional and ideational structure that gave explicit priority to other objectives. Accordingly, a large element of the dominant value of the EU integration process was on the economic dynamics, and the political consequences, that resulted from the Common Market. Cultural values and priorities had to operate and compete within this context. Third, both the COE and the EU require Member States to be willing to contribute money to the operation of the organisations, and therefore there has been a strong incentive on the part of the Member States to limit the budget of both organisations. Although the financial effort to provide agricultural and structural fund monies, as well as to support the institutional structure and engagement with third countries, makes the EU budget significantly larger (€145 billion) than that for the COE (€466 million), in both cases the organisations have relatively limited amounts of money to spend on cultural heritage (COE, 2018a; Europa, 2018a).

Now we link these above issues to tensions that confront the COE and EU cultural approaches. First, there is a tension in the definition of what cultural value is. Given the different integration trajectories, this tension has been much more strongly embedded in the EU approach than the COE's, because of the special privileging of the EU's economic and common market values of avoiding tariff and non-tariff barriers to trade. The history of integrating Member States around values of culture occurred at a much earlier point in COE history; this allows the possibility that cultural values will figure in a more visible and integrated manner within the COE.

Second, although the EU officially adopted 'United in Diversity' as its motto in 2000 (Europa, 2018b), the underlying tension between activities privileging the vision of a common identity and heritage versus that of celebrating the differences remains a fundamental tension in both organisations; the tension is enshrined in both of their constitutional documents. With its greater supranational scope, there remains an ongoing EU tension between the desire to acknowledge Member State territorial interests versus the common integration vision. The EU's greater scope of power has meant that, as the EU has grown with each enlargement, a greater tension has ensued about the balance between respecting the territorial interest and voice of each Member State versus the need to make decision-making efficient within the EU given all of these new voices (Kerremans and Beyers, 1998). Although, as with any transboundary organisation, the COE contains these two tensions, the balance of actual power rests with the territorial perspective and the emphasis on maintaining the Member State voice through consensus (unanimity) decision-making. Diversity in outlook and diversity in compliance with the COE norms are inherent to the COE. The allowance for

diversity and territorial voice in the COE has allowed the organisation to incorporate more extensively ‘the Other’ in European geopolitics, both with respect to its fundamental norms more generally and cultural goals (Bond, 2012). Those two countries, Russia and Turkey, which have been particularly viewed as the Other since 2000 by European Union elite and public discourse, are full Members of the COE and the European Cultural Convention. Thus, only Belarus remains outside this European political entity. This inclusivity in a European cultural outlook must be weighed against the reality that the COE system has far greater limitations, compared to the EU, on its ability to get Member States to comply with these values and norms in the day-to-day governance of cultural heritage. It also raises the question of whether the COE is perceived as a halfway house or preliminary step for EU Membership by many of its members, making it more redundant with each EU enlargement absorbing more COE Members (Stivachtis and Habegger, 2011).

The third set of tensions centres on the privileging of Member States in the governance of both political systems, with an inevitable greater voice given to official and top-down visions of what is of cultural value. This will privilege certain identities and heritages to the exclusion of marginalised voices within the state border as well as the whole question of European culture mixing with ‘foreign’ external cultures (see Chapters 1, 2 and 5, this volume). Although both organisations, for example, have embraced protection of regional and minority languages, the fact remains that the power over decision-making and budgets remains firmly in the hands of (both EU and COE) Member State governments and their representatives, as well the EU Commission and European Parliament with respect to the EU. By its very nature, certain territorial voices, interests and memories will gain greater incorporation into the governance in each system. The limited EU and COE budget as well as the limited cultural scope given to EU policy and the more limited COE staffing mean that inevitable ‘winners’ and ‘losers’ will ensue in any policy focus. These again are more likely to be the more marginal and invisible holders of cultural value. Having the COE Cultural Convention act as an easier first step to European integration also tends to diminish the possibility for ‘awkward and difficult’ questions and voices to challenge the dominant national voice, as seen in Franco’s Spain becoming a convention signatory in 1957.

Instrument analysis

Having surveyed the institutional elements of governance in both the COE and EU, we now need to define the parameters of policy instruments. Instruments represent the most micro focus of how politics and policy engage with society and the environment. Hood (1983) offers a classic typology of instruments, focusing on how governments manipulate resources to attain policy aims: *information* (using knowledge and communication to either motivate societal behaviour or inform public policy), *authority* (those who govern wield legal, hierarchical powers), *finance* (deploying both monetary incentives and disincentives, e.g.

subsidies and taxes) and *organisation* (creation of organisational bodies and networks that can be either official or unofficial) are used to manage particular policy issues. Given its importance in the cultural context, we widen the notion of informational instruments to include those that focus on symbolic communication of feelings of identity and community (such as flags, mottoes and anthems).

As the previous section has indicated, however, not all of the instruments feature so heavily in the cultural heritage portfolio. The COE's limited budget and adherence to the consensus among its diverse Member States has led it to a limited engagement with financial instruments, and the same dynamic holds for EU cultural policy. The COE has pursued more regulatory conventions, but these are authoritative instruments where the states are left to decide whether to become signatories, unless the COE deems the conventions to be core requirements for COE membership. More fundamentally, the conventions leave the implementation to the Member States (Bond, 2012). Arguably, the most vital means for building EU integration has been the creation of the Common Market, and the effort to maintain and enhance a freer market has meant intervention in the market through harmonising rules to ensure Member State actor compliance with this objective (Egan, 2001). This focus on market intervention and limited budget has meant that the core governance structures and instruments have focused on regulations, hence Majone's (1994) depiction of the EU as a 'regulatory state'. Nevertheless, as the EU integration has extended beyond questions of market harmonisation into other priorities, EU actors have often found that they disagree on the goals as well as the instruments; this tendency has led the EU to prioritise informational instruments to address these significant objectives (Radaelli, 2003, pp. 14–15).

In order to isolate how both political organisations deal with the tensions mentioned in the previous section and differentiate how cultural policy instruments function in practice, we emphasise two further distinctions found in studies of international and national governance studies. Legal studies have labelled law as 'hard' when it contains 'obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting the law' (Abbott and Snidal, 2000, pp. 421–422). Such instruments, focusing on the broader concept, provide greater credibility of commitments by restricting actor behaviour. The notion of 'softer' law involves the instrument having weaker arrangements in terms of how obligations, precision and delegation are specified (Ibid, p. 422). The instruments will be relatively flexible in specifying means and objectives, more voluntary in terms of imposition on target groups and more likely to include these groups in the instrument design and/or implementation. The expectation is that softer specification of instruments will allow for a greater differentiation in how communities implement cultural policy. That differentiation may privilege official Member State identities and heritage or else allow more minority values.

The other dimension more explicitly addresses this question of differentiation and the third tension mentioned in the previous section, namely the degree to which an instrument seeks to harmonise (i.e. create a common/European norm/

rule/identity/value) versus one that seeks to celebrate difference and diversity. Difference can often be focused on official cultures and histories. This dimension taps into the wider cultural studies debate about what represents diversity as types of actors and types of cultural expression are a part of diversity (Compendium, 2018). Nevertheless, our analysis focuses on the ethnically marked cultural differences that are associated with international movement of peoples and in situ minorities seeking to maintain an identity in the face of potentially homogenising dominant/national cultures (Bennett, 2001, p. 17) Recognising that policies can acknowledge diversity, an important act, but go no further, we consequently create a third category that mentions explicitly the issue of identifying marginal voices and protecting vulnerable cultures that are not the dominant national or sub-national regional cultures. The juxtaposition is summarised in Table 3.1 below, but it is important to stress that, despite the table, these dimensions are not seen as binary. Instead, they represent a spectrum in which mixed means and aims are eminently possible.

Survey of the instrument landscape

Overview

This section provides a list of notable instruments found in both institutions, in order to depict the general distribution of instruments in each of these categories noted above. This review of instruments does not seek to systematically detect all the instruments wielded by each institution, but rather the ones highlighted publicly by both bodies, particularly the COE 2018 websites (COE, 2018b; 2018c; 2018d; 2018f) and the EU Commission (2017) mapping exercise. This choice has two analytical implications and limitations. First, we do not draw a distinction, in this comparative exercise, between instruments focused on culture versus those on cultural heritage; the reality is that the former can have direct and indirect effects on the latter that are hard to disentangle, especially when it comes to shaping the identities of particular communities. Perhaps even more importantly, the EU itself does not conceptually distinguish between culture and cultural heritage, which has considerable implications for the analysis in this book.

Second, our paper focuses on instruments that consciously, explicitly seek to address the cultural and cultural heritage policy. This decision gives only a

Table 3.1 Differentiating how cultural instruments operate

<i>The instrument promotes European integration by</i>	<i>Harmonising values, approaches</i>	<i>Recognising diversity</i>	<i>Celebrating marginal voices</i>
Governing through flexibility, soft governance			
Governing through prescription, hard governance			

limited mention to a range of potentially significant legislation, particularly in the EU context, that may have a substantial but unrecognised impact on cultural heritage; Nypan (2007) reports the findings of a working group, isolating 24 EU directives that have a potentially direct detrimental effect. The working group had a particular focus on heritage buildings, but, if we take a wider sense of culture, then many more EU directives may have an impact that has yet to register, particularly if they have no obvious detrimental role.

Council of Europe

Starting with the COE, the most prominent kind of instrument is the use of treaties and conventions: there are 16 (out of 224 in total) that contain an explicit cultural relevance; three are modifications/protocols for prior conventions. Although these conventions generally establish both rules and norms and thus are authoritative, their inherently voluntary nature makes them significantly softer than EU Directives and Regulations. Besides the COE organisational efforts to build the Committees to govern the cultural area (such as the Council for Cultural Co-operation and the Steering Committee that replaced it), the organisational focus has been on creating informal networks to voluntarily co-ordinate and share information, ideas and expertise. These include the European Cultural Heritage Information Network (HEREIN), Compendium (a community of cultural policy experts that monitors implementation of European Treaties in the cultural sector), CIRCLE for cultural documentation and research institutions, Platform Exchange on Culture and Digitalisation, the Culturewatch Platform, Diversity in the Economy and Local Integration (DELI), Media in Europe for Diversity Inclusiveness (MEDIANE), European Academic Network on Romani studies, and the Legislative Support Task Force. The COE provides money for certain projects, including the co-funding (with the EU Commission) of the COSME programme for the Competitiveness of Enterprises and Small and Medium Enterprises, the Ljubljana Process (I and II) Rehabilitating our Common Heritage, Eurimages (European Cinema Support Fund) and the Youth Forum.

Beyond the informational function that most of the networks have, the COE has a range of information instruments trying to set the policy agenda of Member States, suggesting guidelines and norms for member implementation, mechanisms for research, expertise and exchange, data, events, reports and symbols. These include 81 Recommendations and 35 Resolutions with a cultural element that are too numerous to dissect here (COE 2018f), as well as specific regional support efforts, for instance concerning the Kyiv Initiative Regional Programme and Kosovo programmes. One example of a data-focused instrument is the Indicator Framework on Culture and Democracy (IFCD), which provides data for assessing culture's contribution to democracy and the economic efficiency of financing culture.

Table 3.2 below draws our attention to several dimensions of the COE governance approach. Most notable is the essential absence of hard governance tools focused on culture, with the original COE treaty being included more for its

Table 3.2 Differentiating how cultural instruments operate in the COE

<i>The instrument promotes European integration by</i>	<i>Harmonising values, approaches</i>	<i>Recognising diversity</i>	<i>Celebrating marginal voices</i>
Governing through flexibility, soft governance	6 Treaties; Flag and anthem; Ljubljana Process; Eurimages Youth Forum; IFCD	7 Treaties including the European Landscape Convention; CIRCLE; Platform Exchange on Culture and Digitalisation; Culturewatch Platform; COSME; Heritage Days	2 Treaties including the Faro Convention; HEREIN; Compendium; DELI; MEDIANE; EANRS; Legislative Support Task Force; White Paper on Intercultural Dialogue; COE Exhibitions; Regional support
Governing through prescription, hard governance	Treaty establishing the COE and containing provisions on human and political rights	None located	None located

provisions concerning human rights than those concerning culture. The second is that, despite the range of instruments according to the Hood typology, the dominant focus is on voluntary guidelines, and the communication of ideas, expertise and information. Finally, a considerable proportion of the instruments, as well as the resolutions and declarations, have explicit mentions of the question of diversity of cultures and the challenges for ethnically diverse peoples and cultures, with more explicit mentions in Resolutions and Declarations after 1986.

Although the instrumental focus is on softer governance instruments this does not prevent these COE instruments from having a significant impact on European cultural heritage. Particularly important is the Faro Convention, which is a framework convention aimed at defining the core issues at stake as well as setting general objectives and possible ways forward for the signatory states (COE, 2005; Thérond, 2009). Adopted in October 2005, Faro set the policy agenda and discourse by offering a holistic definition of cultural heritage, a definition that encompasses a much wider understanding of how the concept relates to all European communities and individuals and makes linkages to wider values of democracy and human rights. In doing so, the Convention acknowledges the contradictory values and potential for conflict, as well as the value of preserving heritage for the wellbeing of society (Thérond, 2009, see also Chapters 1 and 10, this volume).

European Union

In contrast to the COE, the founding treaties of the European Union, specifically the treaty creating the European Economic Community, only give a limited acknowledgement of cultural issues, in this case mentioning the need to limit trade to protect national treasures (Article 36 of 1957 Treaty – see Crauford Smith, 2004); Article 167 of the Lisbon Treaty is more detailed but mentions both culture and cultural heritage in a fairly interchangeable manner while at the same time stressing the importance of national and regional (sub-national) diversity. The diverse elements of EU cultural policy consequently arise out of the creation of secondary legislation (regulations, directives, decisions, opinions, recommendations, communications and white and green papers). We have relied on two Commission (2016b, 2017) sources to give an overall picture of the EU's direct involvement in cultural heritage. However, we also acknowledge the unintended cultural impact of EU legislation by inserting the 16 Directives (such as the Directive creating the Environmental Impact Assessment) and three Regulations that the Working Group on EU Directives and Cultural Heritage (WGEUDCH) isolated as having a negative potential impact on cultural heritage; all of these instruments on this list (which must not be seen as exhaustive but rather merely illustrative) focus on relatively prescriptive rule-making (Nypan, 2007). Table 3.3 below presents examples of each instrument to indicate the overall pattern, but does not provide a comprehensive list.

The prescriptive rules that have a more explicit engagement with culture and cultural heritage tend to focus on enhancing the Internal Market and protecting the community within its borders (for example, Directive 2013/37/EU on the re-use of public sector information as resources, Directive 2014/60 on the return of cultural objects unlawfully removed from a Member State territory, Regulation 116/2009 on the export of cultural goods, Regulation 733/2013 on State Aid, Directive 2015/849 and Regulation 2015/847 on the transfers of moneys for illegal purposes). The EU created more flexible instruments to support cultural initiatives such as the Regulation establishing the Creative Europe Programme involving funding, guidelines and organisation.

Moving to organisational instruments, the EU has one agency, the Education, Audiovisual and Culture Executive Agency (EACEA), to administer various funding programmes that include culture. More prevalent are a range of networks and non-governmental bodies that gather experts and stakeholders to generate greater information and knowledge concerning EU priorities. Examples include: European Expert Network on Culture (EENC), European Youth Forum (EYF), Member States Expert Group on Digitalisation and Digital Preservation (MSEGDDP), Expert Group (EG) on Cultural Heritage, European Marine Observation and Data Network (EMODnet), a network of nature protection areas under Natura 2000, Europe-China Culture and Economy Commission (EUCNC), the network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), and the European Strategy Forum on Research Infrastructures. It is noteworthy that only a few of these networks have

explicitly acknowledged diversity and marginal groups in their core statement of values and priorities. The same picture emerges in studying financial instruments, which fall into four general categories focusing on funding and awards. First, we have the major EU spending programmes supporting a wider set of EU integration priorities, most especially the European Regional Development Fund (ERDF), European Social Fund (ESF), European Agricultural Fund for Rural Development (EARFRD), European Maritime and Fisheries Fund (EMFF), Europe for Citizens, Programme for the Environment and Climate Change (LIFE), Instrument for Pre-Enlargement (IPA), European Creative Districts, and the EU programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises (COSME). The EMFF and IPA stand out for the acknowledgement of ethnic groups including vulnerable ones such as the Roma in Eastern Europe (European Union, 2014b, Annex II). The EU has funds that support the building of knowledge and research, such as Joint Research Centre (JRC), European Region Action Scheme for the Mobility of University Students Plus (ERASMUS+), and Horizon 2020. More specifically focused on the issue of the cultural are a range of EU prizes (e.g. EU Cultural Heritage Prize, Mies van der Rohe Award, European Language Label – ELL) that have a communication/informational component and constitute funding elements of the Creative Europe Programme as well as other programmes (e.g. Literary Translations and the Ljubljana Processes I and II) that fund more specific cultural heritage activities.

The last category of instruments, relating to information, is the most diverse grouping including a range of plans (e.g. Work Plan for Culture) and strategies (e.g. ‘Towards an integrated approach for cultural heritage for Europe’, a Communication on a new framework for tourism), decisions (e.g. establishing the language teaching and learning programme *Lingua*), recommendations (e.g. on Film Heritage), databases (e.g. EUROSTAT and Cultural and Creative City Monitor) and digital platforms (e.g. *Europeana*, Social Platform on Reflective Societies). Of particular interest to this chapter and the larger book are informational instruments that draw attention to cultural values as well as providing some funding and legal protection as appropriate; these include: European Capitals of Culture, European Heritage Days, the European Heritage Label, European Year of Cultural Heritage (EYCH), EU Quality Logos for Protected Designation of Origin (PDO), Protected Geographic Indication (PGI) and Traditional Speciality Guaranteed (TSG).

If you consider the amounts of euro backing each of the programmes in Table 3.3, it is telling how much of the instrumental focus is on the internal market and other aspects of European integration. In particular, the ‘hard’ secondary law instruments are all in the common integration category. Looking at ‘softer’ instruments, informational instruments show the greatest spread across the table and the greatest focus on marginalised communities. Our case studies enable us to gain a greater sense of how these instruments shape the approach to cultural heritage found in the Council of Europe and the EU.

Table 3.3 Differentiating how cultural instruments operate in the EU

<i>The instrument promotes European integration by</i>	<i>Harmonising values, approaches</i>	<i>Recognising diversity</i>	<i>Celebrating marginal voices</i>
<p>Governing through flexibility, soft governance</p>	<p>Symbols (e.g. Flag), MSEGDP; EMODnet; Natura 2000 network; EUCNC; EU CULTNET; European Strategy Forum on Research Infrastructures; ESF; LIFE; JRC funded projects; ERASMUS+; Horizon 2020; COSME; EU Cultural Heritage Prize; ELL; Ljubljana Processes I and II; Europeana; EUROSTAT; Cultural and Creative City Monitor; PDO; PGI; TSG</p>	<p>Create Europe Programme; EENC; EG on Cultural Heritage; ERDF; EAFRD; Europe for Citizens; European Creative Districts; Mies van der Rohe Prize; Literary Translations; Work Plan for Culture; European Capitals of Culture; European Year of Cultural Heritage; Recommendation on Film Heritage; Communication on a new Framework for Tourism</p>	<p>EYF; EMFF; IPA DCI; Towards an integrated approach strategy; Lingua; European Heritage Days; Social Platform on Reflective Societies; EUROSTAT data</p>
<p>Governing through prescription, hard governance</p>	<p>Treaties in force; 3 WGEUDCH Regulations; 17 WGEUDCH Directives; Directives 2013/37, 2014/60, 2015/849; Regulations 116/2009, 733/2013; Regulation 2015/847</p>	<p>Article 167 of Lisbon Treaty</p>	<p>None located</p>

Cases

The European Landscape Convention

The European Landscape Convention (ELC) is a COE treaty that was opened for signatures in Florence in October 2000 (COE, 2000a). By late 2018, the ELC had been signed and ratified by 39 Member States; a further two countries have signed the convention but not yet moved to the ratification stage. The need for an international treaty had been identified in 1994 by the COE's Standing Conference of Local and Regional Authorities of Europe (CLRAE), which recommended the development of a framework convention on the management and protection of the natural and cultural landscape of Europe as a whole (COE, 2000b). The CLRAE's recommendation was to some extent built upon recommendations already prepared by COE experts that took tentative first steps towards moving from site-based approaches to landscape-based approaches to nature and cultural heritage. A drafting group, which comprised expert landscape practitioners from professional and academic backgrounds, developed the initial text of the ELC. Following consultation with representatives of governments, competent authorities, international bodies and NGOs, and consideration by relevant COE committees, the final text was prepared by a Committee of Experts and recommended by the Council of Ministers of the Council of Europe (CM) in July 2000. In 2016, an amendment to the treaty was opened to ratification with the eventual aim of allowing accession by non-member states of the COE (COE, 2016).

The final version of the ELC includes a concise yet powerful definition: ‘“Landscape” means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors’ (COE, 2000a, Article 1(a)). This holistic perspective, bringing together natural and cultural aspects with change over time, reflects the diverse backgrounds of those involved in drafting the text. ‘Character’ becomes a central concept, which emphasises both the creation of landscape through human perception and also its ubiquity (which is explicit in Article 2). Articles 5 and 6 outline the key aims of the treaty: to ensure the recognition of landscapes in law, to support implementation of policies for landscape protection, management and planning, and to ensure the participation of the public. Specific measures should include awareness-raising, training and education, landscape assessment, and activities, which enable the public's aspirations for landscape quality to be realised.

While parties are bound to implement the Convention, they are free to do so using their own policies and methods (COE, 2000a, Article 4). In practice, this means that the Convention's recommendations have been implemented with varying degrees of effectiveness depending on the mechanisms chosen and the resources available to the responsible national and sub-national agencies.

The COE itself has used its limited budget to foster and develop communities of practice (Fairclough *et al.*, 2018, p. 12). A series of conferences and workshops have been dedicated to disseminating good practices and enabling participants to

embed the ELC in their own institutions. A series of related publications have provided case studies on the implementation of the Convention for specific themes such as urban management, spatial planning and sustainable development (e.g. COE, 2006; 2012; 2017); the biennial ELC Landscape Award and the International Landscape Day help raise awareness. Recommendations of the CM provide encouragement for signatories to explore the relevance of the ELC for a range of issues such as human rights and democracy (CM, 2017).

In various Member States, the Convention now provides underpinning concepts for law and policy. In Catalonia, for example, new legislation was introduced in 2006 to provide regulations for landscape protection and management (GdeC, 2006). In the UK, where the Convention has been implemented through policies, Natural England has produced guidance for local government on how to embed ELC principles (NE, 2015). Meanwhile ‘character’ has become a central concept in national planning policy (DCLG, 2012). The Convention’s influence has also extended to the European and international levels. International networks have drafted position papers designed to influence European Union policies such as the Common Agricultural Policy (e.g. RGEUCH, 2017), and UNESCO has adopted the landscape approach in its guidance on the management of historic cities (UNESCO, 2011). Landscape as defined by the ELC is also included explicitly in the revised EU Directive on Environmental Impact Assessment (EU, 2014a).

Responsibility for putting the ELC into action has often been delegated to agencies whose primary competence lies mainly in either the natural or cultural domains; for this reason, pre-existing structures have sometimes limited its implementation. Despite such practical problems, various effective strategies have been developed ranging from the provision of support and guidance through policy to the creation of new legal instruments. Consequently, the principles expressed in the ELC have become influential not only in Europe but around the world.

The European Heritage Label

The European Heritage Label is an instrument designed to strengthen and support a sense of belonging to Europe and the ‘shared heritage’ of European citizens, in particular young people. It is a Creative Europe action which emerged from an intergovernmental initiative beginning in 2005 (EC1, pers. comm., 2017) to become an EU action, with the voluntary participation of Member States, in 2011 (European Union, 2011). The primary motivation for the EHL as a policy instrument – evident within the documentation for the EHL, and its annual review process – is for the instrumental use of existing heritage (whether a single historic site, a collection of objects or documents, or a group of sites and collections) for the purposes of European integration and cohesion. Indeed, the general objectives of the Decision in Article 3 are first to strengthen ‘European citizens’ sense of belonging to the Union’ and second ‘strengthening intercultural dialogue’ (EU 2011, article 3.1). The key target audience for EHL

sites are young people across Europe, with the clearly-stated aim of widening access to and increasing education around sites that are symbolic of European values in order to influence the next generation of European citizens and encourage support for European integration (European Union, 2011).

This ambition is articulated in relation to the notion of heritage as a ‘common good’ of Europeans – one that can be mobilised not only to educate, but also to bolster a sense of European identity and to disseminate European democratic values. Sites nominated each year for EHL status are judged against criteria including the ‘symbolic European value’ of the site – articulated as being ‘cross-border or pan-European’ in nature, connected to European history and integration, potentially through individuals, events or movements, or related to the common values underpinning European integration (European Union, 2011, article 7). Building upon this foundation, candidate sites are required to submit a project and workplan meeting both idealistic aims connected to ‘European-ness’ and pragmatic aims in terms of site management (European Union, 2011, article 7).

Tensions

There is inevitably an overall tension – common to many instrumental cultural policy initiatives, whether European, national or regional in origin – of fitting cultural and heritage policy into frameworks that mix intrinsic, instrumental and institutional value (see Holden, 2006 for definitions of these) in their approach. Layering that into a soft governance approach means that instruments such as the EHL will meet many of the soft targets, but with significant limitations in some cases, not least in how adherence to such targets could be usefully or reliably measured (if at all). The challenge for policy-makers is not only how to fit a square peg (intrinsic value) into a round hole (instrumental value), but also whether to choose a hammer or a chisel for the job. The additional challenge from the heritage management perspective of understanding and articulating heritage – which commonly is funded nationally or regionally, and protected nationally or supra-nationally – on the European level is to meet EU ideals and aims, with no European funding or protection to support this.

Cultural value – defined by whom and how?

EHL selection panel documentation highlights the challenge of not only articulating sites as having European cultural value, but of understanding what European cultural value might be as opposed to universal value (UNESCO), national significance (national heritage/monument/collection bodies) or cultural value as defined variously by different national or regional governments according to their politics at a given time. A further challenge is that sites are required to apply for EHL status themselves, via a national pre-selection process prior to the EU level selection by a European panel. The risk is that these potentially differing notions of cultural value therefore work against successful nomination for

EHL status. Examples include if a site positions itself too closely to the national argument to be able to articulate its European value clearly enough for the EU panel, or if a site's European value is not recognised as such by the national panel during the pre-selection. Underlying this is the ongoing and nationally variable discussion on what 'heritage' is, or could be (see Smith, 2006, Harrison, 2013, Chapters 1–2 this volume) alongside the question of cultural value, and by whom and how both of these terms are defined.

Successful EHL sites focus on the 'European values' of democracy. For example, at the EHL Gdańsk Shipyard site, the co-ordinator highlights that: 'values represented by Solidarity movement are one of the fundamental values of Europe...this is the aim we have to put in the EHL project'. At the same time, other sites which may not have official EHL status – such as the Berlin Wall Memorial Centre – also represent these 'European values': 'the whole site is all about the values of democracy and freedom' (B1, pers. comm., 2017). The soft nature of the EHL as a tool – where sites apply for recognition, rather than being awarded it externally – creates a potential paradoxical situation where sites of significant European value are not EHL sites. So, at the Gdańsk Shipyard site, the priority is:

to put the values of Solidarność in the context of other values represented by other EHL sites and to share the information about EHL itself as a sign of European values – here in Gdańsk, in Poland and in Europe. I think this is the aim of all of us, of all the sites. And we do this, to show that Solidarność and historical shipyard is part of European story and one of the most important European values.

(G2, pers. comm., 2018)

Conversely, the European value of the history of the Berlin Wall (which 'has always been not only a Berlin-ish symbol...but a German, European and an international symbol of the Cold War and it has always been from the very first day, a symbol ... for overcoming the Cold War peacefully' – B1, pers. comm. 2017) lacks EHL recognition under the current system.

Unity in diversity – commonality of identity/heritage v. celebrating differences

The presentation of diversity within the EHL documentation is mostly in relation to regional or national differences between Europeans, and the perceived need for heritage to act as an intermediary in integration processes lies at the core of the EHL decision. At the same time, intercultural dialogue is highlighted as a primary objective of the EHL, but this is not defined or explained further. Diversity in the European sense (as between different nations, regions, language groups or recognised European minority groups) is therefore defined differently from how it is understood in individual nations. For example, in the UK diversity is understood to encompass the wider community of those living within the

UK – no matter what their ethnic, geographic or national origin – in addition to those with protected status from discrimination in human rights terms. Such variations in understanding the terminology and therefore also in expectations of what a site might aim to do to achieve diversity of access inevitably create tensions, which may affect the success or failure of prospective EHL sites at either the national pre-selection or the European selection stage.

The official EHL documentation's stated aim of achieving greater integration through the use of European heritage to promote a sense of a common identity is not necessarily at odds with the different notions of diversity. However, the lack of EHL sites clearly associated with a wider notion of diversity within Europe, either historically or in relation to contemporary populations, suggests that there may be a difficulty – whether at the site level, the national level or at the European level – of understanding that diversity is integral to European history and heritage, as well as being directly relevant to contemporary identities, integration and community cohesion in Europe. For example, out of 38 EHL sites, not one makes clear the connection between Europe and histories of colonialism (see Chapter 8, this volume), of slavery or the contemporary legacies of this, despite opportunities to do so through the historical connections to some of the EHL sites, such as the Vienna Hofburg – an EHL site associated with the Habsburg Empire (G1, pers. comm., 2018).

While the heritage professionals involved with the sites and the management of the EHL projects within specific sites recognise the value of heritage in relation to 'unity' and 'diversity', they question to what extent this is understood in the political realm: 'Heritage in general is quite an important tool for integration but I'm not sure if politicians think the same' (EC1, pers. comm., 2017). This is also evident in the role that heritage sites (whether EHL ones or not) can play in contemporary social integration measures. For example, at the Berlin Wall Memorial, broadening access to the site, using its history for new audiences and an awareness of its value for addressing contemporary social challenges are embedded within their educational activities: 'we are constantly developing new educational formats in terms of how to involve other groups and some for disabled people, some for migrant backgrounds' (B1, pers. comm., 2017).

Labelling reflecting multiple governance tensions

The complexities and layers of heritage and culture designations and protections – with local, regional, national, European or UN instruments and measures potentially in place simultaneously at individual sites – is a challenge, not only for the management of the sites, but also for the public. The Gdańsk Shipyard site – which has EHL status (under both the early intergovernmental action and under the current action), national protected monument status, and city heritage protection and is working towards applying for UNESCO World Heritage Status – is a case in point. A key staff member with responsibility for the EHL site highlights that they have:

difficulties in how to explain to the public what is the difference between for example, EHL and the list of heritage of UNESCO. This is very difficult, because the public know quite [well] the sites of UNESCO and people always think EHL is the same, and it is a very difficult question to show the difference.’

(G2, pers. comm., 2018)

Other heritage professionals take a more laissez-faire approach to the multiple heritage designations and tools; for example, the Berlin Wall Memorial is listed under the early intergovernmental action as having a ‘European Heritage Label’, but has not applied for the current version – seeing no need for it (B1, pers. comm., 2017).

The Gdańsk Shipyard EHL site managers see the EHL as a useful additional tool, which adds prestige to the site, attracts visitors and strengthens their hand in arguing for the preservation of built heritage of the wider Shipyard area and a greater historical awareness of Gdańsk’s pivotal role within twentieth-century political, social, industrial and colonial history (G1, pers. comm., 2018). This is particularly important at a time when political and economic pressures are driving rapid private investor-led regeneration of post-industrial sites (*ibid*), and reducing the capacity of historians and heritage sites to address both historical and contemporary social issues. The potential of the EHL appears to be greater than its current reach. The absence of specific funding for EHL sites combined with public confusion around the multiplicity of heritage instruments are significant challenges. It remains to be seen whether the current Creative Europe call for networking and co-ordination activities for EHL sites will address these (European Commission, 2019).

Conclusion

The instruments landscape with respect to the Council of Europe and the EU is a varied one; this is true not simply or even predominantly in terms of instrument types but even more so in terms of values and objectives, and instrument implementation. The differences in the two European organisations are clearly seen in the fact that the regulatory teeth, as well as the larger budget, are found predominantly within the EU context. Nevertheless, in terms of developing a wider European governance approach to cultural heritage, the COE has had an earlier and arguably equal or even greater influence than the EU. COE conventions such as Faro and the ELC show how it has led in terms of much of the conceptual, ideational language underpinning how European states govern cultural heritage, especially with respect to acknowledging the values of diversity. This has largely been achieved through ‘softer’ informational instruments and networks. At the same time, the similarity with the EU is greater than it appears: the instruments more oriented towards cultural heritage in the EU context tend to be softer as well. The EU has come much later to a policy prioritisation and appreciation of cultural heritage, and so the EU integration effort in culture has weighted the

values more in terms of market and competition. These more broadly focused EU efforts in areas such as regional funding have less of a tendency to focus on the marginalised cultural voices.

In terms of the case study analysis, the European Landscape Convention is a strong example of the influence by means of information that the COE can have on cultural heritage governance. This works at both a mass/community level, raising public awareness and aspiration but at the same time equipping policy-makers and cultural heritage experts with the conceptual vocabulary to contend with governance. This effort has had a governance impact not only in the European context but in the global one as well. The European Heritage Label is likewise an informational instrument trying to build awareness and to educate about European cultural heritage. Our case analysis emphasises the tensions in and the plurality of the values at the heart of this instrument. EHL promotes a common good and a European Heritage but at the same time emphasises the role of unity through diversity; that articulation of diversity, however, usually does not make linkages to marginalised cultures, histories and voices. As we can see in other EU instruments, EHL has an equal ambiguity in terms of the nature of the value that culture represents, with particular tension between instrumental and intrinsic values. In both cases, a limitation in the material resources provided by the ELC and EHL leaves the interpretation of the objectives very much to the specific heritage sites and activities and those local/national agencies (often with purposes that may diverge from each other as well as the European institutional aspirations) that directly govern them.

The reality of multiplicity is both a core strength and a core weakness in European Cultural Heritage policy as practised by its leading membership organisations. The array of instruments allows for different approaches, interests and knowledge backgrounds to give greater coverage to cultural heritage. Nevertheless, the instrumental patchwork that results leaves gaps as well as tensions between cultural heritage instruments as well as other policy priorities and instruments operating in these bodies. Within the instruments and across the sector there are often a multiplicity of identities and values at work, not always in harmony with each other. Unity versus diversity, official versus marginalised, national versus European, European versus the Other and many other juxtapositions often lurk in instruments such as the EHL. The case studies also show that there is a multi-layered, multi-level approach to governing cultural heritage involving global bodies, European institutions, national agencies and sub-national entities. This has advantages in that the different interested bodies can cover more ground, potentially learn from each other and support each other's efforts. Nonetheless, as the Berlin Wall story reveals, this complexity has the potential to confuse and distort efforts to enhance European cultural heritage. Which actors, venues and instruments can provide the necessary co-ordination to address some of these challenges?

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