
SOCIAL THOUGHT & COMMENTARY

Cultural Heritage Rights: From Ownership and Descent to Justice and Well-being

Ian Hodder

Stanford University

Abstract

The protection of cultural heritage sites is normally evaluated in terms of universal and scholarly significance criteria, although increasingly the contributions of sites and monuments to the economic and social well-being of communities have been recognized. Human rights discourse, despite its many problems and limitations, offers a possible mechanism for evaluating heritage in terms of social justice and well-being. A cultural heritage right based on descent is particularly problematic and cannot be supported by archaeological, historical, and anthropological theories. A cultural heritage right based on whether people are in practice able to participate in sites and objects in such a way as to fulfill their capabilities is an alternative, as long as it also includes responsibilities to other communities with conflicting interests. However, few archaeologists and heritage managers have the training and expertise to work out short- and long-term economic and social benefits of artifacts, sites, and monuments, and they have limited experience in facilitating human capabili-

ties through heritage beyond scholarship, aesthetics, and identity politics.
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Discussion of the value of global heritage has focused on estimating the universal value of monuments. This universalist position is clear in UNESCO (United Nations Educational, Scientific and Cultural Organization) statements on the duties of nation states to protect heritage of outstanding value for the sake of humanity as a whole. In 1972, UNESCO agreed on a World Heritage Convention that states, “The cultural and natural heritage is among the priceless and irreplaceable assets, not only of each nation, but of humanity as a whole. The loss, through deterioration or disappearance, of any of these most prized assets constitutes an impoverishment of the heritage of all the peoples of the world. Parts of that heritage, because of their exceptional qualities, can be considered to be of ‘outstanding universal value’ and as such worthy of special protection against the dangers which increasingly threaten them.”

“Outstanding universal value” is identified by UNESCO if a monument is an outstanding example of a particular phase or culture or society or civilization—in other words it is an outstanding example of a type of site. The monument also has to be “authentic”—for example, really from the period in question. It also has to have “integrity”—the monument should not be built upon, developed, be very eroded, partial. The focus is all on the thing (Labadi 2007, Lafrenz Samuels 2008).

Such a definition of universal value is also closely linked to the expertise of archaeologists and historians who can evaluate a monument in relation to other monuments (Byrne 1991). It is dependent on the knowledge of categories of object, on previous research that has defined types of site and architecture, and on expert evaluation of particular examples in relation to others known. “Outstanding” is defined by the scientist, by the archaeology specialist evaluating evidence in objective terms. Science and cultural value here are hand in hand.

The danger with such estimations, however scientific and objective they may appear to be is that they derive from a western tradition of scholarship (Byrne 1991). The monuments are evaluated in terms of objective and abstract knowledge about cultural variation, types, and norms. The heritage is surrounded in expert knowledge, or rather it is

defined through practices of expertise that have a distanced universalizing character. Valuation of heritage in these terms cannot deal with the different claims on the past that are today made by a wide variety of diverse communities. Today non-western indigenous groups stake claims to ownership of their pasts (Liebmann and Rizvi 2008). These claims evaluate cultural heritage in very different terms—as ritual objects, signs of the ancestors, icons of identity, objects of social power, sources of income.

All societies destroy their heritage. Drive around Britain or the United States and one can see houses being knocked down to make new estates, roads being torn up so that new high-speed highways can be built, forests cleared, old barns left to rot, industrial chimneys destroyed, and disused power stations dismantled. But, of course, some of these monuments from the past are saved, and even power stations can be made into art galleries (the Tate Modern in London, for example). We keep and protect only a selection of what is past. We preserve what is of value to us. Both at national and international levels, the values are arrived at objectively, through scholarly discourse (Gerstenblith 2002).

Increasingly today, however, such evaluations have to be balanced against the views of a variety of stakeholders (McNiven and Russell 2005, Silliman 2008). Regional, national, and international heritage managers recognize that a wide range of other interests and values may pertain (Lowenthal 1985, Cleere 1989, Bernbeck and Pollack 1996). Heritage management increasingly takes note of issues such as economic and development value, religious sensitivities, and the role of heritage in identity formation. In other words, matters of justice and well-being are being considered alongside the scholarly estimation of outstanding cultural value for humanity as a whole (Colwell-Chanthaphonh and Ferguson 2008). To talk of social justice and well-being is to take the discourse on cultural heritage closer to the discourse on human rights.

My question in this paper is whether it is possible to move beyond the evaluation of heritage in terms of outstanding value—defined largely in terms of the scholarly evaluation of things—towards a system of evaluation in terms of well-being and social justice (Lilley and Williams 2005). In the UNESCO process, “outstanding universal value” is evaluated in terms of the quality, rarity, and diversity of things. These are abstract categorizations based on nothing except Western values. They are Western components of art appreciation rolled out onto the universal stage. They are

not grounded in social values and are bound to be contested. So the attraction of rights talk is that it may be a mechanism for widening the debate about cultural heritage to focus on social justice.

The archaeological process of excavation destroys the very contextual information that it seeks to explore, but archaeology also has an important productive role. By clearing away the soil from monuments and artifacts, it also brings things into the public domain. Perhaps more than any other social science it produces a material outcome that has a public place. Archaeology is “place making” and it is “history making”—it produces places and temporalities. The things and monuments protrude into social life—in that sense archaeologists also produce social relations in the world around them. When they make places and histories, they produce artifacts and monuments that people have to deal with and cope with. The resulting interactions can be both positive and negative. They can lead to healing or pain. They can be productive or destructive. There is a duty, then, to think about the rights of those affected.

At the end of this paper, I will discuss how a focus on well-being, rather than on the universal value of artifacts, might be an effective strategy in claims for the protection of human rights in the case of the destruction of Hasankeyf by the Ilisu Dam project in southeast Turkey (Kitchen and Ronayne 2001). But I wish first to consider whether human rights discourse might be an effective mechanism for evaluating heritage in terms of social justice and well-being, and to consider what such a cultural heritage right might look like.

Limits of Human Rights Discourse

It is not difficult to critique the discourse on human rights. A strong international discourse on human rights emerged after World War II in parallel with the great genocides of the 20th century. It is not at all clear that the various UN declarations on human rights have been effective in arresting or even limiting the violence and inhumanity we increasingly see around us. Many of the declarations are non-binding and many states have not signed them. There is little opportunity for enforcement. “Rights” seems to be a discourse which allows us to talk about something we do nothing to stop. Rights are increasingly concerned with legal language rather than with moral and social injustice. It is a language through which states criticize each other, but not themselves. Thus, for example,

the US refuses to support the International Criminal Court until there is a provision exempting its own citizens from prosecution by the Court.

There have been many criticisms of rights discourse as a western perspective imposed on non-western countries (Stacy 2009). There is a longstanding multicultural or contextualist critique that notes the variations in the ways that rights are construed in different cultures and societies (e.g., Duquette 2005). Another problem with the rights discourse is that the legal discussion of rights often seems to fail to differentiate between different types of rights; thus, the right to life seems very different from the right to leisure, education, or the enjoyment of cultural life.

The human rights debate often seems removed from underlying issues of inequality and injustice. This gap was, according to Ivison (2008:182), foreseen by Marx in his essay "On the Jewish question," where he distinguishes between political and human emancipation. People may achieve political freedom, the right of expression, and the vote (political emancipation), without achieving resolution of deeper forms of alienation and inequality (human emancipation).

Foucault too was a critic of the human rights discourse. For Foucault (1977), rights exist within relations of power, instead of being external to and opposed to them (as is so often claimed). A language describing the rights of free individuals in relation to the sovereign state is a discourse masking the spread of disciplinary power. Governmentality (a linking of government and rationality) is a mode of power in which populations are governed through a specific rationality in which the notion of individual rights is central. The discourse of rights becomes a form of disciplinary power. It is difficult to deny the validity of this critique in relation to cultural heritage. When UNESCO or Western institutions persuade the global community about the right way to approach heritage, they impose new forms of governance and power (Byrne 1991).

Perhaps most fundamentally, legal discourse about rights immediately places social negotiation within a straitjacket (Ivison 2008, Stacy 2009). The focus is on whether individuals or groups do or do not have certain rights. The determination of rights tends to pit people against each other in an adversarial setting. Issues that might be dealt with through collaboration and negotiation become oppositional. For this and the other reasons listed above, I am not convinced that the introduction of a rights discourse will solve problems regarding claims on cultural heritage. I do not believe that rights are the answer, but I do have one hope. Human rights talk is

really a dialogue that is going on within the international community. When engaging in rights talk, people work out what they think about our global responsibilities to each other. The talk is part of gradually changing values regarding “global justice.” So the discussion of rights in relation to cultural heritage is useful in my view, not because I expect legally binding cultural heritage rights to be enforced any time soon, but because rights talk may promote a broader, people-based dialogue about the values that are important in the evaluation of claims about the past. The discourse is an ongoing process of working it out as a global community—seeing what we feel and what is fundamentally important about heritage for all of us.

Thus if people come to see a certain behavior (such as female circumcision or the death penalty) as negative, so that behavior will enter into the discourse of rights. If they see something as positive (such as protecting the heritage of indigenous groups), so too it will become an issue of rights. These and other causes are continually being debated, and as a global community we change our ideas about killing seals, hunting for ivory, the definition of torture, wearing headscarves, and so on. There is continual flux as to whether we think certain behaviors violate human rights. The debate is not about absolutes, but about social negotiation, nowadays at the global scale, over what is right and wrong in the particular historical contexts in which we find ourselves. It is important that cultural heritage be evaluated in this same arena. Even if legislative change is not the result, the debate may lead to change in the climate regarding what is seen as acceptable behavior. At the very least, heritage rights talk takes us away from discussing heritage in terms of the universal outstanding value of things as defined by the academy.

Cultural Heritage and Human Rights

How has heritage been involved in human rights? The brief answer is, not very much (Silverman and Ruggles 2008, though see Prott 1996 in relation to cultural rights as human rights). But we shall see that in so far as cultural heritage has been involved in human rights discourse, the focus has often been on rights in relation to ownership and descent. It has been assumed that descent from cultural groups in the past endows groups and persons in the present with the ownership and thus care of cultural heritage.

In the universal declarations dealing with human rights, we see very little reference to heritage or cultural heritage. UNESCO's Constitution

calls upon the Organization to give “fresh impulse...to the spread of culture, assuring the conservation and the protection of the world’s inheritance of books, works of art and monuments of history and science..” (UNESCO 1970:9). The 1948 “Universal Declaration of Human Rights” does not refer to cultural heritage, but it does, in Article 27, refer to the right to participate in the cultural life of the community. One could argue that, for example, the right to work in the Declaration could be interpreted as referring to the right to benefit from heritage employment, and the right to education could be used to refer to the right to know about the past, and the right to leisure could be used to refer to the right to visit heritage sites, but there is no specific reference to cultural heritage.

The UN’s 1966 “International Covenant on Economic, Social and Cultural rights,” Article 15, again refers to the right of everyone to take part in cultural life (e.g., see Stavenhagen 1998). The UN “International Covenant on Civil and Political Rights” says that minorities should not be denied the right “to enjoy their own culture” (Article 27). In 1970, UNESCO published a discussion of cultural rights as human rights. The volume presents the deliberations of a group of politicians and academics, including Ernest Gellner, participating in their personal capacities, on topics including the relationships between local cultures and the international community. The document appears to have had little impact. The UN’s 1992 “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities” still has little that refers to cultural heritage, although Article 4 calls upon states to enable persons belonging to minorities to develop their culture.

It is of interest, and telling, that the most explicit reference in these early statements of universal rights occurs in Article 29 of the 1989 UN “Convention on the Rights of the Child.” This states that “the education of the child shall be directed to the development of respect...for his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.”

One can already see a tension in these statements between the universal value of heritage for all and the value for particular groups, whether nations or minorities. The focus on the rights of separate groups has become of greater importance as part of postcolonial processes of separation and identification. We have seen the recognition of minority rights most clearly in archaeology in the World Archaeological Congress code of

ethics which acknowledges the role of indigenous groups in the control over their own heritage (the World Archaeological Congress First Code of Ethics and the Vermillion Accord - Fforde, Hubert, and Turnbull 2004). It is thus of interest that the UN declaration that does discuss cultural heritage at some length is the “Declaration on the Rights of Indigenous Peoples” adopted by the UN General Assembly in 2007, but not ratified by a number of key states. In Article 5, there is reference to the right of indigenous peoples to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. In Article 8, indigenous people and individuals have the right not to have their culture destroyed.

But it is Article 11 that is most worthy of quoting in full in this context:

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Throughout such declarations (for other UN discussions about culture and rights see Schmidt 1996) there is a silence about how one defines “my,” “our,” “their” culture or cultural heritage. The problem emerges right at the start. Article 27 in the 1948 Declaration states that, “everyone has the right freely to participate in the cultural life of the community.” There is a tension between everyone and community. Which community, and does everyone have the right to participate in everyone’s community? And what happens if there are overlapping definitions of “the community?” There is a tension between the universal access of all to know about global cultural heritage and its diversity, and the right of nations and indigenous groups and minorities to control “their own” past and gain restitution.

Rights by Descent

What is meant by this notion of “ownership” of the past, and how does this “ownership” confer rights? In most of the UN declarations, ownership of heritage is vested in the sovereign nation state and, in the more recent declarations, rights of protection and use, if not ownership, are given to descendant communities. Certainly within the NAGPRA (Native American Graves Protection and Repatriation Act) process in the United States, for example, repatriation of skeletal remains and cultural artifacts depends on the evaluation of affiliation and descent (Fine-Dare 2002).

This focus on ownership by bounded groups in the cultural heritage discourse has also been influenced by the debate about looting and trade in antiquities. As Schmidt (1996) notes for the plundering of Africa’s past, the links that are now being made between the rights discourse and cultural heritage often start from anger and social alienation associated with the physical removal of material remains to somewhere else. The desire to “get it back” has fueled discussions of rights worldwide (Schmidt 1996, Prott 1996).

The notion that culture is a bounded entity related to and owned by groups that exist through time is at the heart of NAGPRA and other claims processes in relation to cultural heritage. Many of those at the forefront of discussions of the relationships between rights and cultural heritage focus on the importance of ownership. Thus Peter Schmidt (In press:88) argues, “we need to address taken-for-granted practices and ethical lapses that violate human rights to a cultural past, including ownership of history about others’ pasts. We need to ensure that ownership remains in the hands of indigenous peoples.” This focus on the ownership of the past perhaps derives from the longer assumption that nation states have sovereign control of the heritage within their own borders. The discourse is so pervasive that we have perhaps turned a blind eye to the uncomfortable evidence from anthropology and history about the difficulties of making links between cultures and people. Culture is now seen as hybrid, flexible, in process, contextually changing, and transforming. Is this simply a post-modern, Western perspective that seeks to undermine the importance of tradition and descent to subject peoples? Clearly, people often feel very strongly about identities and even invented traditions may provide shelter and a resource. I will describe the force of these relationships below in terms of well-being. Archaeologists have great difficulty demonstrating any theoretical or other basis for following identities back into the archaeological past as there simply are no grounds for arguing

that pots and peoples coincide through time—as Childe (1952) argued long ago (also see Hodder 1978 and Jacobs 2009 in relation to NAGPRA).

The notion that groups (nation states, regional groups such as the Kurds, language groups such as Bantu speakers, indigenous groups) have an inherent right to the culture from which they are descended rests on grounds that archaeologists and anthropologists have rejected—that peoples and cultures “descend” together. Claims to the past based on fixed boundaries and close associations between people and cultures are contradicted by the evidence that culture is passed down through complex and fluid channels, heritage is continually being reproduced and reinterpreted, human groups and cultures are in the long term open and in flux (Geertz 1973, Hodder 1978, Jacobs 2009, Sahlins 1976, Turner 1967).

The notion that the past is owned by someone is also necessarily conflictual. To claim an origin is always to exclude others, it is always to determine in-groups and out-groups. It is always about dividing populations. The past is a limited good from which multiple descents can be claimed (Jacobs 2009). Thus the identification of Moundbuilders in the prehistory of the Americas excluded native Americans from their heritage. The claim by colonial invaders of a *terra nullius* in Australia or South Africa excluded those of African descent. The claim of a Germanic Lausatia excluded a Polish and Slavic presence. The claim of an original homeland for the Jews in Palestine supports the exclusion of Palestinians (Meskell 1998, Ucko 1987, Lowenthal 1985, Shennan 1994).

Placing ownership at the heart of cultural heritage rights also does not take into account the many different nuances in the notion of ownership. Much cultural heritage is not owned in the way that an individual or a corporation owns land. Heritage ownership is often collective, and it is often more spiritual than pecuniary, more about identity and less about control. Although we are used to saying that heritage is partly a construction of the present, it is not “invented” by anyone and so differs from “intellectual property” (see, however, McGuire 2004). There are numerous ways in which people interact with heritage. They may want access, they may want to use it for education or have a voice in what is written and projected about it, they may want to use it in healing, reconciliation and restitution, make money out of it, put it in a museum, repatriate it, loan it, hide it, destroy it. It is difficult to use “ownership” as a term to encompass all these nuances of meaning. Below I will use alternative terms such as well-being and the ability to participate.

A further difficulty with the ownership basis for cultural heritage rights is that it traps people into categories from which they may have difficulty escaping. People may be attracted by the income to be gained from performing “their own” cultural heritage. Heritage managers and developers may ask that local residents make craft products, or live in houses that are traditional. People may become identified with the categories placed upon them, encapsulated in the past, or rather in the past as we would want it to be. People may be forced to claim rights as members of some past entity constructed in the present—as Classic Maya or Machu Picchu Inca (Castaneda 1996, Silverman 2002).

Finally, notions of ownership and descent do not deal well with the ways in which heritage works in the contemporary globalized world. In 2003, the government of Australia made claims to Turkey that Gallipoli, the site of the battle by ANZAC (Australia and New Zealand Army Corp) forces against Ottoman forces in 1915, should be listed as part of Australian heritage. There are many dimensions of heritage that overlap and cannot be described in any simple way as “ownership.” Many claims to cultural heritage are transnational, including religious rights for access to Lourdes and Mecca, rights of diasporic groups to their homelands, rights to cemeteries of those that have fallen in wars abroad. It is widely recognized today that heritage management is best achieved through multiple partnerships and dialogues across a dispersed and multi-centered world (Meskell 2009).

From Descent to Well-being

The task seems to be then, to develop a notion of heritage rights that focuses on social justice (rather than solely on the universal value of the objects and monuments themselves) without the entitlement to that justice being based on the assumption of exclusionary descent. A starting definition of cultural heritage rights might then be: *Everyone has a right to participate in and benefit from cultural heritage.* The key phrase I have left out here is “his or her own” in front of “cultural heritage.” What this definition does is focus on the right that we all have to participate in and benefit from cultural heritage. This is the right described in Article 27 of the 1948 UN Declaration, but it avoids the notion that we benefit only from “our own” heritage and it avoids the difficulty of having to relate the right to descent.

This definition of the right leaves open the many ways in which cultural heritage might be defined. It leaves open the many ways in which people participate in the past. A person may feel connected to past artifacts and monuments in terms of co-presence (I or my people were or are there), production (I or my people made it), ownership (I or my people owned it), religious belief (I or my people believe in it), aesthetics (I or my people think it is beautiful), and so on. There may be sentimental, historical, economic, or ritual associations with heritage. These are all forms of association that lead to claims for different forms of participation in the present with a particular heritage.

But the definition glosses difficult issues. If the focus of heritage rights claims is to be participation rather than ownership, are not the claims of minorities undermined? Does it not become possible for anyone to claim association (through donations of funds, expertise) and override the interests of local groups?

Given that a particular group is closely associated with a cultural heritage which is central to its well-being, it has a right, under the formulation presented here, to participate and benefit from that heritage. So the emphasis has shifted from demonstrating that a person really is descended from a cultural group and has moved to the question of whether a person has the capacity to participate in heritage. The question becomes whether a person is able to participate in cultural heritage so as to enhance that person's well-being.

In turning cultural heritage towards well-being, the capability and functioning approach to human rights as advocated by Martha Nussbaum and Amartya Sen is of value. In their approach to comparing the well-being of people and nations, the focus is not on how many resources people have or on how satisfied they feel, but on what they are actually able to do (Sen 1993, Nussbaum 1997). The approach makes no assumptions about commensurability: it is not argued that there is a single metric of well-being. It is argued that the pursuit of capabilities is irreducibly plural. In the heritage field, the capabilities might include having attachments to things and people outside oneself. According to this view, people should have the capability to pursue heritage even if they do not pursue this capability into functioning behavior. A heritage capability might allow other aspects of well-being—to be employed, to have good health, to think, feel, imagine. Thinking about rights in this way allows us to ask whether people are really able to attain diverse forms of well-being

through heritage. Considering heritage in this way allows us to examine whether people are in practice able to participate in sites, objects, identities in such a way as to fulfill their capabilities.

In competing claims over heritage, there will of course be different claims, from different standpoints, that the past enhances well-being and allows different persons and groups to achieve their capabilities. In such contexts, there is a need for dialogue and collaboration, as is widely recognized today, in order to come to an understanding of the different positions and to reach some conclusion. Collaboration and dialogue are now the hallmarks of heritage management (Colwell-Chanthaphonh and Ferguson 2008; Habu, Fawcett, and Matsunaga 2008; McNiven and Russell 2005; Silliman 2008), but they need to include broader questions than cultural value, descent, and ownership. They need to deal with the ways in which cultural heritage enhances the well-being and capacities of individuals and groups.

At any particular historical moment, some rights are seen as so basic and fundamental to life that they “trump” other rights. Ivison (2008) describes the way some rights are like cards that trump all others on the table. In my view, the right to heritage in terms of basic subsistence trumps an academic interest, unless an alternative subsistence can be found. Involvement in cultural heritage may be so fundamental for local groups that the interests of cultural tourists or archaeological scholars may rightly be seen as secondary. There may be widespread agreement about the evaluation of needs—which rights trump others. If such is the case in a particular instance, the ranking of rights, implicitly or explicitly, may provide a mechanism for distinguishing between competing claims. As noted in the UNESCO (1970:105) discussion referred to above, “the first task of life is to live and one of the principal functions of culture is to enable people to maintain and perpetuate life.”

In these ways, the right to cultural heritage is not seen as an absolute, “God-given” right, but as something dependent on and relative to particular practical contexts. Thus, for example, for many native American groups, identity and well-being have become very entangled in cultural heritage. In such a context, the past matters at the level of fundamental human rights. The same may be said for some immigrant groups in the United States, but for an Englishman in New York participation in Native American and African American pasts is not fundamental although there may be value in knowledge and study. The right to cultural heritage is specific to historical conditions.

So we can add to our identification of a cultural heritage right: *Everyone has a right to participate in and benefit from cultural heritage that is of consequence to their well-being.*

Rights and Duties

As Clapham (2007:21-22) notes, the American rights rhetoric is near silent on responsibility. The rights bearer is seen as a lone autonomous individual. “The language of rights is too often understood exclusively in terms of the advantages it confers on individuals claiming them. Rights confer advantages but they also impose duties, and no system of rights is complete without an account of how and why they do so” (Iverson 2008:64). Certainly many of the originators of our current discourse on rights linked rights to duties. According to Locke, for example, rights are derived from our duties to God and, though him, to each other.

The “Universal Declaration of Human Rights” (1948) talks of the duties owed by an individual to a community and links these duties to securing the rights of others, but, on the whole, in most discussions of human rights, the rights of the rights bearer are linked to the duties of a rights giver—normally the state (MacLeod 2005). Thus, as Iverson puts it, following Wesley Hohfeld, “if D has a right with respect to H to perform X, then H has a duty not to interfere with D in X-ing” (Iverson 2008:11). Some would prefer that we talk about responsibility and community rather than right entitlement (Clapham 2007).

The “Declaration on the Rights of Indigenous Peoples” adopted by the UN General Assembly in 2007 quoted above has paired the rights of indigenous peoples with the duties of the State to protect those rights. But there is no mention of the duty of indigenous groups to protect the interests of other indigenous groups or other participating groups in that heritage.

Shyllon (1998, see also Schmidt 1996) refers to a distinctly African take on cultural rights. In the Banjul “African Charter on Human and Peoples’ Rights” (adopted by the Assembly of Heads of State of the Organization of African Unity held in Nairobi in 1981—Umzurike 1983) there is a strong focus on shared collective rights, but also on a duty to share and promote “African culture.” The Preamble states, “enjoyment of rights and freedoms also implies the performance of duties on the part of everyone.”

In the “Universal Declaration of Human Rights,” rights are linked to the duties of the State to protect those rights. But there is little discussion there

or in much of the rights literature of the notion that rights are conditional on the responsibilities of the rights bearer as part of a social contract (Iverson 2008). In practice, however, most fundamental human rights are conditional and limited by law. Thus in the United States a person has a right to life and liberty only in so far as that person respects the life and liberty of others: to take a life, is to lose the right to life. A person has a right to work in so far as that person does not work by stealing the products of labor from others. A person has a right to health in the United States, only if that person makes insurance or Social Security payments. And so on. Rights are often defined as claims that are made simply by virtue of being a human adult, but in practice they are closely linked to the duties we have to each other in specific historical contexts (Clapham 2007, Turner 2006). Rights are conditional on normative behavior (doing the right thing), systems of values (what is the right thing), and exchanges of public and private good.

The linking of rights and duties is dangerously conservative if it implies that rights are only given if duties are fulfilled. People may not have the means to fulfill their duties or they may not see the duties in the way conceived of by dominant groups or by society at large. So rights are related to, but separated from duties. People may have a right to X even if they cannot fulfill their duties with respect to X. If the inability to fulfill duties is a matter of resources, then others (e.g., the state) have the duty to provide the means of fulfillment. If it is a matter of disagreement about rights and duties, then it remains the case that rights to X are related to the duty to acknowledge other forms of participation in X.

As Turner (2006:67-68) notes in a general evaluation of human rights discourse, "one criticism of human rights is that there has been little effort to develop a notion of human duties. Through the notion of cosmopolitan virtue, it is possible to develop a theory of human obligation that recognizes care and respect for other cultures and ironic doubt about the claims of one's own culture. These obligations are sequential: recognition, respect, concern, care, and irony. An ethic of care is compatible with human rights and is logically necessary for the development of cultural rights. Care for the safety and security of other communities and cultures rests on our recognizing the precariousness of cultures in a global environment. An ironic distance from one's own culture remains a condition for recognizing the mutual vulnerability of humans."

The notion that rights to heritage can be linked to duties towards other interests is seen in attempts to share the past or to involve it in post-conflict

reconciliation and healing. For example, Israelis and Palestinians have undertaken joint projects to conserve and put on display sites and monuments that are of importance to different communities such as Crusader castles with earlier (Jewish) and later (Islamic) levels (Scham and Yahya 2003). If archaeologists in such a context can come together to work on a shared past (Scham and Yahya 2003), however difficult and however limited the results, then it must be possible for all of us to recognize the legitimate interests of others in relation to cultural heritage. The legitimacy of these interests should not, in my view, be based on who was here first, who came from where, who is descended from whom. Rather, as noted above, the legitimacy is based on the undoubted fact that for both Israelis and Palestinians, for example, their heritage matters to them in pursuing their most fundamental capacities. But recognition of this legitimacy does not preclude responsibility to others to benefit. Indeed, in the Palestinian and Israeli collaboration, it is recognition of the right to participation that has inspired working together. In post-conflict situations in South Africa or the Balkans, reconciliation and healing may be mediated through recognition of conflicting interests and mutual benefits in restoring and caring for heritage (Meskell 2009; see also African American heritage—LaRoche 2005)

So my focus is to relate rights to duties to others. I wish to define a right to cultural heritage as *“Everyone has a right to participate in and benefit from cultural heritage that is of consequence to their well-being, and everyone has a duty towards others with respect to that right.”*

So the question is not about descent, but about the extent to which people participate in heritage, or rather, how much they have the capability to participate in it (in terms of access, education, performance, appreciation, religious experience, employment, and so on). And it is a question of recognizing that others have capabilities that may require access to the same monuments. I have tried to set cultural heritage in the frame of our rights and duties towards each other. I have tried to move away from the notion that it is the care for the object that is the duty, and to say that the duty is towards other participants.

Conclusions and Practices

The history of the discourse on human rights has been dominated by authors such as Hobbes, Locke, Kant, and Hegel, all of whom understood rights as referring to the fundamental status of human beings, a status

perhaps given by God, perhaps deriving from some inherent dignity of persons (that is male persons), perhaps given in a social contract. I have argued in this paper that when such a notion of inherent rights is linked to the notion that persons derive their rights to heritage by descent, the result is a dangerous conception of cultural heritage as basic, fundamental, God-given, absolute. In fact, we know that cultural identities are endlessly mixed, fluid, contested, shared. Especially in the contemporary globalized world, rights to heritage are argued from many perspectives and angles. I have tried, therefore, to describe a definition of cultural heritage rights that is attuned to this more complex world. Rather than cultural heritage rights as statuses based on universal values, I have related them to the specific needs of persons in their search for well-being.

But is this a dangerously utilitarian perspective? What does this definition of cultural heritage rights mean for the view that some heritage is of such skill, beauty, quality, uniqueness that it just deserves preservation—regardless of whether it does anyone any good? What happens to the idea that cultural heritage of outstanding universal value should be preserved? It seems to me that, in the long run, heritage that has no social value will not continue to be funded and preserved. Indeed, it will probably cease to be defined as heritage. But the very fact that we identify an object or monument as of high quality, implies that it has meaning for people at some level. Artifacts of great aesthetic value contribute to cultural life and, thus, under the various UN declarations and conventions, they matter and they enhance well-being. But, under the formulation presented here, they are not protected because they are of aesthetic value. They are protected because our valuation of them as aesthetic entangles them in a particular social context in which they are of consequence to well-being.

And what happens, from this utilitarian perspective, to the notion of abstract and obscure scientific and academic knowledge? We might identify a particular artifact or monument as a good example of a particular type and base its protection on that categorization. This and other forms of scientific knowledge about the past do enhance well-being in that they contribute to cultural life. They contribute to knowledge and education. In these ways, the information is of consequence. When stacked up against competing claims to control and interpret a particular artifact and monument, this scientific knowledge may well be trumped by other needs and values more fundamental to basic human rights. But scientific knowledge about the past has numerous forms of social value and enhances many human rights.

And what of the right of antiquities dealers and collectors to control the licit artifacts that they have paid a good price for? Should they not have the right to control them, and trade and sell them in the way they see best (Merryman 2005)? The traded artifacts can be seen as objects of high cultural value that have great social importance for individuals, however elite they may be. Surely traded artifacts are of consequence to the well-being of dealers and collectors? Under the formulation argued here, the rights of collectors and museums are related to their obligations to others for whom the collections are of consequence. In fact, most museums today and many collectors are engaged in some form of access, sharing, loaning, repatriation that recognizes the legitimate interests of claimant groups (McNiven and Russell 2005, Liebmann and Rizvi 2008). In my view, debates about repatriation and return need to be evaluated less in terms of decisions about histories and dates of legislation, and more in terms of the degree to which the artifacts matter to participating groups—the degree to which human rights might be better served by return or repatriation rather than by being kept in a private glass case or in a museum basement. There is no doubt in my mind that to keep a deeply religious object or one that is of great importance to a cultural group locked up in this way denies fundamental human rights to others.

I would like to end with an example of how a focus on well-being, rather than on the universal value of artifacts, might be an effective strategy in claims for the protection of human rights. In southeast Turkey, there has been a recent proliferation of human rights NGOs dealing with the displacement of people as a result of the series of dams built there since the 1960s (the GAP Güneydoğu Anadolu Projesi or Southeastern Anatolian Project). The increase in this human rights activism since 2000 has partly resulted from Turkey's EU accession process, but it has also resulted from the rise to power of the AK (Justice and Development) Party which seems supportive of some form of recognition of the Kurds in the region. Since the international outcry over the damage to the Roman mosaics at Zeugma as a result of the dam building, cultural heritage issues have been part of the political activism in the southeast; thus there are "Stop Ilisu Dam" and "Save Hasankeyf" NGOs (Kitchen and Ronayne 2001). Hasankeyf is a site in the GAP region with a mixture of Christian and Islamic monuments that will be lost if the dams are constructed as planned.

The "Save Hasankeyf" movement uses the rhetoric of universal cultural value to make its case. This argument is pitted against the rhetoric of

the state GAP project and the European dam construction companies which emphasizes the jobs, agriculture and future well-being of people that will follow from the dam construction. At the time of writing, European governments have withdrawn their export credit guarantees for the Ilisu Dam project, citing Turkey's failure to deal with human rights claims concerning the environment and cultural heritage. The Turkish government may go ahead anyway with the dam and it is clear that much of the argument about human rights in this case centers on well-being—employment, history, environment. It might be argued then that the "Save Hasankeyf" NGO would be more successful adding to their talk of the universal value of cultural things a focus on the well-being that could be obtained from the archaeological sites if saved and restored as an income generating heritage. Prominent artists like Nobel Prize winning writer Orhan Pamuk and pop singer Tarkan have joined the campaign to stop the Ilisu Dam and make Hasankeyf a World Heritage Site. But rather than promoting the universal discourse of object values, an alternative strategy would be to demonstrate the different forms of well-being that could be attained by saving Hasankeyf. This would be to use the arguments of the GAP project (that the Dam will provide jobs and agriculture) against itself. But heritage managers and archaeologists are not used to work out the long-term sustainable economic benefits of sites, as well as the values gained from education, identity and dignity. Unless archaeologists are willing to work out the benefits in clear terms, over short and long terms, it will remain difficult to protect heritage that allows people to achieve their capabilities. As archaeologists and heritage managers, we have for too long been focused on objects rather than people.

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