SOCIAL THOUGHT & COMMENTARY

Human Rights and Heritage Ethics

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Abstract

This paper discusses the efficacy of applying a framework of universal human rights to resolve heritage conflicts. It considers the pitfalls and potentials in particular heritage settings for both archaeologists and the constituencies we seek to represent. A distinction is made throughout the paper between invoking universal human rights, as opposed to other rights or claims more broadly. Specifically, I ask what does the mantle of universal human rights bring to heritage? What additional work might it perform, and who wins and loses when archaeologists elevate cultural heritage to this arena of urgency? If archaeologists want to pursue this route, what steps might they take to be conversant with human rights and, more importantly, effective in practically implementing that knowledge? I then describe the situation in post-apartheid South Africa—a nation that has arguably crafted the world's most liberal constitution, yet in reality faces numerous challenges to instrumentalizing human rights. In terms of South African heritage rights, the archaeological site of

Anthropological Quarterly, Vol. 83, No. 4, pp. 839–860, ISSN 0003-549.

Thulamela is offered as an example of conflict resolution at the local level by briefly examining the role of archaeologists and several connected communities each vying for access and ownership of the site. Following Amartya Sen and Martha Nussbaum I suggest that heritage practitioners might be more effective and ethically responsible by being attendant to pragmatic approaches that enhance human capabilities and human flourishing. [Keywords: Heritage ethics, human rights, heritage rights, claims, South African Archaeology, politics, fieldwork]

Forty years ago, UNESCO held a conference entitled *Cultural Rights as Human Rights* (UNESCO 1970) to reflect on the evolution of the concept of cultural rights in the twenty years since the proclamation in 1948 of the Universal Declaration of Human Rights. Luminaries including Ernest Gellner, Boutros Boutros-Ghali, and Breyten Breytenbach debated a now familiar set of subjects: the place of culture and tradition, group rights versus individual rights, the role of the state, and so on. Among the primary concerns were peace, the eradication of poverty, global development, the hegemony of the nation state, international intervention, freedom of media and artistic life, and education in science and technology. Looking back over this remarkably forward-thinking document is both inspiring and sobering. Ostensibly they were having the same conversation in 1968 as many of us are engaged in now. The critical failures they addressed then, understandably, have not been resolved. But what has changed is the astounding upsurge in "rights talk" and the desire to harness the urgency of human rights discourse in so many aspects of human, animal and planetary existence.

International human rights have become today's *lingua franca*, speaking to issues of inequality, injustice, and politics in their broadest terms (Stacy 2009). The discourse of human rights is everywhere, a pervasive and thick stratum that overlays our understandings of nationalisms and internationalisms, indigenous movements, historic repressions, and global inequities. Archaeology is no different, and one recent volume suggests that heritage and human rights are inextricably linked (Silverman and Fairchild Ruggles 2008a). However, a danger exists, in that the call for "human rights" has been so extensive as to dilute the very power and specificity of those fundamental rights as opposed to other types of claims. Before archaeologists assume that instigating human rights peti-

tions over cultural heritage offers a pragmatic way forward to resolve heritage conflicts, it is certainly worth pausing to consider the potentials and limitations of such an approach. This discussion then revolves around two related issues. First, I consider whether heritage conflicts represent an impingement upon human rights specifically; and second, whether an appeal to an international legislative framework offers the most pragmatic way forward for affected communities.

Crucial here is the distinction between rights and claims more generally—those that have a long history and have diverse legal mechanisms of implementation—and "human rights," specifically as they have been enshrined by the international community since the Universal Declaration of Human Rights (United Nations General Assembly 1948) and have entreated specific obligations and interventions globally. While there is certainly overlap, most experts would agree that the urgency and severity, not to mention legal prosecution and military implications of something called "universal human rights," occupies another order of things. Lodging a heritage claim in postcolonial Australia or South Africa would certainly fall under the banner of legitimate rights, such as land rights or ancestral rights (see Lilley 2000), but it may or may not harness the same exigency as human rights. Few would deny the spiritual well-being that heritage supplies to the goal of human flourishing, rather I am suggesting that archaeologists first be attendant to people's needs on the ground rather than simply reifying the significance of our own disciplinary materials.

Heritage as a Universal Human Right?

Archaeologists have recently begun to consider whether a right to heritage, or more specifically, one's own heritage is a fundamental human right. Here I want to think through whether heritage rights, as currently enshrined, occupy the same register as rights to life, liberty, and security of person? My own fieldwork in South Africa has strongly advocated that indigenous descendants and stakeholders have control, access, and benefits stemming from their own heritage sites under a banner of legitimate claims (Meskell 2005a, 2007). Claims over cultural heritage in the post-apartheid era are transacted on a different scale than calls for fundamental human rights and most often concern material and spiritual connections with ancestors, places, and the past, as well as restitution in the present. Yet such claims can hark back to racial or ethnic exclusion or his-

torical disenfranchisement, thus opening the space to frame heritage as contributing to human capabilities and well-being. In an ideal world, "heritage rights" would include rights of self determination and expression, rights of access and management, rights of veto, and rights to accrued benefits whether social, economic, spiritual, and so on. Currently in South Africa those rights *to* heritage are, more accurately, repositioned as expectations *from* heritage, namely to serve as a concrete driver for maintaining livelihoods in lieu of state provisioning.

The views expressed here have developed in tandem with broader research that examines the privileging of natural heritage over cultural sites, and the concomitant struggle for resource sharing, in and around Kruger National Park. Over the years my fieldwork reveals that natural ecologies have supplanted peopled histories and contemporary social urgencies, despite the widespread calls for historical justice, education and African pride, and the benefit sharing that Nelson Mandela inspired South Africans to forge. Beginning in 2002, my research intended to document a new nation's exemplary re-fashioning of its archaeological past and the new heritages that ANC (African National Congress) statecraft would mobilize in their efforts to reconcile and rebuild. I was concerned with the extent to which heritage was called upon to *pay* for the depredations of apartheid rule. But heritage has ostensibly been obliged to fill the vacuum after post-apartheid failures to provide basic needs in the hope that "culture" will foster tourism and commercial gains. My research subsequently underlines that the modernist fantasy of emancipation and progress puts an excessive burden of expectation upon institutions, individuals, and objects, each with their own sedimented legacies that are not easily shed. Ethnographic research in the impoverished communities around Kruger demonstrates that heritage rights are indeed secondary to the more pressing claims of land, livelihood, healthcare, education (Meskell 2009b) and that for heritage to pay, it must answer these needs first and foremost (Meskell and Scheermeyer 2008).

Since human rights are so often caught up in exclusions and boundaries (Stacy 2009:35, 57), its discourse may not always mesh well with contested heritage sites, where archaeologists typically strive to include more constituencies, to forge inclusivity rather than exclusivity given our long temporal perspectives. Heritage rights, by their very nature, are likely to be locally and culturally understood rather than universally prescribed, though the universality of human rights has also been vigorously contest-

ed. Universal human rights may be the wrong medium for the complex ethnic and community connections archaeologists have become used to negotiating. Superimposing international human rights discourse over heritage landscapes might serve to only escalate tensions and raise the stakes for some parties. This could be the case when various groups claim access to the same site or ancestral remains. In many instances, ownership can be shared and resolved amicably through negotiation rather than litigation. Would the imposition of human rights necessarily always and everywhere be a positive force? More fundamentally, one might suggest that the very act of creating heritage affords the creation of potential heritage conflict. The designation of privileged heritage presupposes cultural claims that are ostensibly exclusionary rights and by this structural designation plunge groups into potential conflict. One implication for archaeologists might be that the scale of conflict we witness today over heritage has escalated with experts like ourselves re-positioning heritage as a socio-economic resource and creating the apparatus to protect, attribute, commercialize, and control sites internationally. It is our international presence, our auditing, controlling, and mastering of heritage—often externally rather than from within—that can often foster and spur on these tensions and conflicts.

Anthropologists and the AAA itself have been involved since the crafting of the Universal Declaration of Human Rights (Goodale 2009, Wilson 2007), but archaeologists are only now recognizing the implications 60 years on. Most archaeologists are not familiar with the problems of successfully prosecuting human rights abuses, the legal frameworks, and the problematic cultural baggage that attaches to the very apparatus of human rights (but see Schmidt 1996). For a comprehensive study of debates within the United Nations over whether cultural materials could be marshaled in charges of genocide, the meticulous work of Ana Vrdoljak (2006), an expert in international law and cultural property, is salutary. She points to the observation recently made by the International Criminal Tribunal in the Former Yugoslavia, that the international community has declined every opportunity since 1948 to extend the definition of genocide to include cultural elements (Vrdoljak 2006:171). Significantly, an initial reference to "cultural genocide" in Article 7 of the UN Draft Declaration on the Rights on Indigenous People (United Nations General Assembly 1993), was removed in the final Declaration that passed controversially in 2007 (United Nations General Assembly 2007).

UNESCO's numerous conventions concerning heritage, whether tangible, intangible, culturally diverse or otherwise, do not constitute a coherent statement on human rights in my view. William Logan (2008:38) rightly remarks that in almost all UN rights documents cultural rights appear as a "left-over category" coming at the end. They might easily be substituted with the words "tradition" or "cultural practices." I would argue that cultural heritage should be decoupled from those typically immaterial categories in many cases, but not all. Logan potentially moves us closer to a substantive discussion of human rights and heritage in his consideration of minority religious groups in Myanmar and Laos who have been repressed and denied self-determination. Where it is weakened from a disciplinary viewpoint is the slippage between archaeological heritage and other cultural forms whether music, dance, and even the environment. The latter is again evidenced in Logan's discussion of the Mirrar community from Kakadu, Australia and their struggle to regain traditional lands and stop uranium mining (see also Lydon 2009). One could argue that here, natural heritage trumped cultural heritage, and the archaeological past did not actually constitute the basis of the claim. The inability to mount decisive discussions pertaining to cultural heritage alone suggests that we are a long way from making a convincing argument that our materials, ipso facto, constitute the basis for a human rights claim. Additionally, we are even further from proposing ways in which a human rights approach might be implemented in archaeological practice or from calibrating the actual benefits for claimants.

Historically, cultural heritage has been absent in human rights documents, whereas the more polymorphous categories of "culture" and "tradition" have been typically employed. One way to think about heritage and human rights would be to demonstrate that destruction or appropriation patently deforms human capabilities and well-being (Nussbaum 1997, 2006; Sen 1999), and does damage for multiple generations. Regional constitutional courts might also be effective venues to resolve these issues, situated in East Africa for example rather than Europe, and carrying with them local cultural understandings rather than imputed universalisms (see Stacy 2009:149-151). Legal rights, as international human rights lawyers would impute, can only exist when a claim is enforceable and the mechanism for prosecution is in place. With the first clear mention of archaeological heritage in the Declaration on the Rights of Indigenous People (2007), there may now be some leverage to consid-

er extreme cases where the willful decimation or controlling of heritage may do significant harm to the capacities or human flourishing of a people or community. The situation in Palestine offers a powerful example.

Another practical step would be to develop a more robust lexicon of "heritage rights" as well as longitudinal studies that demonstrate the gravity of specific claims around heritage violations and abuses, plus the long term fall outs, as Peter Schmidt (1995, 1996, In press) has done in East Africa. Importantly, he has documented the Kenyan state's complicity in the destruction of coastal sites and thus the Swahili cultural past. He imputes that agents of the Kenyan State regularly deprive individuals and communities of their right to heritage by the illegal manipulation of land titles—land on which heritage resources are located. Those lands are then sold to foreign entrepreneurs who bulldoze and destroy heritage sites, going on to construct seaside resorts for wealthy tourists. Such ventures erase the possibilities for the Swahili to reclaim and revitalize their history and traditions, which is especially salient given their already marginal status in Kenya today (Schmidt In press). Schmidt outlines other rights abuses including the looting and erasure of heritage sites by state parties and corrupt administrative practices in countries like Tanzania. Each of these acts would constitute heritage violations in Schmidt's view and deprive future generations of their right to an identity, their traditional practices, and heritage. Put another way, such negative actions would severely inhibit a group's capacities, their well-being, and their ability to flourish (Nussbaum 1997, 2006). However damning this evidence proves, it cannot escape the familiar dilemma of state dominance within the United Nation's legal structure that operates *among* nation states only, not amongst minorities *within* states.

Given the very lack of success in prosecutions of extreme violations in human rights like war crimes, as the failures of the Hague tribunals have ultimately underscored (Stacy 2009), it would seem incredibly difficult (and culturally fraught) to successfully prosecute violators who willfully destroy specific cultural heritage as a human rights abuse. The lack of prosecutions under the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO 1954) is a striking case in point. Silverman and Ruggles (2008b) rightly argue however, that cultural heritage participates in individual and community identity-building and cohesion, thus entreating the right of respect and protection. Yet whether the right to heritage occupies the same register and urgency as life, liberty, and security

of person is debatable. I would also take issue with their suggestions that "world cultural heritage" might promote tolerance since in the last few decades "universal heritage" has been deployed for political ends rather than promoting peace (Meskell 2002, 2005b). Many researchers probing the global impacts of UNESCO also remain suspicious (Byrne 2007, Labadi 2007, Lafrenz Samuels 2008, Meskell 2009a, Mitchell 2002).

Some heritage practitioners clearly see the rhetoric, rather than the reality, of human rights as powerful and have interpolated those into what is largely a "heritage as usual approach." The danger here is that all heritage-work, whether it involves tourism, intellectual property, war, vandalism, looting, and conflict, could somehow be re-framed as a human rights violation. I am not convinced that this moves us any further toward resolution of the diverse nature of heritage conflicts, instead it might abrogate disciplinary or practitioner responsibility in some cases. More worryingly, a plea for heritage to be a fundamental human right might be doing other work like carving out a privileged niche for archaeologists, the material past over living communities, and our discipline generally. Responsibility is a key concern here. Talking in terms of human rights potentially raises expectations for communities—unrealistic expectations that archaeologists cannot hope to fulfill. If it proves difficult and glacial to get rulings on cases of genocide (Stacy 2009), then securing social justice for the heritage communities we seek to support, through this same route might be ill-advised. Through Human Subjects Protocol compliance, practitioners agree not to offer benefits to participants that we cannot deliver. Our own humility as researchers should further give us pause to reconsider our abilities to drastically change the plight of people caught up in state conflicts.

Instructive here is the work of Adam Rosenblatt (n.d.) on the proliferation of new human rights related to mass grave investigations after genocide and the search for missing children of the disappeared. These rights, such as the "right of family members to know the fate of their missing relatives," "the right to truth," and "the right to identity" contrast with a growing concern among those who conduct forensic investigations about the unrealistic expectations family members may have of forensic science, especially in the era of DNA investigation (forensic scientists call this "the CSI effect"). Rosenblatt suggests that, in the worst case, these new rights may constitute yet another false promise, yet another injury, against people who have already suffered terrible loss. Rosenblatt emphasizes, rather

than the fulfillment of a human right or the "rights of bones," the promise to search, and sees the ethics of forensic work primarily in terms of the material activity of returning dead bodies, objects, and missing children to the physical and social worlds that are waiting to receive them. Caroline Steele (2008) agrees that such work is more complex than repatriating the dead, rather it is intimately tied to the dominant state power, whether the government or the military.

We might pose a simple question then: How might interpolating human rights, as both strategy and mission, change the ways we conduct heritage work and alter potential outcomes for various stakeholders? I do not mean how can archaeologists be ethical practitioners, address political conflicts, or enhance reconciliation—these are concerns with an increasing scholarly output in our discipline. I mean, very specifically, what does the mantle of universal human rights bring to heritage? What additional work might it perform, and who wins and loses when archaeologists elevate cultural heritage to this arena of urgency? For instance, it could mean that archaeologists would have to work more closely with lawyers, adopt a more internationalist stance, acquire new training, and participate directly in international organizations and courts (see again Vrdoljak 2006). Instructive here is the work of Schmidt and his close collaboration with Human Rights lawyer, Winston Nagan: together they co-founded the Human Rights and Peace Center at Makerere University in Uganda. Following Lafrenz Samuels (2010) it could also mean that archaeologists themselves instigate an epistemic shift, no less, that traces and interrogates a more complex historical lineage where basic needs might indeed be premised, for example, on traditional understandings of land and livelihoods. These heritage rights are constituted from an historic, contextual view that has been lacking in the universal human rights discourse and would require interpolation from a heritage perspective, diverse expertise, and the involvement of connected communities. From this nascent perspective, human rights and heritage rights might actually be more porous and mutually constituting in specific contexts than previously considered. But taking the long view, in itself, would prompt a major re-conceptualization of universal human rights discourse, rather than simply subscribing to its current mandates, while rights implementation would still have to surpass the strictures of nation state control to be fully realized.

Given our disciplinary inexperience at present, deferring to human rights discourse and determinations may in fact attenuate our own daily

negotiations and obligations, passing those responsibilities further up the chain to an ever-increasing transnational bureaucracy and governance. Yet what really makes a difference in many communities can happen on the ground, in more informal and integrative settings on the local, regional, and national scale. An appeal to human rights might potentially be effective in a case like Australia where a seemingly clear-cut Aboriginal constituency may make claims against a white government, but also less clear-cut when multiple indigenous groups claim the same heritage such as in fraught contexts like Southern Africa (Fontein 2005, Meskell and Scheermeyer 2008, Weiss 2007). Lodging a land claim may, in both cases, prove more successful, expeditious, and beneficial. Put simply, if human rights are too vague, they are unenforceable, and subject to manipulation. But the more determinate we make them, the more we risk drawing on claims that cannot be justified in conditions of deep social and cultural pluralism (Ivison 2008:202). This is salient for many heritage contexts, particularly those involving minority and indigenous groups, whose cultural values and legal systems were typically excluded from national and international legal framings.

Heritage Ethics

My own research context has necessarily shaped my views about the efficacy of human rights on the ground. South Africa has supposedly led the way with its progressive post-1994 Constitution with its range of legal provisions that are seen as a model of rights-based approach. But how the recognition of such rights has been translated into practice has proven more fraught. South Africa's constitution calls for individual rights to housing, health care, food, water, social security, and a healthy environment. However, it has become patently obvious that the government has failed its poorest citizens and fallen short on delivering even the most basic of services (Ashley, et al. 2003), flying in the face of rights provisioning. With the end of apartheid, the ANC inherited an economy that had suffered two decades of stagflation, sanctions, divestment and with public debt of 230 billion rand. While economic opportunities have benefitted a new black middle class, between 45 and 50 percent of the population now live in poverty and the plight of the black poor has notably worsened under the ANC's neoliberal policies. Many of the poorest residents of rural South Africa, including those that live around national

parks and cultural heritage sites, are not sufficiently empowered to instrumentalize claims on the basis of these constitutional rights. We have to consider their legal, organizational, and negotiation resources and how these situated lives run up against political and commercial interests. When communities and groups wanted to challenge the residual apartheid or white regime in the 1990s that was one clear opposition, yet now they face similar challenges from their black, democratically elected government. These are complex overlapping systems of dispossession, inequity, factionalism that have sometimes pitted black communities against each other. Add to this mix the desperate claims to land restitution, control of conservation zones and heritage sites, amidst competing group claims to primacy and as the exclusive progenitors of archaeological sites like Mapungubwe and Thulamela (Meskell 2007, 2009b; Meskell and Masuku Van Damme 2007).

Here we run up against one central problem with rights: they are directly connected to the nation state and thus operate on a state-to-state basis, rather than empowering communities, minorities, or indigenous groups who might propose counter claims. The state remains the primary vehicle for enforcing human rights, yet at the same time the protection offered by nation-states and national citizenship is declining (Turner 2006:2). "Universalist discourses draw largely on individualist readings of rights based on liberal notions of citizenship, where individuals are seen as the bearers of rights. This is contrasted by many examples in southern Africa where rights are derived from 'collective identities' based on affiliations with the community, nation or ethnic group" (Ashley, et al. 2003:6). Moreover, rights discourse must be understood in relation to South Africa's still pervasive colonial history. In terms of land, conservation, and natural resources, an individualist system of allocation overtly privileged white settlers at the expense of indigenous populations. These colonial legacies are not easily elided. Specifically, the negative heritage of indirect rule so popular with colonial governments (Mamdani 1996) pitted clan against clan, and powerful chiefs and their families are typically favored with restitution packages while large sectors of the community and neighboring groups are intentionally marginalized.

Ethnic factionalism and tensions over rights is exemplified in the much cited success story of the Makuleke Contractual Park in the northern sector of Kruger National Park. Handed back to traditional owners immediately following the demise of apartheid (de Villiers 1999, Reid 2001), the

Makuleke have opened two luxury eco lodges and are running their own commercial enterprises within the conservation area of Kruger for their own benefit (Kgosana 2003, Meskell 2009b). While showcased relentlessly by anthropologists and activists, clearly few have ever visited the park, much less interviewed the individuals and communities affected. When I conducted interviews there several years ago, only a handful of Makuleke were actually employed in the luxury lodges and in menial jobs. The managers were white and American, and monies funneled back to a tiny number of the local black elite, while their Venda neighbors have been excluded from employment or benefits. It should also be noted that the clientele for the lodges are national and international elites and certainly no local people could afford to visit much less stay in such resorts. As Robins and van der Wal (2008) report, there are also ongoing internal divisions and challenges to the Makuleke traditional leadership, as well as the Communal Property Association, as a result of gender, lineage, and generational differences.

The Makuleke are, perhaps, the most high profile case in South Africa outside the Kalahari San (Masuku Van Damme and Meskell 2009; Spierenburg, Steenkamp, and Wels 2008). They have received resources and benefits from numerous NGOs "which identified the importance of strengthening this institution so that it could fulfill its democratic and conservation purposes. The Ford Foundation, German NGOs, the Endangered Wildlife Trust, Goldfields mining company, the African Wildlife Foundation Resources Africa and others has been involved since 1996. This has included training the leadership, advising them on strategic action and facilitating development projects" (Robins and van der Waal 2008). This is a rare situation in South Africa and the benefits that have been afforded the Makuleke have been effectively deducted from their equally indigenous neighbors, including other Shangaan and Venda groups. South Africa could easily once again slip into a landscape of exclusion, rather than inclusion, and such directions are often fostered by outside agencies and interventions. Indeed the nods to participation and collaboration (Cooke and Kothari 2001, Mavhunga 2007) have themselves been seen as a means of disempowerment and an effective tool to bolster the status quo.

The politics of cultural identity is also a powerful mobilizer of rights claims. Ethnic groups are increasingly claiming resources on the basis of ancestral claims, rights that can often be bound up with the reinvention or reinvigoration of territorial ethnicity. In the same northern sector of

Kruger National Park, the Shangaan have also claimed rights to financial benefits arising from the Greater Limpopo Transfrontier Park. To date, I have seen no evidence that such benefits have been forthcoming. And this is complicated by the diffuse national character of the claim stretching over three countries: Shangaans have been considered pariahs in South Africa, seen as immigrants from Mozambique who were willing to work for less under the colonial and apartheid regimes (Harries 1991, Niehaus 2002). The newly declared charter on the Rights of Indigenous People (United Nations General Assembly 2007) has one clear statute prohibiting the forced removals of people: ironically this is exactly what has happened in recent years to Shangaan communities on the Mozambican side of the Transfrontier Park (Spierenburg, Steenkamp, and Wels 2008)—showing again the somewhat hollow nature of rights talk for the disempowered and minority groups. USAID, the German Development Bank, the Peace Parks Foundation, and other NGOs have all been involved. However, most of these agencies support the development of the park rather than the people who have been resettled without a viable alternative.

Obviously indigenous issues are paramount: there must be restitution and reparation, and archaeology must actively participate in these accommodations. It is instructive then to see how these same ethnic tensions have played out, and been largely ameliorated, in one high profile heritage site in South Africa. Taking the Iron Age site of Thulamela in Kruger National Park, we can observe how a fractious, ethnically polarized position over site ownership and reburial customs moved from a position of exclusionary politics to one of consensual pasts and shared rituals. Thulamela became famous for its walled settlement, rich burials, golden artifacts and objects reflecting international trade networks. It also grabbed headlines when it was claimed to be the first collaborative archaeological project of the new South Africa (Meskell 2007, Segobye 2006). In reality, a small number of local men were employed rebuilding the walls of the settlement for the duration of the project. Tribal conflict between the Makahane (Venda) and Mhinga (Shangaan) over ancestry and appropriate rituals was also the subject of much scholarly and media coverage (Nemaheni 2004:258) and came at a time when the new dispensation in South Africa was aspiring to unity and an end to racialized conflict. However, a solution was found through indigenous spiritual practices such as divination and decision making over reburial was handled internally, rather than by external agencies. Certainly there were areas of com-

promise during the reburial process and decisions were open to change in the future. Salient here is that an overlapping consensus (Merry 2006b, Rawls 1993) was achieved that was culturally appropriate to both parties.

Archaeologists, in the case of Thulamela, were not viewed as the best arbiters or cultural negotiators (Meskell 2007, Shepherd 2003) and instead may have served to polarize communities. Given the history of archaeology in South Africa, perhaps it would have been idealistic to expect such an expedient transformation. Historians and archaeologists were considered with skepticism during and after apartheid for their complicity in promulgating racist agendas and their denial of black history. One senior archaeologist explained that, "the scientists that were involved had never really worked on a public participation basis. There were so many unresolved issues and mistakes but the important thing about Thulamela is not what *was* done but that *something* was done." While there were numerous problems from the Kruger side, communities like the Makahane and the Mhinga were capable of settling their own negotiations amicably without archaeologists and parks officials interfering with their own agendas, ultimately sensationalizing other people's past for their own gain and shoring up their own authority. Despite these challenges, an inclusive heritage was forged and both groups conducted what they considered at the time appropriate rituals for their ancestors. After working together on site and reburial issues, it was felt that the Greater Thohoyandou Local government should be renamed the Thulamela municipality, effectively encompassing both Venda and Shangaan cultural groups (Nemaheni 2003:39). My point is here that multiple histories of occupation, locality, and connection are common to many heritage sites. This necessitates the forging of shared histories, rather than instantiating divisive, bounded ones. Rights over others, the privileging of one group at the expense of another, particularly in situations of deprivation like rural South Africa, might not always be the best course of action in securing social justice or broad-based transformation.

Thulamela was a touchstone for liberal heritage in 1990s South Africa; yet, like other national ventures, has been haunted by unfulfilled promises of uplift and development before an international audience. Those promises were made as much by archaeological practitioners and commentators as by national parks representatives and government officials, and reveal the ways in which we entice communities to participate and enhance our own research agendas. As a postscript, it would be disingenuous to suggest that the euphoria and limited successes that immediately

followed apartheid's demise have been truly capitalized upon, literally or metaphorically, in regards to community claims and site access. The walls of Thulamela have fallen into disrepair; tumbles of stones that were laid in the 1990s now make traversing the site hazardous while trees and grasses engulf the stone circles (Meskell 2007). This decline is not the product of centuries of abandonment with luxuriant undergrowth threatening to engulf a lost city. It is the material evidence of disregard for a decade-old project of rehabilitation and reconciliation whose moment has passed into history. In 2009, South African National Parks put the onus back onto black communities to pay for site upkeep and development. Having exhausted the private donors, NGOs, and international agencies, parks representatives petitioned the impoverished local Limpopo municipality to fund the restoration of settlement walls. So coming full circle, the very people that Thulamela was supposed to empower and sustain through its heritage development are now being asked to foot the bill after more than a decade of disappointment. "After all," one employee explained in justification, "they did change their name to the Thulamela Municipality."

Ethics, Capabilities and Rights

Rights discourse and the inherent tensions between rights universalism and cultural specificity, transnational governance and respect for local law and practice, not to mention the potentials for universal rights to be a mechanism for new colonialisms, hegemonies, and interventions, have prompted many theorists to call for an ontological shift. According to Merry (2006a), the language of international human rights has shifted from an either/or political discourse to a more unified language of global justice and governance. Because rights talk is associated with claims of equality, it provides entry points to public debates for groups and individuals trying to claim or make real the status that rights presuppose (Ivison 2008:86). Rights talk thus operates to leverage power in arenas of political debate and discourse. Having become a lingua franca for democratic argument, using the language of rights can underscore the importance of the interests at stake, and the need for special kinds of justification attached to those interests. And as Ivison argues, in multi-ethnic states such as Australia, Canada, or South Africa, where appeal to a common ancestry, history, or language is incapable of delivering national unity, the appeal to equality, as expressed in a tradition of rights, can be strategically invoked.

Rather than relying on older notions of rights and development, Amartya Sen (1999) and Martha Nussbaum (1997) have attempted to reposition the discourse toward a more cosmopolitan concern for enhancing human capabilities. Our obligations to others, then, would denote less interference in the culture of others and more of a flexible understanding of what the good life might entail in specific settings. Eschewing any normative reading of "human nature," Nussbaum's (1997:289) construction of human capabilities includes life, bodily health, bodily integrity, senses and thought, emotions, practical reason, affiliation, and so on, and can even extend to other species and the environment. It can take into account individuals and communities: something that universal rights cannot easily encompass. Her account of "human flourishing" then might subvert many of the tensions and hardened categories around "culture" and "rights" outlined here. More instrumentally, an emphasis on human flourishing may also prove beneficial for archaeologists and ethnographers who hope that their interventions might intercalate with the broader aims of social justice, restitution and enhancing the lives of those we work with. Such negotiations and resolutions need not simply reside in state-to-state allegiances, international pronouncements, and presumed universals, but, as anthropologists are expertly poised to recognize, might more effectively stem from listening to other people rather than imposing our own worldviews.

Given that I am concerned with the continued obligations of archaeologists, "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" (Turner 2006:67-68). This is not to dismiss the application of human rights to specific heritage issues, yet it may be that the *rhetoric* of rights proves to be more expedient, to leverage more political attention nationally and internationally. Some cases clearly offer a better fit for rights than others. I simply have doubts that we can successfully petition international courts on the basis of heritage rights and that, instead, much of this responsibility and resolution resides at home. Those responsibilities mandate long term vigilance to be truly effective, as the failures of Thulamela, only a decade on, illustrate.

In summarizing the key points of this paper, my first concern has been whether an appeal to a universalist register of human rights is appropriate in the case of conflictual heritage. Second, I questioned whether the

international legal route provided the most efficacious avenue to pursue. I considered whether the rhetoric of human rights proves strategically useful, or whether a local and grounded engagement poses a more pragmatic, achievable way forward. Marshalling human rights based on abuses of heritage might indeed be warranted in extreme cases, as Schmidt's East African examples demonstrate, but not necessarily expedient in the South African case study. Throughout I have expressed my own concerns about the application of the Universal Declaration of Human Rights to heritage conflicts, rather than the merit of all rights claims on a somewhat less ambitious scale. These doubts are obviously bolstered by the diminished efficacy of the apparatus currently in place to make resolutions achievable. Such doubts are exacerbated when claims and expectations are raised that reflect more of our own concerns and less about what effected communities really need. The solution then may "not be to push up, but down—towards more engaged and participatory democracy at the local level," as Ron Jennings suggests (pers. comm.). From my own fieldwork, I suggested that heritage rights are just one issue and that those basic concerns flagged in the original 1948 declaration—life, liberty, and security of person—remain paramount and unfulfilled. Archaeologists might see themselves increasingly as conduits and facilitators, rather than arbiters, and enable local stakeholders and affected communities to direct the process and the outcomes.

At present, archaeologists are woefully unprepared to assist individuals and groups in rights struggles. However, the scale of conflict is unlikely to recede and we cannot ignore our disciplinary role in prevailing tensions. Practicing humility when working with communities and not promising what we cannot deliver remains imperative. Listening to those who are affected by heritage conflicts hopefully makes us more respectful outsiders, acknowledging that, in most cases, we have the luxury of escape while others do not. Preparing ourselves and our students to engage with a wider range of issues and specialists, such as international lawyers, can only strengthen our chances of being responsible and effective. Being more conversant with the scope and limitations of human rights and other alternatives, on the ground, can forge more pragmatic solutions.

ACKNOWLEDGEMENTS

My thanks to those people who have contributed to our discussions and to those who also read drafts of this paper, including Neil Brodie, Brian Daniels, Ian Hodder, Duncan Ivison, Ron Jennings, Richard Leventhal, Adam Rosenblatt, Helen Stacy, Lindsay Weiss, and participants of the International Heritage Ethics group at Stanford. I would especially like to thank Kathryn Lafrenz Samuels for her insightful suggestions drawn from her own important work on heritage rights in North Africa. Generous financial support for our collaboration came from the Humanities Center and the Archaeology Center (Stanford University) and Penn Cultural Heritage Center (University of Pennsylvania). I am deeply indebted to the elders and representatives of numerous communities around Kruger National Park, the Makahane, Malatje, and particularly Joseph Mkhabela and his family. Numerous residents in Musunda, Bendemutale, Lilydale, Tshikuyu, Makushane, and Welwerdiene also shared their histories, time and ideas about heritage. In particular, I want to acknowledge Joseph Endani, Alpheus Mapukumele, Freddie Mukosi Munzhelele, Alpheus Thomani Mudzanani, Bishop Malatji, Evans Malatji, Andries Makatikela, Andries Sihlangu, and Philleos Machavi. As always, I extend my gratitude to the Andrew W. Mellon Foundation for their ongoing support of my fieldwork in South Africa and to my colleagues in and around South African National Parks.

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