ICOA1073: RESEARCH INTO APPLYING DISPUTE RESOLUTION METHODS TO HERITAGE PLACE MANAGEMENT

Subtheme 02: The Role of Cultural Heritage in Building Peace and Reconciliation

Session 3: Recreating Ideas of Memory
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Abstract: Oftentimes stakeholders have differing perspectives about the significance of heritage places. These differences may lead to tension or conflict, and heritage practitioners may find themselves caught in the middle. It is important for heritage practitioners not only to recognize these differences but also to be prepared to resolve them. However, heritage practitioners often have no formal training in consensus building or dispute resolution.

Since the 1970s, an entire field of practice has developed around dispute resolution, consensus building, and negotiation. Its concepts and techniques have been expanded and refined over time through application to a wide range of societal issues and in various parts of the world. Over a number of years, the Getty Conservation (GCI) Institute has been carrying out research to demonstrate the relevance of consensus building, negotiation, and conflict resolution concepts, methods, as well as specialists to the practice of heritage planning and management. This work has included convening a workshop of both heritage and consensus building specialists to explore this topic, the production of a resulting publication, and subsequent engagement with a broader range of dispute resolution specialists, including those focused on resolving cultural identity-based conflicts. This work has been one aspect of a broader body of research carried out by the GCI involving other heritage and allied professionals over the past two decades.

The proposed paper will present this work, including the identification of a number of challenges, needs, and related recommendations for the heritage field, including related to philosophical concepts and frameworks, capacity building and awareness raising, pilot projects, strengthening the ability of those in the heritage field to advocate and negotiate on the behalf of heritage, and interfiled collaborations.

Key words: *heritage management, heritage values, stakeholders, dispute resolution, consensus building*

Background

The Getty Conservation Institute (GCI)'s exploration of dispute resolution methods sprang directly from its long-term work examining the values and economics of heritage.[1] This work, as well as experiences in a range of other GCI projects, has made clear that stakeholders commonly have differing views about heritage significance, and that heritage values can evolve over time. This may lead to tension or conflict. The *ICOMOS Ethical Commitment Statement* notes the obligations of ICOMOS members in this regard:

> "ICOMOS members respect the diverse, dynamic tangible and intangible values of places, monuments and sites that may hold different meaning for various groups and communities, enriching human culture. Members are committed to promoting effective community involvement conservation processes, through collaborating with people or communities associated with the monument, site or place and recognising, respecting and encouraging the co-existence of diverse cultural values. (…) Monuments, sites and places may have a range of values for different individuals or groups and values are continually renegotiated (ICOMOS 2002)."

Given these obligations, heritage professionals are at times inevitably caught in the middle of disputes or must help reach consensus on achieving satisfactory outcomes.

Through its values-focused research, though, the GCI found that a deliberate effort had not yet been made to apply formal dispute resolution methods to issues of heritage place management. Many countries have now integrated public consultation into various heritage-planning processes, such as at the time of designation, for major local planning processes, and for development planning. While heritage practitioners in such countries now have some experience in this area, the GCI determined that heritage practitioners did not have access to dedicated training in dispute resolution or negotiation approaches, and that dispute resolution expertise had been rarely utilized in addressing heritage-related conflicts. This provoked the GCI to take an interest in exploring the application of dispute resolution approaches to heritage place management.[2]

As a first step, in 2010the GCI and the Jordanian Department of Antiquities collaboratively published a didactic case study focused on the archaeological site of Jarash, Jordan, which is designed for teaching a values-based approach to dealing with stakeholders in heritage place management. The GCI secured the aid of the Consensus Building Institute in creating this publication, which introduces consensus building concepts and techniques (Myers and Smith 2010).

In 2009 the GCI convened an international group of heritage practitioners and consensus building specialists for a workshop on the application of dispute resolution methods to heritage place management. This workshop resulted in a GCI publication that includes background papers on relevant issues and

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[1]The first phase of this work was carried out through the GCI's Research on the Values of Heritage project (1998-2005)described at: http://www.getty.edu/conservation/our_projects/field_projects/values/index.html
[2]This work has been undertaken through the GCI's Heritage Values, Stakeholders and Consensus Building project, described at: http://www.getty.edu/conservation/our_projects/field_projects/heritage/

challenges in the heritage field as well as dispute resolution concepts and methods, relevant case studies prepared by workshop participants, and conclusions and recommendations regarding the application of dispute resolution methods to heritage education, training, and practice (Myers, Smith, and Ostergren, eds., 2016). This paper is intended to share this body of work with a broader audience of heritage professionals.

Issues and Challenges

Disputes surrounding the management of heritage places are common. They are at times relatively simple to resolve. At times they manifest as lack of agreement, which can hinder or halt a decision making process. At times, disputes can be described as intractable or irreconcilable, and may be part of conflicts existing at societal or even international scales, which in extreme cases may involve armed conflict. Disputes sometimes arise from differences in power, from real or perceived threats, or from differences in culture or worldviews. Some conflicts have underlying long-standing distrust due to historical relations.

The issues and challenges in heritage practice that commonly give rise to disputes can be categorized in a number of ways (Johnston and Myers 2016). They include differences of opinion about defining what is heritage and what is not, which can at times be politicized and sometimes be influenced by other interests, such as economic ones. Disputes also commonly arise in making public policy, including due to competing aims of heritage conservation versus other national or local interests, such as infrastructure and other economic development, and economically-driven heritage tourism. Some of the most heated conflicts arise when heritage is recognized as symbols of national or cultural identity. Tensions can also arise when world views clash. This can sometimes occur with the application of international heritage norms by heritage professionals on the heritage of traditional cultures, which may disagree with or misunderstand those norms. Issues can also emerge around processes of stakeholder engagement, including during the elicitation of heritage values, relating to the credibility of a convener, facilitator, or mediator, in choosing the extent and type of public participation, and in dealing with differences over scientific methods and findings. Differences can also arise among heritage practitioners, such as in examining the ethics, aesthetics, and potential effectiveness of proposed physical interventions.

The Dispute Resolution Field and Its Potential Application to Heritage Management

Since the 1970s, an entire domain of international professional practice has emerged concentrating on dispute resolution, consensus building, and negotiation. The dispute resolution field has progressively developed and refined a suite of concepts and methods through application to an exhaustive variety of societal issues, including in environmental conservation, land-use planning, and resolving disputes between cultural groups. The number of experienced dispute resolution practitioners, as well as scholars and higher education programs having the same focus, has also steadily grown across the globe. Online dispute resolution information hubs have also been created, such as those offered by the Conflict Information Consortium (Conflict Information Consortium 2017).

Framing Issues
One area that is apparently ripe for the application of dispute resolution constructs to heritage practice is in the framing and reframing of issues. Frames have been described as "cognitive shortcuts that people use to make sense of complex information. They help us organize complex phenomena into coherent, understandable categories." (Kaufman, et al., 2013). Kaufman, et al., note that the concept of frames has

been applied for analysis purposes in a variety of fields, including sociology, psychology, business management, artificial intelligence, decision making, negotiation, and environmental conflict analysis.

One could argue that the heritage field has constructed the concepts of "values" and "significance" to frame the importance of heritage to stakeholders. In many cases the concepts "values" and "significance" have been formally codified within heritage norms, such as in the UNESCO World Heritage Convention, the Australia ICOMOS Burra Charter, and national and local heritage policies. These concepts are commonly applied in many places on a formal basis to argue for heritage designation, protection, and for receiving public financial benefits.

Alternative frames have been developed and applied by dispute resolution practitioners to deal with a wide variety of issues. One set of concepts that has been applied in dispute resolution that may prove useful is as follows (Smith 2016: 26-34):
- *Interests:* underlying desires or needs that individuals and groups seek to attain
- *Values:* deeply held views about the way the world is or should be, which may be spoken of as truths; it should be noted that this conception of values in an ethical sense is distinctly different than the heritage field's traditional conception of values as specific attributes of heritage places.
- *Identities:* how we conceive of ourselves as individuals and as part of the social and cultural groupings we associate with
- *Rights:* independent standards of fairness or legitimacy that are either socially recognized or formally established in law or contracts
- *Positions:* specific, desired outcomes

Heritage professionals may benefit from applying these concepts to frame issues to better understand the needs and concerns of stakeholders, in addition to using the heritage field's concepts of cultural significance and values.

A Toolbox of Approaches
Over the past several decades, an entire suite of principles, frameworks, and methods has been developed and applied by the dispute resolution field to working with a broad range of stakeholders and issues, including in collaborative processes. Many of them may be beneficially applied to heritage management.[3] These include approaches to understand conflict situations, such as identifying root causes, ways to frame and reframe issues (as mentioned above), and understanding intergroup dynamics. They also include approaches to intervene when disputes arise, such as in designing collaborative processes, including paying attention to defining discrete roles within such processes, such as conveners, facilitators, mediators, stakeholders, and technical experts. An entire framework exists for interest-based negotiations known as the Mutual Gains Approach. Effective principles have also been developed for negotiations, such as seeking out many options rather than focusing on fixed positions. Cultural differences in negotiations styles have also been studied and explained. Joint Fact Finding is frequently used for dealing with situations when stakeholders disagree about scientific, technical, and factual information. Specific approaches, such as dialogue, have also been developed for dealing with intractable conflicts. These represent just a few of many more dispute resolution approaches.[4]

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[3]For an overview of consensus building concepts and methods and their potential applications to heritage place management, see Smith 2016.
[4]To further explore the range of dispute resolution approaches, see the Conflict Information Consortium's Beyond Intractability Knowledge Base: http://www.beyondintractability.org/library/essay-browse-tree

Recommendations

The participants of the GCI's 2009 workshop identified a number of needs and recommended corresponding actions regarding the application of dispute resolution, consensus building, and negotiation approaches to heritage place management. The recommendations include the following:

- Bring into heritage practice dispute resolution frames for better understanding and responding to contested issues.
- Determine the applicability of, as well as tailor, specific dispute resolution methods to particular heritage management issues and challenges.
- Capacity building and awareness raising among heritage professionals, including:
  - creating a community of practice among heritage professionals to share dispute resolution experiences, approaches, and resources
  - creating dispute resolution training materials, guidelines and principles tailored for heritage practice
  - training heritage educators, trainers and heritage practitioners in dispute resolution methods, and
  - targeted awareness raising across the heritage field about dispute resolution methods and resources.
- Create and share examples of the application of dispute resolution approaches to heritage management, including through documenting case studies and implementing model projects.
- Familiarize dispute resolution specialists with cultural heritage concerns and processes to help ensure that they are prepared to lend assistance to heritage-related disputes.

(The full set of conclusions and recommendations from the workshop is contained in Myers, Smith, and Ostergren, eds., 2016: 196-197.)

Next Steps

In 2017 the GCI convened another group of international heritage practitioners and scholars as well as professionals from the environmental and dispute resolution fields for a symposium in Los Angeles to take stock of emerging approaches to values in heritage practice and policy, and to identify areas where the development of approaches and future research may help to advance the field. One topic which was focused on was understanding and resolving cultural identify conflicts. A related publication is planned to appear in 2019.

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