Indigenous Participation in Heritage Management and Presentation

- Crossing cosmological, disciplinary and ethnic divides

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"Law is not a neutral force; it both shapes and reflects social norms and constructs"[1]

"A strong human rights-based approach to the preservation/safeguard of cultural heritage, both tangible and intangible, requires the establishment of procedures ensuring the full participation of concerned individuals and communities."[2]

International law has notably influenced participatory practices in cultural heritage through standards developed both in international human rights and cultural heritage law. It has given rise to treaties, recommendations, expert reports and many other legal instruments on the international level which (partially) guide states in their formulation of heritage policies on the national and regional level. Examples are Art.5(1) 1972 World Heritage Convention, Art.15 of the 2003 UNESCO Convention and Art.31 UNDRIP.[3] Yet, neither national nor international law can be classified as a neutral, value-free sphere, as Babcock rightly points out. It is used as an instrument to shape society and realize societal goals. Heritage policies which are developed in line with international law on the national or regional level carry within them underlying 'international' values and unspoken assumptions.

These goals or values need to be made explicit to ensure that practices are in effect consistent with the goals pursued and have a chance at achieving them. Questions about participatory practices in heritage in general, and international law in particular, cross disciplinary divides: Why do we pursue participation? Is participation the final goal or is it a means to achieve other, unspecified objectives which participation is presumed to further? In case of the former, on which moral/ ethical or philosophical foundation do we base our claim that it is a goal worth pursuing? In case of the latter, what are our aspirations? Do we seek to validate heritage value or possibly a specific claim to heritage? Is it part of a wider societal effort of reconciliation? Or part of an effort by the state to realize its duties towards its citizens, notably in the area of cultural rights? Not only need these foundational questions answering but they raise other, procedural concerns: How do these goals influence the identity of the participant community? Does participation create only rights or also obligations for the participant? If a cultural institution or heritage site pursues participation, are all participants equal or are there different communities of participants? Who decides who may participate?

These questions are inter-dependent; to pursue a specific goal or adopt a particular explanatory model limits the participatory practices which are left available. Focusing on the 1972 UNESCO World Heritage Convention and the UNDRIP and focusing on indigenous communities as participants, this paper explores the extent to which international human rights and cultural heritage law have articulated or indicated the goals to be pursued with participatory practices. To showcase the vast differences in available approaches towards

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[1] Babcock, H. M. (2012). ""This I know from my Grandfather:" The Battle for Admissibility of Indigenous Oral History as Proof of Tribal Land Claims." American Indian Law Review 37(1): 19-61. P.36

[2] UN Doc A/HRC/17/38, Report of the independent expert in the field of cultural rights, Farida Shaheed, paragraph 70.

[3] 2003 UNESCO Convention denotes the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, UNDRIP denotes the United Nations Declaration on the Rights of Aboriginal Peoples

participation, the paper develops a democratic[4] and a reconciliatory[5] model. It then delineates the consequences which have to be drawn for the formulation of consistent practices, depending on the adopted approach to participation.

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[4] Christiano, Tom, "Democracy", The Stanford Encyclopedia of Philosophy (Spring 2015 Edition), Edward N. Zalta (ed.), available via https://plato.stanford.edu/archives/spr2015/entries/democracy/ .

[5] Reconciliation is used here in its procedural understanding Radzik, Linda and Murphy, Colleen, "Reconciliation", The Stanford Encyclopedia of Philosophy (Summer 2015 Edition), Edward N. Zalta (ed.), available via https://plato.stanford.edu/archives/sum2015/entries/reconciliation/.