International Journal of Cultural Property (2006) 13:333–349. Printed in the USA.
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DOI: 10.1017/S0940739106060152

Pocantico Conference Report

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To draw on recent developments and find ways to break the deadlocks that have stymied discussions on cultural property and heritage, the International Cultural Property Society organized the conference, "What Heritage to Preserve?" held at the Pocantico Conference Center of the Rockefeller Brother's Fund from October 19 to 21, 2005.

Cultural property was first considered spoils in war; then pillage from archaeological sites and piracy through trade; and lately, wrongful colonial takings. Traditionally, the focus was on artifacts and who had the right to them. Recently, interest has turned to intangible cultural property, nonmaterial, culturally important forms of expression, music, customs, and local knowledge. Greater attention is also given to the current role of heritage: how it is used to make cultural distinctions and develop cultural differences as well as how it affects current relations between cultures and is affected by a world cultural environment. This has led to a shift in emphasis from the past, artifacts, and exclusive claims to them, to intangibles and the relationships between cultures in a global world. The conference was motivated in part to understand and clarify these developments.

The conference was also motivated by interest in developing more fruitful ways of approaching cultural property and heritage. Past discussions nearly always revolved around spoils of war and the looting of archaeological sites. Questions about who should own the cultural past and its repatriation predominated. Over time this led to a stultifying focus on a limited number of conflicting interests: those between archaeologists and nations with archaeological remains and collectors, between source and acquiring nations, between local and international museums, and between the victims of war and imperialism and those who now have what those victims want back. Although incontestably important, the urgency and emotion that tend to surround these issues have curtailed inquiry into related matters and limited consideration of the underlying impasses. The intensity of the debate on a narrow range of issues has led to stagnation. Adding new voices with differ-

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https://doi.org/10.1017/S0940739106060152 Published online by Cambridge University Press

ent approaches and a wider range of concerns could help break the impasses and open new areas of inquiry.

The society was faced with similar issues in deciding how to proceed with the publication of its journal, the *International Journal of Cultural Property* (*IJCP*), after a 2-year hiatus. Although *IJCP* sought to be the interdisciplinary forum for the discussion of all aspects of cultural property and heritage, it was affected by the battling interests that dominated the field and thought by some to take sides in that battle. The society was also concerned with finding a way to advance beyond the narrow focus on issues between competing parties holding entrenched positions and repeating prior battles. It was decided that when publication of *IJCP* resumed, it would be with an enlarged editorial board with anthropologists, heritage experts, and other culturally based scholars along with archaeologists and other object based scholars and legal experts. The idea was to widen *IJCP*'s perspective to include greater emphasis on culture and its global context.

A question for the society and its journal was how best to integrate anthropologists and other cultural experts into a field that historically focused on law and issues of ownership as well as to avoid and perhaps advance beyond the old controversies and debates, which were reflected in most articles and symposia with little effect in helping to resolve differences or advance discourse. The answer: a conference focused on new ways of thinking about cultural property that could provide grounds to get around the contentious quagmire of the debate about ownership. This posed a dilemma: How does one develop new approaches to old problems? How, in the terminology of the field, can heritage be reconceived and approached to move beyond past controversies and debates without disregarding those debates, that is, without ignoring its own heritage? It was decided that the Pocantico Conference would be the occasion and vehicle for clarifying the situation and developing new beginnings. The conference was to provide an opportunity to exchange ideas, develop topics and ideally an agenda for cultural property and heritage that confronted the controversies and debates they engendered without repeating them. The objective of the Pocantico Conference would be to create a stage for open discussion leading to more productive debates in the future.

How could this be accomplished? There were no clearly identifiable speakers, no experts, no expertise, and no obvious topics for breaking new ground in the deeply historical matter of heritage. The solution: The Society and *IJCP*'s own editorial board would be the conference's participants. The next issue addressed the best structure of and subjects for the conference. It was decided that time would be needed to develop a sense of purpose and consensus about how things should progress. It was also determined that broad topics that considered different aspects of heritage and cultural property and provided wide latitude for discussion yet overlapped and touched on past issues and controversies would be ideal. The conference would begin with four topic sessions, each having three cochairing organizers with varied backgrounds drawn from the conference participants and charged with beginning each session with presentations designed to provoke dis-

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cussions leading to ideas to be further pursued. This would be followed by roundtables chaired by the conference organizers and session chairs to develop the most promising ideas for postconference development and, perhaps, through subsequent workshops and meetings. The topics for the four sessions would be those potentially best suited to investigating and integrating traditional cultural property and heritage concerns with a broader anthropological view of culture.

There was a substantial amount of preconference planning and preparation. Suggested readings were provided to participants as well as brief outlines of the presentations with suggested topics for follow-up during subsequent discussions. The result was animated, reasonably focused deliberations throughout the meeting. A sense of the varied and dynamic discussion can be gleaned from the conference rapporteur's transcription notes to which the reader is referred.[1] The notes, intended as a summary and aid to identifying the speakers on the conference audio recordings, capture what took place and were used to write this report. They are invaluable for understanding the flavor of the exchanges, often provocative but never heated, and the creativity and insightfulness in the give-and-take of the conference and what was achieved by it. Reading the rapporteur's notes of what occurred is strongly recommended for a better and more accurate appreciation of what took place.

The first session, titled "Cultural Heritage or Cultural Property," took two concepts basic to the field, property and heritage, as marking key differences and raising a number of critical issues. First, culture as property—object-like, bounded, separable, controllable, alienable—is something static that can be maintained and preserved. This is the historical way of thinking about culture as embedded in objects and monuments. Issues of ownership and control predominate, and legal solutions using property law naturally developed as the basis for resolving disputes. In the companion and often competing concept of heritage, what matters is the underlying relationship to a culture, whether through a progenitor or cultural community, which is the ground for an emotional connection, whether through birthright, identity, or other personal relationship, that leads to a sense of *belonging* in ways deeper than through ownership and law.

The question of *cultural property* versus *heritage* was considered an appropriate beginning for a conference concerned with clarifying differences without invoking them. Terminology affects differing perspectives and values without using them: A discussion of basic terms calls attention to underlying concerns and allows discussion of those concerns without necessitating a choice between them. The differences evoked by these two terms can be seen in part by the topics with which they seem naturally aligned: For example, intangibles and indigenous cultural claims appear more appropriately as matters of heritage; economic interest and legal protection more appropriately appear as matters of property and ownership. It was hoped that discussion of basic terms would avoid the contentious subjects and the conflicts that stymie discussion and permit disinterested inquiry into the differences they mark.

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Daniel Shapiro, a lawyer and president of the International Cultural Property Society and an organizer of the conference and the author of this report, stood in for the society's founder John Merryman. Shapiro introduced the session by providing historical background on these two ways of thinking. Because interest in cultural property and heritage historically arose in the context of war, its traditional focus was on protecting buildings and monuments from destruction and the return of valuable cultural property. This explains the singular importance of tangible property; the interests of nations and the people who lost their heritage; the importance of law with its clear and enforceable remedies; and why lawyers, governments, and those concerned with preservation remain dominant rather than those with culturally based expertise who would explore alternatives to resolving disputes about cultural property based on cultural connection.

The next presenter was Lyndel Prott, a legal scholar long associated with UNESCO and heritage concerns. Although noting the legal and historical connections to monuments and artifacts, Prott preferred *heritage* as the more appropriate term (and approach). Recognizing Merryman's concern with emotive nationalism and its connection to the politics of heritage, Prott considered a property approach, with its reliance on ownership and alienation, less suited to the underlying cultural attachments that are of increasing importance in a global environment. She stressed the need for agreed definitions of key terms for consistency in understanding and applying law in a multinational context. Prott viewed property notions as less suited in recognizing the personal aspects of culture as heritage, which she considered of crucial importance in understanding and dealing with cultural matters.

For Richard Handler, an anthropologist and cultural theorist, the prior introductory remarks and legal concerns about property and heritage were examples of "the natives doing their thing." That is, they were expressions of particular cultural interests and perspectives. *Culture* is not something bounded, like property, but the ever-changing medium of a particular cultural perspective through which things are interpreted, experienced, and understood. Approaching culture as property or heritage uses culture to interpret, clarify, and define and simultaneously adds to and changes that culture. Claiming something as essential to a culture, whether as property, heritage, or anything else is a culturally affiliated act that manifests a political cultural agenda. Culture is inherently particular, and any attempt to define it changes it. As a cultural theorist Handler's recommended approach was to understand the role of culture and its specific acts and manifestations. Culture is not static but subject to continuous development; instead of singling out particular cultural manifestations or considering some cultures better or more appropriate, Handler views a culture as an ever-changing way of considering and dealing with the world.

With such divergent presentations, it is not surprising that the discussion that followed raised dissimilar points. There was consideration of the varied and related terms, including, in addition to cultural property and heritage, patrimony, preservation, *biens culturels* and nostalgia. All had differing inflections and foci, yet

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together not fully covering the field; thus, for example, the display of children's shoes at Auschwitz did not fit comfortably under any of them. However, it was agreed they were a proper subject. Similarly, there was agreement that *heritage* was overly political and *property* too limited; yet, its implication of *ownership*, although negative, was also an aspect of heritage. The consensus was that with a multiplicity of meanings, with no term for all occasions, the terminology must reflect the issue at hand; but the lack of a single concept made translatability and so the meaning and application of international treaties problematic. An attempt to explain the complexity of meanings was sought. Among those noted was that cultural property, heritage, and other cognates were inherently retrospective, reflecting the need for a point of reference in the past in the rapidly changing modern world; and identity required maintaining continuing connections with the past. This was linked in part to the importance of preservation: the need to maintain things and to have something to study and understand as well as an anchor in the present. However, culture itself was considered the always current interpretation of experience, reflecting the need to continuously reconceptualize the past, and so is prospective in nature, with preservation a limiting notion that serves institutional needs and purposes involving the past.

The conclusion of the session, if there can be said to be one, was that given the numerous possible uses and abuses of cultural property, heritage, patrimony, and so forth; their complexity of meaning and perplexity; as well as the various interests, concerns, and purposes that they express, the best approach was to provide as wide an area for discourse as possible, without prejudicing the discussion to reflect a particular interest or agenda. That is, rather than concern for what term was best, attention was better paid to the breadth of the field, the purpose of the inquiry, and the issue at hand. Such a laissez-faire approach, reflecting the most commonly shared political and cultural proclivities of the discussants, best allowed all the "natives to do their thing," including cultural theorizing. Analogous to providing wide breadth for discourse was the companion suggestion that the natives have the widest choice possible for dealing with cultural property, heritage, and patrimony. This was linked to a *rights* approach. That is, comparison was made with international human rights and freedom of speech, where all parties have a right to their say; thus, the culture of cultural property and heritage freely develops.

The second session, "Intangible and Tangible Heritage," considered intangible heritage—music, ceremonies, indigenous peoples' knowledge—in contrast to tangible cultural property—monuments and artifacts. Anthropologists and others interested in intangible forms of cultural expression have much to add to the traditional object-oriented approach of archaeologists and others that has dominated the study of cultural property. Anthropologists, with their focus on culture and interest in indigenous peoples, stress the present day function of cultural property, or the role of intangibles, and emphasize that everything is interpreted or viewed through the lens of current culture, including the past, which is under-

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stood from the perspective of the present. On this view intangibles, like language and the ways we organize experience, are the critically important cultural vehicles that inform and give meaning to cultural property and material heritage. The addition of anthropologists and cultural theorists into the traditional mix of object-oriented specialists provides a new emphasis and ways of thinking about heritage and cultural property. Unlike tangible cultural property, which is unique, limited to one place at one time, and generally deemed diminished through reproduction, intangible culture, like digitized information, is simultaneously reproducible anywhere; it is considered enhanced because of it ubiquitous global availability. Inquiry about intangible culture provides a vehicle for considering cultural interaction and conflict, how dominant societies affect minority cultures, and how globalization is effected.

Michael Brown, an anthropologist concerned with intellectual property, began the session noting that western law provides the structure for dealing with indigenous intangible cultural property. Intellectual property law, which provides time-limited rights to intangible property as a monetary incentive for its creations, is ill-suited to an indigenous community's traditional intangible culture, which is connected to its cultural identity (unlimited and timeless), uncommercial, and not the product of individual creators. He also considered digital technology and its preservation of culture as information, making it available to others as discrete data (not unlike objects), and the effect this can have on living traditions and communities. Additionally, he noted that the monies spent on preserving intangible culture as data might otherwise be used to help preserve the communities themselves. These concerns raised the problem of preserving cultural property and the nondominant cultures that create it in an increasingly global community with its insatiable need for information and reliance on international laws.

Hyung Pai, an anthropologist who specializes in Asian cultures, exemplified these concerns in the context of Asian approaches to cultural property and heritage. Japan and Korea developed their cultural property laws based on European examples, first listing antiquities and then intangible heritage (Japan), and micromanaging it for nationalistic and especially economic purposes. She provided the telling example of an extraordinarily popular Japanese knock-off artist who was made a national treasure, his activities were recognized as intangible national cultural heritage, to control and commercialize his success.

Patrick O'Keefe, a legal expert in international cultural property law, highlighted UNESCO's approach to intangible cultural property, noting how it was political in nature and similar to Japan's approach using tangible masterworks as the model. Given UNESCO's cross-cultural approach, a key issue was how to determine masterworks of world heritage. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible heritage as "practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artifacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage" and seeks to

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"safeguard" it; but it is unclear whether this will help maintain diverse cultures and their vitality or commercialize them for national purposes. In short, the convention reflects rather than solves the conundrum surrounding intangible heritage: how to protect and regulate it without changing or destroying it or its cultural creators.

The discussion following the presentations focused on two issues. The first issue was the intractable problem of how preserving indigenous cultural practices tends to distort or fossilize them. On the other hand, not doing anything can mean cultural extinction and the loss of information. Related issues involving the dominant culture are: is classical music moribund except for the nostalgia of wealthy patrons who are preserving it and will hunting soon only survive with government support; these in contrast to football, a vigorous, living cultural practice that thrives on popular support. There was no agreement on even conceptualizing the issues surrounding the preservation of intangible culture, or for evaluating the trade-offs that occur when cultural practices are preserved. Large unanswered questions also concern the interrelationship of intangible to tangible heritage. Indeed, is the distinction between them clear? Isn't the cultural importance of tangibles intangible? Some striking examples of an indistinguishable relationship between tangible and intangible was that of spells being said over a facsimile of an old idol to transform it into a replacement for one that was stolen and a case that in effect held that such a new idol would not be legally protectable as heritage because it was not *antique*. (Interestingly, the prevalent example of the use of intellectual property law to protect a multinational corporation's economic benefit from its taking of an indigenous people's traditional knowledge, which is not itself protected by intellectual property law, was not a topic of discussion.) Perhaps the one conclusion that could be reached is that this is an area still in the early stage of development, and additional work is needed to better understand the effect of intellectual property law on cultural property and heritage concerns.

The third topic session was on stewardship. Stewardship focuses on the why, what, and how of preservation rather than on who has the best claim to what is preserved. As such it minimizes concerns about property versus heritage, tangibles versus intangibles, ownership versus inheritance, individual versus group, and nationalism versus internationalism. In place of these dichotomies and claims of right, it emphasizes an overriding concern for heritage and the value of cultural creation. Stewardship stresses that public interest is broader and more important than that of any owner or possessor, individual collector, museum, archeologist, anthropologist, group, nation, or political entity. In place of definitive solutions between conflicting interests and claims, stewardship is concerned with maintaining important examples of cultural expression for the future, stressing the *right* to cultural expression above and beyond any current interest in it. The question is whether stewardship avoids the historical impasses among incompatible claims, whether public interest is more and different from competing individual interests,

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and whether the notion of an unchanging culture and its preservation into an undefined future even makes sense.

Alexander Bauer, an anthropologist, editor of *IJCP*, and one of the conference organizers, began by quoting from an article by Alison Wylie, for whom he was standing in. The article discusses the creation of a 1996 ethics code for archaeologists that Wylie helped draft in which stewardship of the archaeological record rather than archaeological research was viewed as archaeology's primary concern ("archaeologists … [are] … '*caretakers … for the benefit of all people*'"—italics added). Bauer questioned whether *caring* for heritage (and similarly *safeguarding* it as in the UNESCO Convention on Intangible Heritage), affects a change in archeology's unfettered pursuit of its own interests. Among other things he wondered whether it was self-sacrificing or a self-serving assertion for access and use, like universalism and internationalism. Was it merely an attractive cover to a particular perspective? That is, without clarification of what interests were to be served, the claim to be stewards was arguably little different from archaeology's traditional assertion of the authority to control and manage what remained from the past. In short he queried whether *steward* was simply a new name for the archaeological fox to gain unrestricted entry into the antiquities chicken coop. In general, a good deal more than claiming stewardship was needed to ensure a change in practice. It required limits on authority and control and the recognition of shared interests. Without this, stewardship seemed little more than the assertion of control without ownership; a reprieve of archaeology's traditional claim to be the only proper authority in modern politically correct dress.

Jim Nafziger, chair of the International Law Association's Committee on Cultural Heritage Law, presented stewardship as an alternative to the traditional conflict-based approach to heritage and cultural property. According to him, an adversarial and contentious approach to cultural heritage developed as the natural consequence of claims for repatriation of property taken in war, theft, or as colonial booty. The inheritance from these beginnings is a focus on normative remedies. Concerns about heritage are cast as claims for which there must be winners and losers, to be determined by ownership, decided by evidence, and enforced by law. Given such a contentious context and need for black and white solutions, there is little room for complexities; and the deeper issues underlying most heritage matters tend to be ignored. This confrontational approach is reflected in the current contrasts of nationalism versus internationalism, retention versus free trade, and the other dichotomies that frame current debates and make progress near impossible. Nafziger considered stewardship an alternative to this traditional two-sided adversarial approach, replacing it with numerous potentially valid interests for which cooperation and collaboration, not contests over ownership, provide the best means of resolution. He discussed current attempts by international organizations, nongovernmental organizations, and the committee on heritage law that he chairs to develop collaborative procedures based on caring (protection) and sharing (cooperation) to move away from the limits of adversarial proceed-

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ings and the prior unhelpful two-sided debates. He viewed the Native American Graves Protection and Repatriation Act, which provides incentives for cooperation to resolve differences through reconciling divergent interests as the best example of an alternative to continued adversarial proceedings.

Claire Lyons, a collections curator specializing in archaeology, was the third presenter. For her, stewardship was a way to conceive a museum's mission and as a guide for the administrative procedures that fulfill that mission. Museums are depositories holding cultural property in trust for others. They are stewards rather than owners of heritage; their mission: to define, collect, and preserve what they collect for current and future generations. Stewardship is an ethical association between collector and collected intended to provide the most good to the most people most of the time and to be analogized to an ideal relationship with the environment. Rather than the one-sided connection of ownership, stewardship involves mutual respect for a community of interests, entailing recognition of and cooperation with the interests of others. Although the possessor, a museum is only a caretaker; it does not have unfettered right to use what it holds for its own purposes of scholarship and display, but it is a steward obliged to consider as part of its obligations other competing interests, including political (e.g., claim of originating culture), religious (e.g., relations to nonscientific values, such as respect for burial practices), and ethical (e.g., extralegal repatriation to right past wrongs). Recognition of varied and conflicting interests, including future ones not currently known, may be indicative of an inherent value to cultural property, one independent of any particular interest in it, and what may be called culture and heritage's intrinsic right to exist. Stewardship reflects this in being a *kinder, gentler* approach to collections. It calls for reassessing claims and realigning interests based on the importance of what is collected, a process already begun, as exemplified by Italy's return of an obelisk to Ethiopia and an Atlanta museum's return of a mummy to Egypt.

The central focus in the discussion that followed was whether stewardship avoided issues of ownership and provided an alternative to it: Can stewardship exist alongside, separate, and independent of ownership? An initial response was if stewardship is the commitment to a process in which a variety interests are respected, it can coexist with ownership by others and act as an alternative. It was also questioned whether archaeologists can be stewards because only nations and institutions such as museums, not archaeologists, have the power to control and set policy for archaeological remains; and even when archaeologists have been in control, they have had a poor record of restoring sites and publishing their findings. This led to consideration of whether stewardship was an ideal or a matter of practice necessitating control, if not ownership. Alternatively, ownership could be construed as a bundle of rights; so a key point to the contrast between it and stewardship, exclusive control, involved an oversimple dichotomy because ownership was not without limits. However, stewardship was not a panacea for dealing with cultural heritage, as evidenced by the British Museum's arbitrary cleaning of

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the Elgin Marbles and then covering it up. This in turn led to broad problems with stewardship: the nebulous character of the rights and duties it entailed in contrasted with the *hard* and *clear* legal limitations applicable to ownership. (Interestingly, a *hard, objective, effective* legal approach contrasted with a *soft*, *open*, *kindly*, *cooperative* tactic; and satisfaction with open discussion compared with definitive, enforceable decision procedures tended to distinguish lawyers from cultural specialists throughout the conference.)

At this stage of the stewardship discussion, the question of whether stewardship required ownership or whether cooperative approaches could develop without legal underpinnings remained very much an issue. Nevertheless, and tellingly, all agreed that museums should not automatically assert legal defenses to repatriation claims but consider them in good faith (that is, independent of potentially dispositive legal defenses); and similarly, they concurred that attempts to resolve fundamental differences through negotiation was clearly and principally preferable to solutions based on definitive assertions of right, as exemplified by the extended litigation between religious and scientific interests over the ancient human remains in the Kennewick case. The large and related question of whether cultural heritage is intrinsically valuable, valuable independent of any particular interest in it, was not considered.

The last session, on diversity, considered the effect of the increasing contact among cultures, both within and between states, in a modern, interconnected world. Aspects of this include the commercialization of culture, a tendency to homogenize differences, receptivity to change and efforts to stop it through cultural isolation and ethnic cleansing, broadening our views of ourselves and our relations to others and nurturing our differences, creating multicultural communities and arming for cultural conflict, collaboration and terrorism, all as nonexclusive parts of an interrelated whole.

In this new world, cultural property and heritage have an important part to play, one both affecting and affected by the political and economic as well as local and global forces in which these matters are considered and framed.

The session could not have been more topical. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression was formally approved by a vote of 138 to 2 (the United States and Israel voting against) on October 20, 2005, just hours before the session. In its preamble the convention provides "that cultural diversity is a defining characteristic of humanity," but in its body there is little that is either clearly required or enforceable. Although the treaty and the forces and concerns to which it responds go beyond the large but relatively circumscribed field of heritage, it provided a reference point and realistic context for the concerns about heritage that the conference addressed. In the presentations and the discussion that followed, the nature and role of the Convention on Diversity dominated: What is diversity? Why a treaty and what will it affect? How does it relate to heritage? How does it relate to the conference?

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The first presenter was Neil Silberman, the international programs coordinator of a Belgium-based think tank concerned with public presentations on archaeology and heritage. He noted that heritage was primarily the creation of nation states and part of their story, and so was above all political, administered by and for nations to suit their purposes. Diversity in this context is problematic; it calls for the inclusion of other cultures in an extended state narrative. As such it is conundrum: How is a story of a bounded, homogenized nation broadened without being undermined? This is especially problematic in matters of heritage for which the connection with the past is crucial: How does one maintain a nation built on a traditional storied past yet change that story? How does a homeland become the home and land of aliens who, like the natives, need it to become part of their heritage without changing tradition or distorting the history and myth of that nation's identity? How are others added to the mainstream while keeping their differences; how are they separate yet part of the whole? For the United States and other colonized nations, nations now mainly of immigrants, this is not the insurmountable problem it is for nations whose heritage is intimately connected to the land and its past (Europe) or to identities built on the differences between dominant and minority cultures and those of related neighboring states (Asia). Diversity is a most difficult problem when it comes to national heritage, such as patrimony, which nation states manage to ensure their continuing identity. This, according to Silberman, is why cultural conflict and the hard issues of cultural incorporation are not realistically addressed in the Convention on Diversity.

Stanley Katz, a lawyer and cultural policy expert, presented a different perspective. Unlike other countries, in the United States culture is a matter of economics, not politics; and in the sphere of international regulation, it is mainly relegated to business-oriented nongovernmental organizations that try to protect and increase the U.S. cultural industry's interest through the international intellectual property regime (e.g., longer copyrights for Hollywood movies). There seems a clear antagonism between the homogenizing tendencies of free trade purveying commodified culture created by international conglomerates intent on furthering their economic interests through global markets and that of diverse individual cultures with their unique perspectives and local products. The situation has been likened to what happens to environmental concerns in the face of nationally important polluting industries. The convention analogizes cultural diversity to biological diversity and recommends nurturing diversity rather than attempting to stop the onslaught of commodified culture through protective defenses. For Katz, diversity reflects the variety in human culture; it is the expression of human creativity, which he compares with freedom of speech. It is the right to free cultural expression, which sustains multiple values and voices and does not conflict with economic interests in so far as intellectual property rights are used to protect the economic interests of cultural creators. According to him, nurturing, not economic protection, is the way to promote diversity, otherwise one culture is set against others rather than all separately moving forward.

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The last presenter, Bob Paterson, with expertise in international law and indigenous rights, considered the politics and economics of cultural heritage in the context of free trade and the Convention on Diversity. He began with an example: The Canadian government provides financial support to domestic magazines because of the otherwise insurmountable economic advantage of imported U.S. magazines, which siphon off local advertising revenue with their huge circulation. Canada views its economic assistance as serving a cultural purpose; the U.S. views it as providing an unfair economic advantage prohibited by free trade agreements. The result of this difference was that the U.S. initiated World Trade Organization (WTO) proceedings, which outlawed the subsidies. The example shows the grey nature of cultural versus economic protection and that the forces favoring free trade can disadvantage cultural diversity highlighting the need for cultural exceptions to free trade. Free trade agreements, like the WTO, successfully promote trade because of their economic value, which supersedes other concerns and leads to near-universal enforcement because of the economic benefits they are expected to bring. Although the Convention on Diversity does not inherently conflict with free trade, the issue for Paterson is that more attention must be paid to cultural exceptions, which are now determined by free trade advocates with limited sympathy or concern for situations of unequal cultural contact, like that between the United States and Canada, and their effect. According to him, unless cultural diversity is better understood, more powerfully advocated for, and more sympathetically addressed by free traders, diversity cannot compete with countervailing economic interests.

The discussion that followed focused on two points. First, the need for clarification. The *culture* of the convention appeared to be that of the creative cultural industry. That is, culture was considered primarily a matter of economics, the importance of cultural properties, which is the subject of intellectual property regimes and not, as would be expected, culture in its broad anthropological sense like the customs and practices of different peoples. Further, even when culture is considered anthropologically, it is essentially concerned with *high* culture, such as the arts and sciences, the concerns of national heritage or patrimony, and tension remains not only between legal (economic) and anthropological approaches to culture but between culture as valued achievement and as lived. The second point was the likely effect of the convention: Would it change anything? Considered as a legal document, little was expected: It does not supersede other treaties; and even though cultural difference is considered a human right, the convention is so *soft* or vague that nothing enforceable follows from it. For some this meant that the convention is really no more than a declaration of ideals made into a treaty because of France's concern about its cultural identity. For others, even if it set forth unenforceable ideals, this provided a real benefit because signatory nations would be constrained by it, especially those in South America, Asia, and Africa with poor human rights records. Nevertheless, there was agreement that there was no effective connection between the goals set forth

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in the convention's preamble and mechanisms set forth in the body of the convention to accomplish them. Another point of the discussion was the underlying analogy between cultural diversity and biological diversity on which the convention draws. The analogy was thought to reflect the anthropological point that the dominant technologically advanced societies are not self-sustaining and that their alternatives must be preserved to ensure humanity's future. Alternatively, cultural diversity was considered intrinsically valuable, important in its own right, and to be used now not just in a desperate future. Moreover if, as the convention provides, there is a human right to continuing cultural identity, diversity is an intrinsic good requiring active support and sponsorship.

The discussion ended with two very general and telling concerns. First, is the analogy between culture and biology that underpins the convention and much of the discussion valid? Is the distinction between nurture and nature, the cultural or social sciences, and the natural or physical sciences deeply embedded, or is it ignored by the analogy? For example, is culture transferable in a way genetic differences are not? It is easily communicated and subject to rapid adoption easily sustainable, which is markedly different from most genetic developments, thus potentially undermining the analogy. The second consideration was even more basic: A convention on diversity presumes that culture needs protecting, but does it? Is McDonaldization—our modern, global, economically driven culture, which creates universal, commodified products that homogenize cultural differences—a real threat to diversity? Or is it the most recent scare that humanity (culture) is in decline and subject to destruction unless safeguarded, a view that may be likened to the threats in grade-B movies that only prove ordinary people can be heroes? In other words, is culture similarly made of epic stuff? What does a diversity of cultures represent? Is diversity an expression of multiple solutions to how we live, which naturally play themselves out in time? Is the diversity of cultures something like divinely created natural kinds, all intended to survive as intrinsically valuable in themselves? Or is diversity something in between, different, or simply whatever we make it? Unquestionably, more must be said about diversity, the convention, and the assumptions and inconsistencies in the metaphor and theory on which it relies.

The two roundtables that followed the topic sessions sought to clarify and develop their results. The first generally considered how the goals of the conference could best be pursued as well as the specific matters to be further addressed. The second focused on how *IJCP* could further the conference objectives.

First considered was whether an agenda replacing previously unproductive controversies, such as who should own cultural property, with an emphasis on new approaches such as stewardship should be a goal. It was noted that setting forth a new agenda or issuing a declaration similar to the Bellagio Declaration on intellectual property and indigenous culture was unrealistic. Bellagio was concerned with a relatively well-known and circumscribed area for which there was a reasonable expectation that a broad consensus could be developed. It was also noted

https://doi.org/10.1017/S0940739106060152 Published online by Cambridge University Press

that, notwithstanding the preeminence of the Bellagio Conference and its declaration, it led to few substantive results. In comparison the Pocantico Conference was concerned with ideas in a very early stage of development, for which substantial additional work was needed, and about which a consensus might never develop; so it was unrealistic to think that conference participants, or perhaps any other group, would have the status or resources to provide a common direction for others in a field so fraught with differences and controversies. It was also thought that the attempt to guide the field was itself misguided and that even providing support for limited positions on particular topics was inappropriate. Instead of pursuing an agenda, declaration, guidelines, or taking positions, the consensus was that the real merit of the conference was in its open discussion of new topics with participants having divergent positions, which were best conveyed by report and further efforts to develop new ways and topics to most advantageously pursue cultural property and heritage concerns. To this end it was suggested that additional steps be considered to further the conference's objectives, including developing working groups on particular topics, sponsoring meetings with organizations in related areas on issues of common concern, reaching out to those interested in but not previously engaged with these matters, sponsoring articles and supporting work on important issues that were unlikely to be pursued or published without support, and developing other means to sustain new and diverse approaches to cultural property and heritage.

The roundtables also developed a number of topics on which further inquiry was to be sought: How do the different terminologies, such as cultural property, heritage ownership, stewardship, affect the discussion? What are the dominant metaphors, such as the biological analog for diversity, and what issues do they pose and limits do they set? Does stewardship provide an alternative model of community-based obligations to heritage in contrast to the bundle of personal rights of ownership? What if anything is generally special about cultural property and the heritage of indigenous peoples and national minorities? Does the regulation and safeguarding of culture adversely affect its continued growth and development? How is cultural diversity affected by globalization? How is it related to terrorism? And how might the Convention on Diversity be improved? Does our concern for the past reflect some deep human need or cognitive structure? Ultimately, why is preservation important?

The conference concluded with a second roundtable, which sought to elicit specific suggestions as to how the Society and specifically its Journal could further delve into these issues and interests. Consideration was given to: expanding the IJCP editorial board and creating an advisory board with correspondents for areas not otherwise well-covered, developing a broader readership and range of contributors, increasing public access through the internet, publication of an electronic brochure, creation of a web site, in particular one to disseminate information about the conference and its results, and to have ongoing and increased communication between the conference participants, Society, Journal, and others.

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It was hoped that the Pocantico Conference would lead others to pursue new avenues of inquiry into heritage and cultural property. Indeed, this need was perhaps the conference's most striking conclusion. As evident from the previous text, there was little agreement on the topics that it considered: terminology, intangibles, stewardship, and diversity. A conclusion that can be drawn from this is that there cannot be agreement or consensus on such matters. Instead, issues of heritage and cultural property may be inherently controversial, like questions about how we should live our lives, what in them need to change, and how and whether we can make a break with our past. Heritage and cultural property similarly tend to raise issues continually in need of reconsideration. The most common theme of the conference and the one in which there was the most agreement was that culture is not static. Cultural differences and exchanges tend to be beneficial and, in any event, probably cannot be controlled; they bring problems as well as vitality and solutions. Likewise, there was agreement that individuals as well as societies are best served when there is freedom of cultural expression and that the right to such expression should be the goal of all. And, interestingly, heritage and its preservation, the privileging of some forms of cultural expression from the past, was not the unproblematic good that it might seem to be; and it raised numerous issues of how culture should now proceed. Unsurprisingly, support for cultural differences, expression, and exchange reflected the cultural perspective of all participants, and what heritage to preserve had to be seen in this light.

The conference also led to a number of unanticipated conclusions. First, its goal for a new agenda to develop ways around old problems was naïve. The conflicts in interest and approach, between global and local, economic and political, inclusive and exclusive, and inquirers and acquirers are real and important and may not allow for sustainable compromise. More likely they are a necessary part of the back and forth of how culture develops, they are a part of its discourse. Thus, conflicting interests were apparent even though old controversies on ownership, national versus international as well as dominant versus indigenous, were avoided. There was, however, a sense that avoiding the traditional quandaries lead to a better understanding between divergent parties and even a sense of progress in dealing with differences. Therefore, some session topics were more helpful than others, but none were essential. There seem to be a host of ideas and issues ripe for consideration that are of broad concern and reflect basic differences that could be fruitful ground for continuing discussion. Additionally, it was clear that heritage and cultural property were areas of immense, basic, and continuing importance. The relationship between cultures and a culture and its past, whether through tangible remains or intangible manifestations, is an inexhaustible area and a necessary and conflicted part of any future.

Another unanticipated aspect of the conference was how it demonstrated some of the ideas on which it was intended to comment and elucidate. Attempts to understand culture as well as the relationships and histories between cultures

https://doi.org/10.1017/S0940739106060152 Published online by Cambridge University Press

ultimately enact what is being considered. Inquiry into heritage appears fated to live what it is about. How important is the past? How much of it is to be questioned, continued, preserved, and superseded? How much of a conference about this does this? The answers to these questions are destined to be piecemeal, never final, reconsidered, and revised in the future in part because of responses today. A culture's future is embedded in present discussions about its past, which became clear during the Pocantico Conference, a telling aspect of the conference. The back and forth between participants with differing interests and concerns—but with the common goal of better understanding their differences through discussions—clarified that approaches to heritage and cultural property in the future would likely be affected by speaking about them now. Although there was no *definitive* outcome, no answers, and no breaching of impasses or creation of new ways around them, there was a clear sense of progress and achievement. Throughout the conference there was reference to what culture is and does: It provides an ever-changing framework through which we experience and change ourselves and our surroundings. The reciprocating reflexive nature of a conference that considers the terminology it uses to speak about itself; is concerned with avoiding and moving beyond controversies; combines hard legal with soft cultural expertise; and most paradoxically, seeks to come to grips with heritage while attempting to move from an unproductive past to a more productive future, reveals both the role of culture and what was sought to be accomplished.

Overall, the Pocantico Conference confirmed that a group of experts with diverse views and interests as well as deep commitments to them can gain much from an exchange of ideas in a structured context with well-intended colleagues. Although this should have been obvious, nevertheless it was somewhat of a surprise given the long history of repeated controversy among the often antagonistic constituents of this deeply divided field. In large part the conference's success resulted from the shared interest of all the participants in advancing beyond old problems by discussing new issues in new ways with new colleagues. In time and with continued effort, this may lead to concrete advances. Perhaps the strategy pursued by the conference and its documentation in the transcribed notes will itself provide a helpful model for the future. More generally, the fact and nature of the Pocantico Conference is itself an example of how culture and heritage are created and preserved.[2]

https://doi.org/10.1017/S0940739106060152 Published online by Cambridge University Press

ENDNOTES

1. The rapporteur's notes can be found at: http://www.williams.edu/AutuSoc/IJCPdocs.htm and will be forthcoming on the IJCP website at http://www.culturalproperty.com.

2. "What Heritage to Preserve?" was an unusual conference because it questioned what it was putatively about and, most extraordinary for obtaining funding, had the vague goal of developing new approaches to a contentious field for which there were no *objective correlatives* or other *metrics* of success. There was no certainty that there would be publishable papers, a public report, or any other concrete results. The society, conference organizers, and participants deeply appreciate the support of those who funded the conference: the Carnegie Foundation, the Leon Levy Foundation, the Kress Foundation, and the Rockefeller Brothers Fund. Opinions expressed by the conference participants are their own and do not reflect the positions of these organizations.

https://doi.org/10.1017/S0940739106060152 Published online by Cambridge University Press