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**PUTTING OUR MONEY WHERE OUR MOUTH IS:
MECHANISMS FOR GIVING THE PUBLIC ITS ARCHAEOLOGY**

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This paper, grounded in the commonly-held notion that ‘the past... belongs to all’ (e.g. Merriman 1991, 1), starts from the premise that the heritage¹ is a ‘public’ good in which a range of divergent interests have a legitimate stake. Accordingly, I will consider in what ways archaeological material can be genuinely considered to be a ‘common resource’ and how these inevitably different interests can be reconciled within an appropriate structure that will avoid both a ‘tragedy of the commons’ (i.e. the presumed tendency of people to overuse a ‘free’ resource) and the appropriation of the material by one particular interest group – including archaeologists themselves. It does so by applying top archaeology ideas drawn from economics, and especially ideas related to the concept of ‘common property’².

Common property

While the consensus of the disciplines of law and economics has been in favour of exclusive property regimes, some scholars have broken ranks to advocate – or at least study – the potential value of common property systems for economic production (e.g.

Wade 1987; Ostrom 1990; Thompson 2000). Typical evaluation criteria for the success of such regimes combine three elements:

- failure to squander the resource (i.e. no loss of the resource),
- investment in the resource (i.e. its enhancement) and
- a lack of anarchy among the co-owners (i.e. ongoing commitment to resource maintenance) (Bromley 1991: 3).

These can be readily applied to the case of an environmental resource, such as the archaeological heritage.

Ostrom's (1990) model of what is required for a successful common property regime comprises:

- clearly defined boundaries to the resource
- clearly defined rights in it
- rules that meet the needs of local conditions
- common agreement as to rule-making and amendment
- monitoring of resource use to ensure compliance with rules
- a graduated system of sanctions for rule-breaking, applied by co-owners to each other and to non-owners
- low-cost mechanisms for dispute resolution
- external recognition of and respect for the common property regime in place.

What these criteria do not do – as Cole (2002: 123) makes clear – is explain why a group of individuals would come together to form a co-ownership scheme in the first instance, especially since there is no historical or other evidence for the inevitability of such structures (e.g. Field 1989). In response, Ostrom (1990: 211) offers the

following hierarchy of conditions which encourage the development of a common property system:

- a shared perception among owners of the advantages of cooperation over non-cooperation
- an expectation of equitability of outcomes from applying rules
- low transaction costs (i.e. the time, trouble and costs associated with maintaining agreement and cooperation among the group)
- a general acceptance among the co-owners that each can be trusted to behave according to the rules
- a relatively small number of co-owners.

In response, Cole (2002: 124-5) argues that these factors can be reduced to a single element: that in fact, each of them contributes to low transaction costs, and accordingly he offers this alone as reason enough for entering into a common ownership arrangement.

The key point that appears to lie at the heart of any successful common property regime, however, is a community of interests among co-owners. It is generally assumed in discussion of these regimes that all the owners will make equal and identical use of the resource and will accordingly require equal and identical access to it, and that therefore benefits and costs will be the same for all. Indeed, in economic discourse at least, the co-owners and users of the resource are assumed to be identical. This works well for economically productive resources, but is perhaps less relevant in the case of environmental resources. Cole, for instance, cites as an example of the extension of the common property idea to the field of environmental protection, that of the Thanet Coast of southern England (www.english-nature.org), by the

involvement of 42 stakeholders in the construction of a management-plan (Cole 2002: 127). In doing so, he makes explicit that the concept of 'stakeholder' employed is necessarily wider than that of 'user' and that they represented very different kinds of interest group, including interests ranging from the economic to the purely amenity, from use to non-use, and from use by those directly represented to use by others for whom they may speak or provide facilities. It is clear that many of these different interests collide. In such a case, the idea that each co-owner represents an identity of interest with all other co-owners breaks down. Any scheme of common ownership of an environmental resource must therefore accommodate these different uses, different requirements for access and differences in outcome.

Co-ownership of archaeology

Although economists and lawyers have been slow to examine the role of common property regimes in relation to environmental resources, and especially archaeological remains, archaeologists themselves have in practice been experimenting in just this area, although without necessarily realising it. The language of such efforts is not that of property regimes, however: the general reference is to 'community' archaeology (*World Archaeology* 2002), 'collaborative' archaeology (Field et al. 2000; Moser et al. 2002; McDavid 2002) or 'democratic' archaeology (Faulkner 2000; McDavid 2004). Nevertheless, close examination of such efforts reveals a remarkable similarity between these initiatives and the kind of common property regime advocated by economists (Ostrom 1990; Bromley 1991).

Marshall (2002: 216) suggests that in general archaeologists encounter two kinds of overlapping community: one defined by geography is the 'local'; and the other

defined by affiliation is the ‘descendant’, of which the indigenous community is a particular example (Layton 1989a; 1989b; Smith 2004). Either of these – or both – may be involved in an emerging community archaeology project. The issue is primarily, however, not one of who is involved, but the nature of the involvement, and in this connection Stephanie Moser and her colleagues in Egypt (Moser et al. 2002: 221-3) note that there is a standard hierarchy of types of collaboration: ‘outreach’ represents a one-way process of communication and education; beyond this is a willingness to recognise the contribution to knowledge and information others can make; and beyond this is an active process of consultation, most evident with indigenous and descendant communities. In going further, the project at Quseir in Egypt involved a series of additional steps:

- fostering social relationships with the local community
- maintaining a presence in the community between fieldwork seasons
- employing locals as part of the project
- using locals as the means of outreach programmes; and
- ensuring the retention of remains retrieved locally in the local area (Moser et al. 2002: 223).

Similar ideas emerge from the work of Judith Field and her colleagues with the Aboriginal community at Cuddie Springs in Australia (Field et al. 2000: 43-4). Here, it was important to the community that the archaeologists establish their integrity, that they engendered trust, that they encouraged active participation in the project, especially by employing members of the community in the work, that they maintained a constant presence in the area, that they conveyed information to the community members in ways to which they could respond, and – as in Egypt – that locally-found

archaeological material remained in the area. In both cases, these factors contributed to a sense among the local community of the project as something of direct relevance to them and in which they had a direct stake, both emotional and economic. It also engendered trust among them of the archaeological team, who arrived as strangers. In both cases, however, the community was involved by the researchers. A similar kind of project in Fiji (Crosby 2002) aimed to go a little beyond this by listing the requirements for a 'true' community archaeology project, which are said to be:

- initiation of the project by the local community
- a basis in local ideology and attitudes, linked to concerns for sustainable resource-use
- the provision of expert advice from outside the community; and
- external (in this case, government) funding.

Here, the community calls upon others to undertake the work, which is then organised and financed from outside. Although dependent upon the willingness of professional experts to place themselves at the service of untrained locals and of government agencies to provide full financial support, which may be exceptional and peculiar to the Fijian context, there is nevertheless an indication here of a way forward in terms of creating a viable common property regime for archaeology and which relates to transaction costs, to be discussed further below.

'Democratic' archaeology projects take a similar approach. At Sedgeford in England, a local committee of trustees has control over the project as well as employing – indeed relying heavily upon – local labour, while hierarchical structures are minimal (Faulkner 2000: 31-2). In other cases, more formal structures serve to support community control. At the Levi Jordan Plantation site in Brazoria, Texas, USA

(McDavid 1997; 1999; 2000; 2002; 2004) control over archaeological research and its public interpretation is in the hands of a board of trustees drawn from descendants of former owners of the plantation and those they enslaved and their representatives, the aim of archaeologists being to collaborate with members of local descendant communities in reciprocal, non-hierarchical, mutually empowering ways (McDavid 2000: 222). It is also clear, however, that any particular initiative requires the permission of the trustees, that committee members are involved in every stage of the project and are seen as the 'bosses' who direct the archaeologists; these are then concerned both to involve committee members, and to be 'involved in [committee members'] own agendas, according to... mutual needs' (McDavid 2000: 222). Nevertheless, McDavid admits that the committee members perceive her as the project leader, a role she both claims and does not attempt to disguise (McDavid 2000: 222).

McDavid takes an explicit approach to her work at the Levi Jordan site, grounded in American pragmatist philosophy, which entails the establishment of a continuing 'conversation' about issues at the site (McDavid 2000: 229; 2002: 305). She emphasises the diversity of backgrounds of committee members and of attitudes towards the site, both white and African-American, and draws upon the pragmatist approach as a way to accommodate this without closing the conversation. First, she notes how involving herself as one actor in a conversation among many served to enhance her standing in the community, rather than diminish it: effectively by denying her own 'expert' status as an archaeologist she was able to emerge as the community's expert (McDavid 2000: 230). Second, she sees how the abandonment of scholarly authority allowed her to engage more closely with the more contingent and

contextual interpretations of others' lives by those others (McDavid 2000: 230-1).

Thirdly, a pragmatic approach is about keeping the conversation going, not about winning arguments: accordingly, disagreements between actors become not problems to be overcome but opportunities to engage more deeply with colleagues (McDavid 2000: 231).

None of the projects outlined here have described themselves in terms of property relations, although they may recognise that community 'ownership' in a broader sense is what they aim at. Nevertheless, as community projects they represent the rejection by professional archaeologists of any claim to exclusive control over the object of their research – archaeological material itself – or its products.

Evaluating community archaeology

Against Bromley's (1991: 3) criteria for evaluating the success of common property regimes, community archaeology projects such as those covered above appear to do well. In all cases, the resource – the site and its products from research – are not squandered: local involvement and leadership in the project ensures that the resource is given value; and where the project offers opportunities for local employment, this ensures further a direct economic incentive in preventing damage and looting. The resource is in various ways enhanced: by the process of research, it yields new information for archaeologists and others; outreach and educational programmes – for locals and others – ensure that this information is made widely available, while formal academic publications give the resource intellectual value; where recovered items are retained in a local museum, the nearby site from which they come is given greater prominence and the objects themselves are more closely contextualised. The lack of

‘anarchy’ among co-owners is attested by the continuing nature of these projects and their success in maintaining and enhancing the resource, as well as establishing and retaining good will among the local community.

Ostrom’s (1990) eight components for a successful common property arrangement are also generally well met. In all cases, the resource – a local site or the archaeology of a given area – is clearly defined. In most cases the purpose of the project – whether pure research into the past or to encourage tourism – is made clear. It is frequently the community who make the rules regarding how the project will be conducted, and accordingly they will meet local needs and conditions, while there is also in all cases common agreement as to the rules and how they may be changed. Monitoring of the project is conducted jointly by archaeologists and community alike in both formal and informal ways: the peer-review process evident in formal academic archaeology serves to support such monitoring, as will auditing of financial and other arrangements. Sanctions for rule-breaking or failure to perform will be appropriate for the project and agreed by parties, and will involve external recognition of the arrangements in place. Whether dispute resolution is low-cost or otherwise will depend upon specific arrangements: like transaction costs generally, this is difficult to assess. In terms of archaeologist’s time and effort, however, and the way in which this will inevitably impact upon their specifically archaeological performance, it will seem that these costs are quite high.

Such a point may appear to invalidate any argument made in favour of treating such projects as common property regimes. If such regimes rely for their success upon low transaction costs, then if these costs are high they do not meet suitable tests. A

common factor in all the cases discussed above, however, has been a willingness on the part of those with a specifically non-economic interest to invest in the community project. McDavid (2000: 222) is recognised as a project leader and takes time and trouble to ensure community wishes are respected and disputes addressed. Moser and her colleagues (Moser et al. 2002) and Field and hers (Field et al. 2000) were at pains to build significant trust and willingness to collaborate among members of the communities they work with. In Fiji (Crosby 2002), government funding and the provision of expert guidance was a pre-requisite for the project.

In all these cases, the costs of establishing and maintaining community involvement may in fact have been very high: the same applies in the case of the Thanet example quoted by Cole (2002: 127), where the burden was carried by English Nature. This may be the key to addressing this issue. It is not necessarily that overall transaction costs need to be kept low for environmental resources to be held as common property: but if one or more owners, or an agency acting on their behalf, is prepared to carry them on behalf of all, then they will be considered low so far as owners are concerned, allowing them to act as if transaction costs are in fact low. In the case of community archaeology projects, it is generally the archaeologists involved who are prepared to carry these costs – in terms of effort and time – on behalf of the owning community, of which they may also be members. Where it is a State agency that shoulders the cost – as in the case of English Nature or in Fiji – they do so without also appropriating the resource to themselves: this is different therefore from exclusive State ownership, which is a common option in heritage management.

Creating a common property right in archaeology

Assessing community archaeology projects as if they are common property systems may be a useful academic exercise: but in practice – except in so far as such projects involve actual trusteeships and their formal incorporation as types of legal person, as at the Levi Jordan site (McDavid 1997; 1999; 2000; 2002; 2004) – they do not generally represent property ownership in the full legal sense. To achieve this, some form of specific property must be created and rights in it duly allocated.

A problem with heritage that is frequently stated is that it does not, in fact, represent any kind of property (see e.g. O’Keefe and Prott 1992; Brown 2004; Rowlands 2004).

A way of overcoming this problem that has been proposed is to treat cultural resources as a form of intellectual property – akin to a copyright or a patent. The system of intellectual property ultimately recommended consists of:

- the grant of intellectual property rights to communities
- the explicit recognition of community and collective rights
- the recognition of sectional community rights – to protect the infringement of rights to hold sacred or special knowledge that may be part of the local culture
- comprehensive conservation legislation to protect the resource from exploitation
- a public defender or ombudsman to advocate and protect the rights of the community (Ditchfield 2000: 79-81).

Here, legal ownership of a resource is vested in a recognisable community with clearly defined rights and with sufficient outside investment – in the form of supporting legislation and a mediator – to keep transaction costs (at least for community members) low. This way forward therefore meets Ostrom’s (1990: 211) list of preconditions for a common property regime to become established.

It follows from this section and the last that if a given community was granted the right of ownership of an archaeological property under arrangements like these, and the archaeological project was then organised as a community archaeology project such as those discussed earlier, it would meet the conditions set by economists for a successful common property regime.

Conclusion: a common property regime for archaeology

It would seem that the idea of archaeology as a form of common property may not be quite so outlandish as may be first thought, and indeed that there is a practical way in which it could be accomplished. This then is the proposal in outline:

- that archaeology – both as material in the ground and as practice - be treated as a form of intellectual property right (IPR)
- that a specific IPR in archaeology be granted to a given community
- that the community establish rules governing the management and conduct of archaeological research and related activities
- that the role of monitoring the project and acting as a locus for dispute settlement be placed either with the archaeologists involved, or outside the community altogether, thus reducing transaction costs for co-owners.

This extension of community archaeology into the realm of common property would overcome many of the problems identified with exclusive rights in cultural property.

Notes

1. The terms 'heritage' and 'archaeological heritage' are used interchangeably in this paper, and can be considered synonymous with 'cultural heritage' and 'cultural resources'.
2. For a fuller treatment of these ideas, see Carman 2005.

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