

Power, Politics, Laws and the Management of Archaeological Heritage. An experience from Madrid

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Abstract – Spain has been one of the leading countries in the expansion of commercial archaeology. Seen as the least-bad option at the political moment when it was set, the framing law for heritage was not even close to the reality that was about to happen. After the ratification of the La Valetta Convention in 2011, a group of professionals decided to move forward, towards a new regulatory framework in Madrid. The process has been intense and led to a new law, but nothing close to what was expected. Political interests, corruption, responsibility, contestation and a surprisingly innocuous end mark this “story” about the latest legislative process for archaeological heritage in Madrid. This paper will expose the whole process of the latest heritage law in Madrid from the first consultations to the first full year of application, after the Constitutional Court voided about 20% of it. In the process, this paper will explore in a transversal way some of the topics of the Berlin DGUF conference like the role of institutions and professional associations, the psychology of power within archaeological professions, shifts of power, and the real impact of legislative actions.

Keywords – archaeology; power; politics; heritage; negotiation; participation; Madrid; Spain

Titel – Macht, Politik, Gesetze und Bodendenkmalpflege: Erfahrungen aus Madrid

Zusammenfassung – Spanien war eines der führenden Länder beim Aufkommen der Firmenarchäologie. Bei ihrer Einführung galt sie im Land als die am Wenigsten schlechte Option, aber der gegebene gesetzliche Rahmen war fern der sich dann entwickelnden Wirklichkeit. Nach der Ratifizierung der Konvention von La Valletta/Malta durch Spanien im Jahr 2011 beschloss eine Gruppe von Archäologen, diesen Mangel zu beheben und ein neues Regelwerk zu schaffen. Dieses Vorhaben war anspruchsvoll und intensiv, es führte zu einem neuen Gesetz, aber die Erwartungen daran wurden nicht annähernd erfüllt. Politische Interessen, Korruption, mangelndes Verantwortungsbewusstsein, Auseinandersetzungen und am Ende ein harmloses Gesetz charakterisieren dieses jüngste Gesetzgebungsverfahren für das kulturelle Erbe in Madrid.

Dieser Aufsatz stellt den ganzen Prozess dieses Gesetzgebungsverfahrens in Madrid dar, beginnend mit den ersten Konsultationen bis ein Jahre nach seiner vollen Umsetzung, an dessen Ende das Verfassungsgericht etwa 20 % dieses Gesetzes für nichtig erklärte. So beschäftigt sich die Schilderung anhand einer Fallstudie exemplarisch mit den Themen der Berliner DGUF-Tagung: der Rolle von Institutionen und Berufsverbänden, der Psychologie der Macht unter professionellen Archäologen, den Veränderungen des Machtgefüges und dem Einfluss von Gesetzgebungen.

Schlüsselwörter – Archäologie; Macht; Politik; Denkmalpflege; kulturelles Erbe; Partizipation; Madrid; Spanien

1. A short story of politics and power in Madrid

I will start this paper in first person, with an experiential approach to a traumatic process for Spanish heritage. I will do it with a story that starts back in 2007 when a group of colleagues started AMTTA, an archaeology workers association with a clear aim: a new labour agreement for the sector in Madrid.

Spanish archaeology is mainly conducted under the polluter-pays-principle and most interventions take place in a commercial context (see PARGA-DANS, 2009). This situation has been blamed for the precariousness of the sector (MOYA, 2010; GONZÁLEZ, 2012), which is not different from other countries (SCHLANGER & AITCHISON, 2010).

For three years, the labour agreement was carefully written up and in 2010 it was ready to be signed. First meetings with archaeological companies went well and I was about to start my mandate as President of AMTTA when the crisis blew all up with a new frame law that made any agreement unviable.

It was a moment to rethink the association, as its main aim was virtually over. Outreach was a clear focus for us, but the ratification of the La Valetta Convention in March 2011, opened a new line of action in the legislative arena. Therefore, we started to meet the different political representatives in order to explain our situation and the need of further regulations adapting to it.

1.1. No need of new regulations!

In October 2011, we went to the Regional Parliament, and the minority party in the opposition offered us the possibility of writing questions to the Government, asking for new regulations for archaeological activity and a reform in the law according to the Valetta precepts. We did so and on November 24th 2011 we got an answer to only two of them (see figure 1).

The answer was simple: To the question about an adaptation of the law, there was no need to change anything. To the question about the new regulations, there were already six of them and that was enough.

PREGUNTA DE RESPUESTA ESCRITA

PE 195/11 R 3049

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ASUNTO: Si tiene previsto adaptar la Ley autonómica de Patrimonio Histórico al Convenio Europeo sobre la protección del Patrimonio Arqueológico hecho en la Valletta el 16 de enero de 1992, que entró en vigor en nuestro país el pasado día 1 de octubre.

RESPUESTA:

En relación con la iniciativa de referencia, se informa que el Gobierno Regional no considera una prioridad la modificación de la Ley 10/1998, de 16 de julio, de Patrimonio Histórico de la Comunidad de Madrid, para adaptarla a lo estipulado en el Convenio de la Valetta, por entender que el patrimonio arqueológico en la Comunidad de Madrid está suficientemente protegido tanto por la Ley autonómica como por la nacional.

Madrid, 24 de Noviembre de 2011

It is true that the law was not especially bad, although it could not be considered innovative regarding the national law, and the national one was not especially adapted to the real situation of archaeological heritage management in Spain, as it was written looking backwards into a different model (BALLARÍN, 1999; PÉREZ DE ARMIÑÁN, 1987). Still, there is no doubt it did not fulfil the requirements of the Valetta Convention.

About regulations, there were actually six of them, but regarding totally different topics to the ones addressed by us. They affected the Regional Council (its members and their roles), BIC declarations (BIC is the highest protection figure in Spanish legislation) and funding (based on the Cultural 1% of funds set by the national law).

We were not happy at all with the answers, so the three opposition parties in the Regional Parliament made new oral questions to the Vice-Councilor of Culture during a control commission in February. His answers were exactly the same, with no possibility of replica. Therefore, after the refusal to do anything, we started to fear that the expected regulations on archaeological heritage management, which would be fundamental to the better practice of archaeology, were never going to happen.

1.2. A new urgent law...

Three months after the written answer and only twelve days after sticking to it in the control commission, the Vice-President (to be the new President only months later) of the Regional Government announced a new law that would be processed urgently, expecting to have a draft by the summer (Fig. 2).

Fig. 1 Snapshot of the answer of the Regional Government to our question on the need of a new law for archaeological heritage management, adapted to Valetta Convention.

Expectations were met as on May 29th 2012, we received an email with the draft from CDL (the official professional association with a consultative role). Only seven people came to the urgent meeting called to discuss it, but we managed to answer shortly. CDL with an official report, and AMTTA with a counter-law, amending most of the text. As many people were not aware of the new draft and we had no answer from the Regional Government, we decided to go to the media in the form of the scientific news agency "Materia" (on June 25th). This did not go over well in the government and we were indirectly reprehended. However, the process had just started and we aimed to set battle in order to achieve a better outcome for the new law.

Trying to build strong basis for our allegations, we called a committee of recognised professionals in different aspects related to cultural heritage management, including experts in cultural legislation. In a two-day workshop we drafted some red lines and developed many interesting ideas for a new innovative law. Our objective was to use those in our attempt to change the draft for the better. Maybe our confrontation with the Regional Government was too obvious, but it laid on a strong lack of communication.

In the spring of 2013 we received new fuel for the fire. The Legal Services of the Regional Government had spotted dozens of problems in the text, including several serious ones that should be amended. Some of them were in line with our comments and that is what we used in order to fight the final draft going to the Regional Parliament for approval. Our main problem was that the Government had a sufficient majority in the

Fig. 2 Snapshot of the news announcing a new urgent law.

González anuncia una nueva ley que agilizará la protección del patrimonio histórico

- La Comunidad restaura la torre de la iglesia de Santa Cruz de Madrid, de estilo neogótico-mudéjar
- Este inmueble será declarado próximamente Bien de Interés Cultural en categoría de Monumento

24.feb.12.- El vicepresidente y consejero de Cultura y Deporte de la Comunidad de Madrid, Ignacio González, anunció hoy que el Gobierno regional está estudiando una nueva norma que agilizará la protección y conservación del patrimonio histórico. En este sentido, apuntó que en las próximas semanas el Consejo de Gobierno aprobará el anteproyecto de Ley de Patrimonio Histórico, que pretende actualizar la Ley 10/98 y que supondrá una simplificación normativa.

parliament. However, the governing party promised to hear the opposition and us, so our expectations of a slight positive change rose.

The final draft was not very different from the original and we had conducted an extensive campaign against it, including over 6,000 signatures from professionals and institutions (DÍAZ & TORIJA & ZARCO, 2014). Finally, on June 13th 2013, the law was being voted upon, despite the opposition of three parties and over 200 amendments. The debate was certainly disappointing and listening speech after speech, reply after reply, we understood that the draft was going to pass almost untouched, although the law was not good (YAÑEZ, 2013; GARCÍA FERNÁNDEZ, 2014; MUÑOZ, 2014).

Around midnight, after a recount of 52-69 against us, it all ended as a bad basketball match.

1.3. *The appeal*

The odds were not very good for us, as there were very few options to appeal and they were all extremely expensive for us. The cheapest and more realistic was an appeal to the Constitutional Court, but that meant years of deliberation over very few points that did not actually solve anything. However, we needed to try something at least as a stand. For the first time in years the whole collective agreed on something: That new law was not good and we needed to keep fighting.

After contacting the national representatives of the opposition parties, there was an agreement to go ahead with the fight. After all, if the national Government itself did not appeal, a move by over 50 senators or MPs could do so. We had the presenter; Javier García Fernández, a professor of Constitutional Law and one of the best special-

ists in Heritage legislation (i.e. GARCÍA FERNÁNDEZ, 1989 for a first international work). We had the money after an agreement between CDL and AMTTA-MCyP. We only needed time.

A first shocking reaction was the manoeuvre from two of the three opposition parties to leave the other outside the photo (using the Senate instead of the Congress). A political strategic move we did not expect. However, the appeal was registered in September and admitted soon after. This was good news, as it meant those articles appealed against were temporarily suspended until the appeal was resolved.

At this moment I moved away from the project. I was not AMTTA President anymore and the process was apparently going to last forever. After months of very hard work, it felt frustrating that political power was absolutely over everything. A lesson learned, but still painful.

We went back to outreach and other claims (health and safety, monitoring of open to visit sites, visualization of archaeology in the city, etc.). During a huge cultural event in March 2014, in which we participated, another colleague convinced me to run for the board of CDL with him and other colleagues. We got elected and soon I had to get involved again in the process.

Why? Against all odds, the Constitutional Court sentenced in less than one year (Sentencia 122/2014, de 17 de julio de 2014) upholding the appeal against about 20% of the law and requiring the Regional Government to change it. As one of the main actors in the process, CDL had to get involved in the new process opened and I was again there for it.

1.4. The reform

However, the process was not going to be as fast as expected. During that fall, no actions were taken, and the Regional Government decided to amend the annulled articles using the national frame law.

Elections in the Spring of 2015 slowed the process even more. When the new Government was elected, plans for a reform arose, but the Regional Parliament soon mandated the task with clear terms by autumn. They had to change the annulled articles, as well as some other details with stakeholders' participation – and all in just three months.

This was the perfect excuse to limit any change to the mandate, but the time frame was extremely short for the real parliamentary schedule. In February 2016 we had a first consultation meeting as one of the six platforms invited to participate in the process. A draft was being completed and the cultural heritage office wanted to see what we (as interested parties to the process) had to say. By Easter we had a final draft, which we had the opportunity to amend. However, the changes made were correct and they had no need to go further with them. At the same time that these lines were written we got an official answer to our amendments, in which only two of the proposed changes we exposed were accepted, and a working task-group has been commissioned to continue monitoring and acting within the parliamentary process that will not probably take place before this coming fall.

2. Layers of overlapping powers

Within this short description we can identify several layers of power, among which there is not a clearly dominant locus of power, as depending on the specific situation some of them prevail over the others. In a brief review we can highlight: the people; the media; civil associations; professional associations; bureaucrats; the Regional Government; the political parties; the Regional Parliament; the National Government; the Constitutional Court and beyond.

Some of the actors participate in different layers –let's call them spheres from now on– like myself, as part of civil society, a professional association and an informal member of the media –gaining or losing power even within each sphere. As a member of the civil society I might have a voice, but I cannot articulate it effectively to make the organic power (Government?) listen. Howev-

er, with a good media release the organic power might listen, even more than when we organize in associations. But the political sphere(s) is even more complicated and “the party”, supposed to be the minor power, becomes the ruling voice, or even a dictatorial one in situations like those described above, where it holds the majority of the Parliament. Then, independent spheres like the bureaucrats or the Parliament itself are under full control and higher powers are needed. This is basically how we acted, but things could have been extremely different if just one of the spheres had changed slightly. For example, a Regional Parliament without a full majority from “Partido Popular” would have probably stopped the law before being approved, as we had gained the support of the other three parties. This is the current situation and the negotiations over the amendments are being much more inclusive, even though ideology is still there. A shift in power relations always affects the outcome.

This power can be gained by different means. For us it should have been the expertise of the professionals. This is how we gained the favour of the opposition and the people, but not the Government. In this case our power was money, as we were able to pay the fees of a constitutional appeal –the lawyer that basically wrote our submissions. Without that money, our power to put down the law would have vanished instantly. Public opinion showed to be insufficient for us, but we were used by the political sphere to gain power over people through this same public opinion when the parties appropriated our work.

This is probably the main form of power we practice, from the so-called Authorised Heritage Discourse (SMITH, 2006) and our role as experts. We exercise power over people in activities related to archaeological interpretation and management. The term was defined in a negative way, as means of exclusion and scorn, but hides a reality that has not been critically addressed yet from its opportunities. After all, the power relations set within the AHD are not always – or completely – bad.

Power is a complicated issue that lays in the core of society. It is not my role in this paper to discuss its sociological foundations (see i.e. FOUCAULT, 1980; HONNETH, 1991), however, I find it interesting to delve into its implications for archaeological practice. Archaeology has extensively studied power in the past, either as a matter of change, persistence or resistance. Understanding power in an historical perspective is an advantage to understand society nowadays. We have called

for the position of archaeologists as public intellectuals in this sense (see i. e. HAMILAKIS, 1999; TARLOW AT AL., 2013), but very few results have been achieved besides contemporary (public) archaeology. In this sense, projects like the Levi Jordan Plantation (MCDAVID, 1997) or Annapolis (POTTER, 1994) were an example of community empowerment from archaeology. However, other political options are present, with less transformative consequences and questions arise: is this the only possible model we can follow? Do we need an actual connection with the affected community to act? Is political action the way? How?

3. Politics and Archaeology

Some time ago I had a heated debate about the political impact of archaeology in contemporary society. Reading McGuire's *Archaeology as political action* (MCGUIRE, 2008) had awakened some old ideas in me. A couple of years later, two sentences in a new book (STOTTMAN, 2010) set the basis of the debate for me: "Is trying to save the world with archaeology what we want to be doing?" (JEPPSON, 2010, 63). "Perhaps it is the world of archaeology which needs to be changed in order to be saved" (LITTLE, 2010, 154-155).

Politics became the centre of my research in two different ways: how politics – and policies – affect archaeology (see the beginning of this article as an example) and how archaeology might affect politics – and work towards social change. In this venture, there are different scenarios to play, as politics affect most aspects of the social sphere and, thus, are implicit in most of our actions. However, there are several aspects I consider essential to point out.

3.1. *The social image of archaeology... and its impact on politics*

There is an extensive literature on the topic – at least on the image of archaeology – that portrays a very interesting profile of society on what they understand as archaeology or the past (see i.e. HOLTORF, 2007 – my personal favourite – or my risky approach to other scenarios in ALMANSA, 2013; 2014a). From there we can understand that stereotypes of the profession and the past are still strong in the collective memory – maybe as strong as for other professions. But also that the *archaeo-appeal* that Holtorf defines is still too strong to be missed. The public interest in archaeology is more an opportunity than its misunderstanding is a threat, making this line of work imperative for

the future of archaeology. Why?

In another article (ALMANSA, 2014b) I illustrated with a short story the importance of a better knowledge of archaeology for the future of the discipline. In it, I narrated the story of a small village where a good educational program had developed concerned citizens. One of them became himself an archaeologist. Another one became the major and soon a first line political figure in his party. The impact of this educational program in the long term could have meant a strongly positive impact for archaeology. Could it be possible? Even on a global scale? Environmental education has been successful in many contexts, but still lacks the global impact needed. However, we are only seeing the mid-term consequences of a long-range strategy that is still improving year by year after affecting public policies, international agendas and even research programs – even within heritage (BARTHEL-BOUCHIER, 2012).

Therefore, we need to take care of our image as a profession, as well as about the messages we make clear about the past – although that is another matter.

3.2. *Political economy and archaeology*

If the current economic crisis has made anything clear, is the need of a stronger funding strategy for archaeology (SCHLANGER & AITCHISON, 2010). Current models are not stable and depend too much on third parties and political change. But solutions like crowdfunding do not seem to be a real – or suitable – alternative. One of the consequences of the scenario shown in the previous point is a higher demand for archaeology and heritage in society and, thus, more funding. But again, it is long-range solution for a current problem.

I am personally sceptical of this specific issue, as it is in direct relation to Capitalism as the ruling frame system. We can be utopian in thinking this can be changed at some point, but again, meanwhile, we need to survive. Thus, archaeology needs to make a political decision on the scope of the discipline. What can we offer society so there is a demand for our services? Where are the ethical boundaries in this venture? Should we just stay "pure" and stress the need of funding for the traditional values of our work?

Too many questions arise here, as the topic is highly controversial. However, there are many options for an ethical archaeological practice that can provide different services to society. Most of them go beyond the traditional practice of archaeology to the use of its products – let's talk in these terms. Actually, some of them have existed for a

long time, like educational programs, artefact reproductions or historical consultancy.

I do not aim here to be controversial, but we need to integrate archaeology within the political economy of contemporary society in order to survive and we will only do that by forgetting about the prejudices of becoming a non-(only)-academic discipline. After all, we can change the world even within Capitalism.

3.3. Management and public policies

This was originally the core topic of this paper, with the example of the power relations that happen within a legislative process. But we cannot forget that power also takes place in the daily decision-making process, being the final call for a politician or civil society.

How many times have we wondered whether society would choose between archaeology and another service in the event of a clash? Would it be our fault/win? Are highways or shopping malls more important than archaeology? At this point we need to make another controversial issue clear: archaeology is the study of humanity through material culture, which means the product of our work is not (only) archaeological heritage, but knowledge.

Made this clearly, the destruction of an archaeological site is not always a drama. There are thousands of archaeological sites that have no merit in being preserved *in situ* and the over-protective policy in Western countries within the last decades has played against us. A good management of archaeology means an accountable planning, a great record, thorough research, inclusive outreach and socialization, and sensible decisions. Current regulations do not always ensure this, but still are our main tool for exercising power, maybe sometimes in a wrong way. Therefore, we need to exercise best practices in heritage management and influence public policies with them – or in other words, exercise our power to improve management.

3.4. Ideology and archaeological interpretation

Having a look at the last decades of archaeological theory, there have been impressive advances from a wide range of sources. Most debates centre on the “fight” between processualism and post-processualism (see i.e. this interesting debate, in Spanish DOMÍNGUEZ RODRIGO ET AL., 2008; BARCELÓ ET AL., 2009), which is in some way trivial if we think about an archaeological practice where different perspectives can coexist within the same site or project. However, this is not the norm and

instead of enriching each other or constructively debating, we usually accuse others of being or not political, as if any of them were not.

I like to remember an interesting debate that took place in 1961 between Karl Popper and Theodor Adorno (WIGGESHAUS, 1995, 567-70) where the first accused non-positivist science of an excessive subjectivity that could support authoritarian regimes – read Marxism or Communism – while the second answered with a critique of positivist science as an uncritical practice, also supportive of authoritarian regimes – read an alienating and exploitive Capitalism. Self-consciousness of the actual impact of our research should be the main conclusion, but (how) should we apply it?

Accepting that ideology is over us, in whatever way we do archaeology, we need to think about what kind of impact do we want to have. Assuming here that all archaeologists are... ‘X’, would be absurd. There are many colleagues that are comfortable in the current system, as there are many others that are very critical, either with the system itself or certain aspects within it like gender inequality or minority rights.

What we need to accept, and maybe embrace, is the power of archaeology to influence politics from our own ideological backgrounds. The kind of societies we study and our interpretations of them make a political stand that we must be aware of. Sometimes we do not realise that by defining power in the Iron Age we might be empowering Capitalism or a sexist society. Let’s decide consciously.

*Note I have explained it the other way around... Archaeology is used as political propaganda in a daily basis. Sometimes we do not even realise we are being used, or we are empowering inequality, while others we actually support this use.

3.5. Public archaeology as a tool for social transformation.

Therefore, if we understand public archaeology as a tool for social transformation (see my part in TARLOW ET AL., 2013), the power archaeology and heritage provide to actually change the political discourse can be useful.

This means we need to go a step beyond the classical definition of public archaeology (RICHARDSON & ALMANSA, 2015) towards an understanding of it as a critical theory of archaeology. Understanding archaeological practice in its social context; defining the dynamics of the relations set within the different stakeholders; criticising the different practices we undertake as professionals;

raising awareness about the consequences of these practices within their social context; and maybe providing alternatives towards social change.

We must notice here that I am not talking about archaeology anymore. Although it is sometimes said that all archaeology is public archaeology, I would like to make a stand for a difference, as well as for getting over the short-sighted definition of public archaeology as some kind of enriched participatory outreach and research that is so extended. Public archaeology is about the relations between society and archaeology (ALMANSA, 2010) and therefore, it is about understanding archaeology in context and acting over it.

Recalling the quotes at the beginning of this section I would say that perhaps we need to change archaeology into a more responsive practice within its social context, so we can actually help to change the world.

4. Discussion

The origins of this paper were an excuse to write about power and politics in archaeology. The example provided highlights on some interesting issues for the topic like the ubiquity of power or the fragility of power relations. We exercised power to extend our possibilities for a legislative problem, but every day we continue empowering this same “enemy” just by working. I used to say that we had the power to stop Spain when the construction bubble was still inflating and while our labour conditions weakened. We never exercised that power – with a strike – and today we probably suffer the consequences. The example of the strike to Codex in Catalonia (LLORCA & GARCÍA, 2007) is an exception in Spain. An exception that lead to better conditions and a labour agreement in the region. Should we have exercised our power with a strike in Madrid? Nobody thought this was a solution and a problem of collective cooperation then questioned our real power. On the other hand, our defeat when the law passed created an opportunity to exercise our power in the media, as attention was raised for several endangered sites and we gained a voice to influence public opinion. Did we use it well? Probably not.

Looking at the profession, it is difficult to see a common voice, or even an understanding on important issues. We might agree about the past, but not about the present or the future. But we need to realise that our real power is in the consequences of our work today, and that is also the only way to sustain the profession. I cannot be naïve to believe

there is an easy solution to our problems or that political action is the solution by itself. I am not optimistic about it either. But I need to make the call and keep the debate, as it is still a very important issue to address.

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