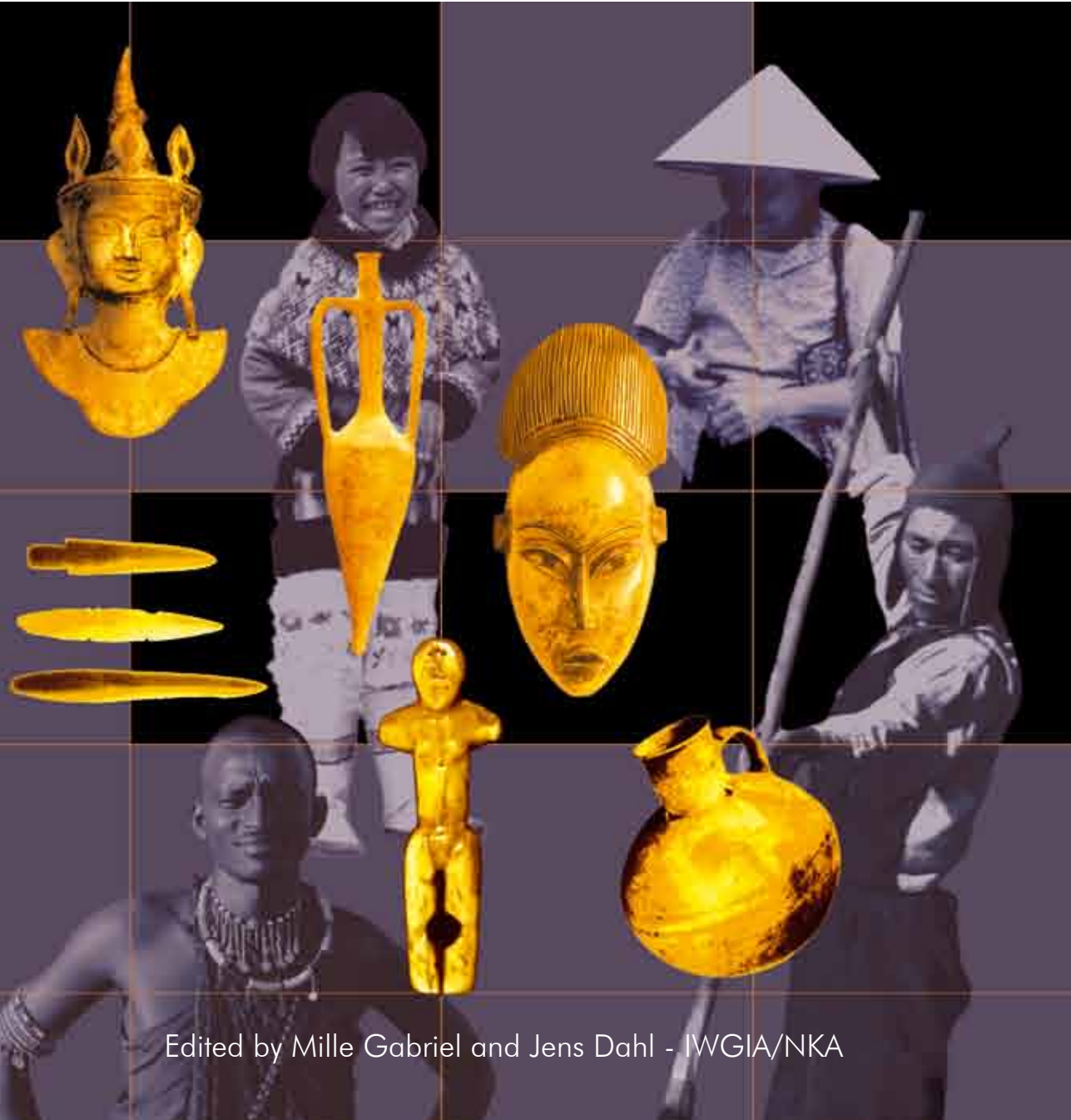


# UTIMUT

PAST HERITAGE - FUTURE PARTNERSHIPS



Edited by Mille Gabriel and Jens Dahl - IWGIA/NKA

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## Past Heritage – Future Partnerships Discussions on Repatriation in the 21st Century

**Mille Gabriel & Jens Dahl (eds)**

Copenhagen 2008 – Document No. 122

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**Editors:** Mille Gabriel & Jens Dahl

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**Cover and layout:** Jorge Monrás

**Cover photos:** IWGIA; Greenland National Museum & Archives; Jakob Christensen Medonos; Nikolay Dimitrov; Vera Bogaerts; Mikhail Nekrasov; Miranda Gillespie; Sean Nel; Bill Philpot

**Proofreading:** Elaine Bolton

**Prepress and Print:** Eks-Skolens Trykkeri, Copenhagen, Denmark

**ISBN:** 97-88791563454

**ISSN:** 0105-4503

*This book has been produced with financial support from  
the Danish Ministry of Foreign Affairs and  
Greenland National Museum & Archives*



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## PREFACE

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**Daniel Thorleifsen**

Over the last decades, repatriation has been of great concern to many newly independent states, indigenous peoples and others having lost essential parts of their cultural heritage as a consequence of colonialism or other kinds of occupation. This often results in ownership disputes and conflicts between the present owner of the material, be it a state, museum or private institution, and the applicant, who claims it by virtue of being the culture of origin. Greenland has for 20 years been engaged in a very constructive partnership with its former colonial power, Denmark, resulting in the return of 35,000 items of cultural heritage – a process later identified as Utimut. Based on these positive experiences, the Greenland National Museum & Archives hosted an international conference on repatriation of cultural heritage from February 12-14, 2007 in Nuuk, Greenland, addressing all parties involved in repatriation; researchers and museum curators, representatives of Western governments, Third and Fourth World populations, UN agencies and other inter- and non-governmental organizations. Repatriation is a complex phenomenon that touches upon a wide variety of legal, ethical and museological issues, which the conference sought to encompass in 4 main sessions: 1) Whose property / whose heritage? - the legal status of cultural heritage, 2) Does cultural heritage matter? - the politics of repatriation, 3) Ethical considerations – repatriation as a ritual of redemption and 4) Preservation or reuse? - repatriation as a challenge to museums. The aim of the conference was to facilitate not only an international but also a cross-disciplinary dialogue aimed at creating understanding and mutual respect between the parties involved in repatriation in order to work out perspectives for future collaboration.

My own cultural background (being a Greenlandic Inuit and a member of the world community) has taught me that you cannot achieve a peaceful world without respect for other cultures. Tensions and conflicts between different cultures are usually based on the way we perceive those peoples and cultures. If we cannot respect others as much as we respect ourselves then we will never be able to understand one another. Visitors to Greenland have often described Greenlanders as a hospitable and humble people. But if humility is a virtue, then humiliation is the worst vice. There was a time in world history where the appropriation

of other people's cultural heritage was a display of power, where the fittest, strongest and thus winning party captured cultural heritage as plunder. I wish that such humiliations were but a thing of the past.

## **The Utimut experience**

During the Colonial Period of Greenland (1721-1953), large quantities of ethnographic and archaeological objects relating to prehistoric and historic times were collected and brought to Denmark by Danish officials, Arctic explorers and missionaries. As a consequence, the National Museum of Denmark eventually possessed the world's largest Greenlandic collection, consisting of more than 100,000 artefacts: archaeological collections relating to palaeo- and neo-Eskimo cultures as well as the Norse people (Scandinavian Viking-age settlers), ethnographic objects from the late 19<sup>th</sup> – early 20<sup>th</sup> centuries, water colour paintings from the middle of the 19<sup>th</sup> century, archival information on prehistoric sites in Greenland and collections of oral material.

The act of appropriating cultural heritage from other cultures must always be considered within its cultural and historical context, including the view of other cultures. In a Greenlandic-Danish colonial context, as with other European-colonial relations, the appropriation and exportation of Inuit ethnographical objects, artefacts and human remains was done, among other reasons, in the name of science. Today, I have chosen to believe that this appropriation of artefacts during colonial times in Greenland was done in good faith, obviously with a wish to save a dying Inuit cultural heritage from oblivion. Such appropriation should additionally be of benefit to science in the study of human development and evolution. That this appropriation actually increased the gradual obliteration of the Inuit culture at the same time is another story that I will not discuss in detail here, because our aim for the conference on repatriation of cultural heritage was not to attempt to reproach former colonial powers. Instead, we wanted to look forward to future collaboration and partnership on such issues.

Since the early 20<sup>th</sup> century, there has been a growing Greenlandic interest in the return of Greenlandic cultural heritage, and today about one-third of the collections have been returned. The main argument has been that we Greenlanders ourselves ought to have the right of immediate access to the physical remains of our own past, and that repatriation is inextricably bound up with the restoration of cultural pride and identity in Greenland. Denmark was sympathetic to these requests from the beginning but stated nevertheless that until a museum was established in Greenland, which did not happen until 1966, Greenland was unable to provide the proper facilities for storing and keeping the material. Besides, as Greenland was a part of Denmark, Denmark declared that the curation of



Greenlandic cultural heritage was to be considered the responsibility of the National Museum of Denmark, and not a Greenlandic museum.

In 1979, Greenland eventually achieved Home Rule and, from January 1, 1981, all matters relating to museums and the protection of ancient monuments and sites became the responsibility of the Home Rule government. As part of this process, the Greenland Museum of 1966 was transformed into the Greenland National Museum & Archives, and negotiations were initiated with the National Museum of Denmark to obtain the return of substantial parts of the Greenlandic collections.

First to be transferred, in 1982, was a unique and extremely important collection of 19<sup>th</sup> century water colour paintings depicting Greenlandic everyday life and mythological features: 160 paintings by Aron from Kangeq, and 44 by Jens Kreutzmann from Kangaamiut. But this was only the beginning. Now the conditions under which repatriation should take place were negotiated and a mutual agreement was reached, an agreement that benefited both parties. The agreement was signed in October 1983 and took effect on January 1, 1984. A committee was appointed for Danish-Greenlandic museum cooperation, consisting of three people representing the Greenlandic Home Rule and three representing Denmark, with the Director of the Greenland National Museum as chairman. The primary aim of the committee was to monitor the process of repatriation and work out principles for dividing the collections in Denmark, principles based on mutual respect and an interest in establishing representative collections in both countries. Over the period 1984 – 2001, the committee made nine proposals for the repatriation of cultural heritage originating from different parts of Greenland and, altogether, 35,000 objects were transferred over this period. Due to the sensitive character of human remains, the committee decided not to divide this material between Denmark and Greenland but to repatriate the entire collection, representing the remains of 1,646 individuals of both Inuit and Norse origin.

The repatriation of thousands of archaeological and ethnological objects, artefacts and human remains from Denmark to Greenland had an enormous importance and far reaching significance to our understanding of ourselves today, our identity and our cultural background. We have had some very good experiences of collaborating with our former colonial power, Denmark, on the issue of repatriation of cultural heritage. This, then, is the background against which the conference in Nuuk was convened: to show that repatriation can be much more than the subject of conflict; that it can also be a potential starting point for new and rewarding partnerships.

Today, the repatriation of Greenlandic cultural heritage stands out internationally as being a most successful partnership because it was based entirely on cooperation and mutual respect. Mounir Bouchenaki, former Assistant Director-General for Culture, UNESCO, described it as "... an impressive example of cooperation between a country and a former colonized territory." (Pentz 2004: 10). It is important for me to stress our wish that repatriation should always take

place within partnerships based on the observance of equitability, mutual sharing of knowledge, and governed by scientific and humanitarian standards. Our own experience has given us new knowledge about the wider setting in which we should look at repatriation.

Different partnership models for repatriation could include, but are certainly not limited to: 1) dividing collections into two equal parts, 2) pro-active ways of assisting countries or peoples of origin to investigate what cultural heritage is available at their own and other museums, private and cultural institutions. 3) returning copies in circumstances where museum facilities are lacking or unsatisfactory in terms of preservation, 4) establishing shared collections “on tour”, which could certainly be rewarding to both parties, 5) repatriation in exchange for other collections. The primary goal of repatriation should never be the transfer itself but the establishment of a working relationship that can be beneficial to all parties involved, regarding for instance the sharing of knowledge in future research projects, exhibitions, etc. The express recognition that the concerns of various ethnic groups, as well as those of science, are legitimate and to be respected will permit acceptable agreements to be reached and honoured. ○

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## INTRODUCTION: FROM CONFLICT TO PARTNERSHIP

Mille Gabriel

Over the last couple of decades, the world has seen concerted efforts on the part of certain ethnic groups, peoples and countries to regain ancestral human remains and lost cultural heritage – efforts that raise questions as to the Western museums’ legal title to these items. While this phenomenon has been discussed at length in conferences and publications, raising such questions as: “Whose property is it?” and “Who owns the past?”, the focal point of this book and the related 2007 Nuuk Conference from which it derives is different (for more information on the conference itself, see the Preface by Thorleifsen).

The reason for moving beyond such argumentative and confrontational approaches is that, while the repatriation debate was previously rooted in post-colonial movements stressing the rights of formerly colonised peoples to recognition, the world is now becoming a global arena that poses new challenges and opportunities. In brief, globalisation is transforming the way in which we interact and think about ourselves and others. It is not only giving rise to new knowledge and communications technologies that enable people to interact on a global scale, it is also – in many places – causing an increased pace of change that is challenging traditional ways and local identities. While globalisation is a uniting factor, it thus also creates a need among the world’s peoples to explore and celebrate their own cultural identity and distinctiveness, and cultural heritage is one important way in which identity can be negotiated.

As cultural heritage takes on a new role in identity formation processes on both a local, national and global level, so do museums. Rather than just being places enabling national audiences to conserve, research and display, they are increasingly becoming active players in sustainable development, and centres for public ethical debate – a “safe place for unsafe ideas”, as Richard West, Director of the National Museum of the American Indian (see Skrydstrup) puts it. As part of this trend, museums are increasingly engaging in partnerships with groups other than their local audiences, not least with regard to repatriating collections to the peoples or countries from whence they came.

The message of this book is that such partnerships must be formed in a spirit of reconciliation and equitable exchange and, apart from actual repatriation, can include approaches such as knowledge sharing, capacity building, co-curation and co-management of collections. The challenge for museums is, as expressed by Jack Lohman in this book, "... to free ourselves from the known ways of being museums by exploring the role of being an actively involved participant in society and allowing society to be actively involved, and not just a place where society collects its memories".

This book represents a cross-disciplinary as well as an international approach involving the many diverse positions in the repatriation debate, ranging from politicians to museum professionals and academics from many different parts of the world. Besides issues of legal doctrine, identity and state formation processes, museum liability, land claims and cultural rights, it presents a number of recent and ongoing repatriation processes and procedures, from Greenland to Greece, from New Zealand to Norway.

Rather than summarising the 18 contributions, this introduction will consider some of the general themes that reveal themselves through the individual chapters. First, the framework or conditions within which such partnerships are shaped will be sketched out, including historical, political, legal and ethical perspectives and, secondly, different approaches to partnerships in practice will be discussed, such as the importance of knowledge sharing, increased accessibility of collections either physically or through inventories, and equal rights to participate in processes of interpretation, representation and collections management.

## **The colonial legacy of museums and collections**

Most repatriation claims concern acquisitions made under colonial or other occupational circumstances, often in the spirit of enlightenment, including documenting and ordering the peoples of the world in terms of supposedly racial differences and cultural essentialisation. Just as human remains were used for physical anthropological research to construct aboriginal identity and reify perceptions of indigenous peoples as inferior (Fforde 2004), ethnographic exhibitions evoked convincing images of self and other (Lêgene 2007; Simpson 1996) that reinforced the ideologies of political and cultural dominance by the West, thereby legitimising colonialism. In the Western scientific attempt to document the supposedly vanishing cultures of the new worlds, also material objects were collected and thereby "rescued", it was assumed. As this, apart from archaeological artefacts, involved appropriating cultural and religious objects still in use, it only served to further the processes of cultural destruction, and enhance the

immense assimilation and acculturation processes also brought about by colonialism (see Simpson).

Sometimes these colonial acquisitions took place as mere plunder, as was the case concerning the British punitive expedition to the Kingdom of Benin, in present-day Nigeria (see Abungu) but in most cases they were probably based on legal transactions such as donation, trade or exchange in accordance with the laws and ethics of the day. As this included also trade in items such as preserved tattooed Maori heads - at times even tattooed post-mortally to satisfy the demands of European colonists and explorers (see Curtis) - it implies that past ethics of acquisition differ substantially from present-day ones. As Martin Skrydstrup suggests in this book, "voluntary consent" could previously be obtained through negotiation or even manipulation. As the colonial legacy of museum collections is dealt with thoroughly elsewhere (Barkan & Bush 2002; Henare 2005; Lowenthal 1996; Simpson 1996; Warren 1999), it suffices here to point out that because national legislation, as well as international legal instruments on traffic in cultural heritage were practically nonexistent in colonial times, Western encyclopaedic and national museums irrespective of ethical concerns generally have legal title to their foreign collections.

## **The politics of repatriation**

While the importance of repatriation has been acknowledged at least since the Congress of Vienna in 1815 (see Skrydstrup), the recent increase in repatriation claims is closely tied to the political changes following WWII, which includes the decolonisation of 3<sup>rd</sup> World countries and the political enhancement of indigenous peoples.

Owing to the colonial legacy of Western museum collections, many indigenous peoples and newly independent states make a connection between the loss of sovereignty and the loss of cultural heritage. In this book, Aqqaluk Lyngé describes the Danish "hunt" for Greenlandic skeletons as part of the same colonial expansion responsible for the "hunt" for Greenlandic resources such as bowhead whale, shrimps and oil, in addition to the souls of the Greenlanders through missionary endeavours. Consequently, claims for repatriation are part of an overall demand for recognition of past injustices and restoration of human rights to colonized or otherwise subjugated peoples (Barkan & Bush 2002). In relation to indigenous peoples, such rights have recently been strengthened by the passage of the UN Declaration on the Rights of Indigenous Peoples (September 2007), giving high priority to matters concerning cultural heritage and human remains.

Being part of such political processes, both Liv Nilsson Stutz and Joe Watkins caution in this book against the political uses and abuses that lead the heritage of the past to be caught in the middle of present-day political conflicts. Represent-

ing the archaeological discipline, Liv Nilsson Stutz remarks, on the basis of case studies from Israel, Sweden and the USA, that the real problem is not the loss of scientific source material, but that "... through repatriation, a permanency might be imposed on interpretation". In line with this Joe Watkins demonstrates how both Native communities and Right-wing American politicians find a political use for cultural heritage and repatriation in the USA. The former because cultural affiliation - determined through repatriation negotiations - can be used strategically in land claim negotiations, and the latter because theories on the origin of ancient human remains such as the Kennewick Man can be misused to conclude that the USA was originally inhabited by Caucasians, thus questioning the indigenous status of Native Americans (see also Nilsson Stutz).

A difference of perspective on human remains such as Kennewick Man has, from the outset, constituted the most heated repatriation debate between, on the one hand, the scientific community, stressing the importance of human remains for the scientific analysis of human origin, health and environmental issues and, on the other, colonised peoples referring to spiritual concerns and the right to decide the proper destiny of their ancestral bones (Meighan 1992; Klesert & Merrill 1993; Hammil & Cruz 1989; Thomas 2000). This polarization has, however, lessened in recent years. Today most museums and institutions comply with policies such as the Vermillion Accord (1989), the British DCMS Working Group on Human Remains (2003) and the ICOM Code of Ethics for Museums (2006), just as a few countries today have national legislation facilitating the return of human remains. The result is that museums and descendant communities are increasingly committing to compromises such as allowing bone samples to be extracted for scientific analysis prior to reburial or depositing human remains at special keeping places rather than reburying them.

## **Identity and identification**

By virtue of cultural stigmatization and assimilation processes, many formerly colonised peoples feel a "'sense of loss' of a passing age and the sense of 'losing out' on the coming age", as formulated by Jack Lohman in this book, a feeling only enhanced by the increased pace of change brought about by globalization. While colonised peoples were previously categorized by Western scientific classification systems or identified through museum representations, in the globalized world they are suddenly identified as (in principle) equal members of the world society. At times, this creates insecurity and a need to find a role in this world: who are we? And where do we come from? As cultural heritage manifests the cultural identity of a group or nation and thus instil a sense of pride, newly independent states as well as indigenous peoples attempt to piece together those parts of their history and heritage that have shaped their cultural identity (Bar-

kan & Bush 2002; Lowenthal 1996). But globalisation not only causes frustration and alienation, it also provides new opportunities, among others the opportunity - through international organizations, conferences and not least the Internet - to engage with others on a global scale and create "a 'commonality' between cultural groups that did not exist in pre-colonial times but has become relevant and necessary in the face of the legacy of colonialism" (Fforde, Hubert & Turnbull 2004: 11). One example being the international identification processes leading to the notion of "Indigeneity".

As Gordon Pullar points out in this book, traditional ways were rarely entirely "lost" but rather "misplaced" and waiting to be once again brought to the fore and revitalised. He emphasises that repatriation is playing an active part in the cultural healing that has occurred among indigenous peoples, as pride and identity are restored. This leads Moira Simpson to conclude that cultural heritage, for indigenous people, is more than a mere record of the past but also a vital part of revitalizing culture, renewing knowledge, skills and ceremonies.

## **Universalism or nationalism?**

Such local (or national) uses of cultural heritage in processes of identity formation and cultural revitalisation tend, however, to collide with globalization and the notion of universalism that derives from it. While the former relies on communitarian perceptions of material culture as inextricably constitutive of cultural identity, the latter represents a cosmopolitan position based on notions of universal moral values (Appiah 2006). Both George Abungu and Martin Skrydstrup explore in this book the dichotomy between universality and cultural identity, stating that the self-proclaimed universality is conditioned by colonialism and can be perceived as "the promotion of the Western world's dominance and their monopoly of interpretation of other peoples' cultures and colonization" (see Abungu). This is particularly so in relation to the 2002 Declaration on the Importance and Value of Universal Museums, which George Abungu sees as an attempt to legalise the ownership of the 19 signatory museums to their collections, thus freeing them from the ethical obligation to repatriate. References to universal values do not necessarily constitute an argument against the return of cultural objects, however, but can be quite the opposite. Nikoletta Divari-Valakou states in this book that, "The Parthenon represents the symbol of Athenian democracy and of the spiritual reserve bequeathed by the Athens of the 5<sup>th</sup> century B.C. to humanity." She argues that the universal value of the Parthenon can only be fully achieved, however, if all the dismembered parts of the frieze are reunited in their national and historical environment, more precisely the New Acropolis Museum, due to open in 2008.

## Imposed or negotiated solutions?

Legal instruments and policies on cultural heritage ownership and management are also part of the framework conditioning repatriation. As previously mentioned, given the lack of legal instruments on cultural heritage in colonial times, museums are more often than not the legitimate owners of their collections, for which reason major Western museums emphasize the need for repatriation requests to be formulated in a neutral language, avoiding concepts such as “illicit”, “illegal”, and “claims”, as they correlate with contemporary issues on illicit trafficking (see Lohman). Guido Carducci clarifies in this book the specific situations that concepts such as return and restitution apply to, and what legal instruments they invigorate. Whereas the term “restitution” should be used in relation to illegal appropriations, according to present-day legislation and international conventions such as the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, the term “return” refers to cases where objects left their countries of origin during colonial times, denoting no reparation of injury. While the vast majority of repatriation claims are bound to rely on museum policies and goodwill, the USA has passed repatriation legislation enabling people to successfully claim back their heritage on legal grounds, such as the 1989 NMAIA (National Museum of the American Indian Act) and 1990 NAGPRA (Native American Graves Protection and Repatriation Act). The provisions of the latter are dealt with in detail by Timothy McKeown.

Timothy McKeown, Tom Hill and Catherine Bell discuss in this book the advantages and disadvantages to “negotiated solutions as opposed to imposed solutions”, as formulated by Tom Hill. Timothy McKeown identifies the legislative approach represented by NAGPRA as a workable compromise for resolving ownership disputes and, even though it relates to American conditions, he extracts some recommendations of general applicability: that all museums should produce museum inventories and improve access to their collections. In contrast to this legal approach, repatriation requests in Canada are dealt with through case-by-case negotiations on the basis of the 34 recommendations of the Task Force Report of AFN (Assembly of First Nations) and CMA (Canadian Museums Association), addressing issues such as the need for increased involvement of First Nations in the interpretation of their history, improved access to museum collections on the part of First Nations, and the repatriation of artefacts and human remains (see Hill). As Catherine Bell explains, this collaborative approach is very flexible and can - contrary to fixed laws - accommodate diversity in First Nation law as well as community preparedness and general interest in repatriation.



## Partnerships and the role of museums in the 21<sup>st</sup> century

Ever since national and encyclopaedic museums from the turn of the 18<sup>th</sup> century were established all over Europe, contributing to state formation processes by reinforcing national – or imperial - identity, the basic duties of museums have been those of conserving, studying and displaying. Owing to decolonisation and globalisation processes, museums are increasingly identifying ethical obligations beyond the national audience, to the global society, not least the communities where the objects originated. Obligations, which, apart from actual repatriation, can include issues such as capacity building, knowledge sharing and community involvement in collections management, interpretation and representation.

Part of such new ethical concerns is to provide a critical view on the concepts employed in the debate. As Neil Curtis points out in this book, it is important to avoid categories of material such as “human remains”, “sacred material” or “cultural artefacts”, as these are basically Western concepts and might be irrelevant or perhaps even perceived as offensive by others. Also in this book, Inger Sjørsløv remarks that the overriding notion of cultural heritage - until the adoption of the 2003 UN Convention on Intangible Heritage - hinged upon Western ideas of the primacy of material heritage, and consequently did not cover many of the cultural expressions of indigenous peoples. Several authors of this book consequently highlight the importance of giving equal consideration to the concerns of communities and museum professionals. What is needed, however, is not necessarily “a partnership that equally shares the hunt”, as expressed by Aqqaluk Lynge in relation to the return of Greenlandic cultural heritage, but a partnership based upon equity. For this reason, Aqqaluk Lynge remarks that cultural heritage should be returned without conditions, and that the return should also be accompanied by funding and capacity building.

## Resources and capacity building

One point that is repeatedly addressed in this book is precisely that of the importance of resources, both financial and human. Regarding financial resources, many former colonised peoples simply do not have the funding or research capacity to locate their cultural heritage at faraway museums, nor are they familiar with the processes by which to initiate repatriation requests. But once cultural objects or human remains are returned, the question of funding is just as essential. As described by Bjarne Grønnow & Einar Lund Jensen in this book (see also the Preface by Thorleifsen) repatriation to Greenland was part of an overall construction of museum institutions in Greenland, demanding funding as well as training of museum staff. But funding is of equal importance in cases where claims are made for purposes other than museums, such as the reburial of human

remains or the reuse of religious paraphernalia. From Kenya, George Abungu describes in this book how a family having stolen *Vigango* (grave posts) returned from American institutions was unable to finance on their own the rituals associated with the re-erection. Also in this book Susan Rowley & Kristin Hausler highlight, however, the importance of recognizing the costs of repatriation not only in financial terms but also emotionally and spiritually. Not all communities are yet ready to handle collections if returned, as is the case in British Columbia, Canada, where not all communities have for instance reburial ceremonies at hand and thus have to consult with the elders on how to accomplish this.

### **Repatriation policies**

A few repatriation partnerships stand out as remarkable: one involves the Scottish Marischal Museum returning both a sacred headdress to the Horn Society of the Kainai Nation/Blood Tribe in Canada and a so-called *toi moko*, preserved tattooed Maori head, to New Zealand (see Curtis). The other is the return of 35,000 archaeological and ethnographical artefacts and human remains from Denmark to the Greenlandic Home Rule (see Grønnow & Jensen and the Preface by Thorleifsen). All three partnerships involved the establishment of ad hoc repatriation policies that aimed at being fair and balanced, giving equal consideration to the different cultural understandings. While the Danish-Greenlandic repatriation policy was based on principles of how to divide the collection held in Denmark into two equally representative collections, the Marischal Museum's policy was to constitute criteria of evidence that both the museum and the requesting party had to present in relation to the identity and significance of the item, its history of appropriation and its future treatment once it had been either returned or retained.

### **Alternatives – knowledge sharing and accessibility**

Not all successful partnerships involve any physical return of objects, however. Several articles in this book explore alternative kinds of exchange – generally highlighting the value of knowledge sharing (see Lohman; Pullar and Sjørsløv). Gordon Pullar demonstrates how, as part of revitalisation and cultural healing processes, the Sugpiaq of Kodiak Island in Alaska have faced difficulties in, "... bringing back traditional ways if there is no-one around that knows the traditional ways." This is where the need for a new kind of repatriation emerges, he writes, the repatriation of knowledge, knowledge embedded in the objects themselves (their materiality, design and proportions) but also in ethnographic research, photos, drawings and field notes. One example is the ongoing partner-

ship between the Sugpiaq peoples, the Anchorage Museum of History and Art and the French Musée du Chateau in Bologne-sur-Mer, which holds a collection of 70 Sugpiaq masks. Instead of physical repatriation, this partnership involved providing Sugpiaq artists with unlimited access to the masks in France in order to enable them to produce such masks once again and, later organising a travelling exhibition to Alaska.

Another example is the 'Recalling Ancestral Voices' project, involving cooperation between the Sámi peoples and museums in Finland, Norway and Sweden aiming at locating and inventorying Sámi cultural heritage (see Harlin). It is important, however, not to forget the mutual benefits of knowledge sharing, as museums are also gaining from it. As Eeva-Kristiina Harlin points out in relation to the Sámi cultural heritage, prior to the project several of the museums involved had sparse or no knowledge about their Sámi collections.

Other alternatives to physical repatriation could be temporary loans, co-curated museum exhibitions, visual or virtual repatriation. Jack Lohman speaks in favour of such innovative approaches in those cases where the cultural value of an object is recognized by both the original and present owners. One example is the Codex Siniaticus, the oldest complete New Testament in the world, which is being reconstructed and repatriated digitally to institutions in four different countries (see Lohman). By co-managing research and co-curating exhibitions, it becomes possible to let different voices and knowledge systems come together on an equal footing, several of the authors of this book conclude. In terms of collections management and handling policies, the involvement of communities is equally important, as some museum artefacts have spiritual connotations and therefore require special care and handling (see Sjørølev). Susan Rowley & Kristin Hausler describe how LOA (the Laboratory of Archaeology at the University of British Columbia) conducted research into the proper care and management of their collections among First Nations communities and, because of this, has established new policies that include aspects such as spiritual cleansings, burnings at which the ancestors are fed, and restricting access on the part of menstruating female staff. They argue that these precautions are not only respecting First Nations but are equally aimed at protecting museum staff from spiritual harm.

## Conclusion

There is no doubt that museums, as Tom Hill remarks, "... play a very significant role in long-term community, regional or global arenas", with the consequence that, besides the traditional duties of preserving, researching and exhibiting, museums have also assumed obligations towards society at large, not least the communities in which their collections originated. In order to live up to these new responsibilities, museums and communities are increasingly forming partner-

ships based on principles of equity and reconciliation involving a wide variety of approaches such as physical as well as virtual repatriation, knowledge sharing, co-management, co-responsibility and joint access. Rather than being detrimental or posing a threat to the integrity of Western museums, repatriation can pave the way to cooperation in new areas, for instance in relation to future research projects or exhibition initiatives. Let me give Neil Curtis the final word: "By embracing repatriation, museums can therefore establish themselves as centres for rigorous - and vigorous - public ethical debate, not just as treasure houses in an unequal world". ○

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# REPATRIATION IN THE SERVICE OF SOCIETY AND ITS DEVELOPMENT<sup>1</sup>

Jack Lohman

The Codex Siniaticus in the British Library is the oldest complete New Testament in the World.<sup>2</sup> In terms of surviving manuscripts, it ranks amongst the most valuable. In the 19<sup>th</sup> century it left Mount Sinai, where it had happily survived for over a thousand years and arrived in London, via Leipzig and St. Petersburg. As it travelled, pages went missing and, today, there are fragments in three locations. This year, the Codex is being reconstructed and repatriated digitally in a three-year project involving stakeholders in four countries.<sup>3</sup> New narratives of its provenance are being researched and written, and a joint effort is being put into applying the latest techniques to its interpretation rather than separate efforts directed at securing title against each other. This project shows the creative and innovative approaches to different forms of repatriation where an actual claim to title does not exist but where the cultural value of the work underlines the importance of the object to both source countries and more recent owners. It is a positive story. It is a story unimaginable in an earlier non-globalised world.

We live in extraordinary times, in which rapid change and new developments mark the spirit of the age. Change affects every aspect of life, personally, nationally and globally. No-one and nothing is left untouched or unaffected by it. Globalisation, while opening the door for massive efficiency gains, also brings with it new challenges: increased pace of change and rapid transfers of wealth, power and knowledge. We in Britain have shifted from Empire to modernity and, whilst we live in the latter, many of our assumptions and attitudes remain rooted in the former. These strain our existing systems – regional, national and international – systems which evolved at a time when global structures were different. They put new demands on our existing institutions and, critically, on leadership.

Museums like mine, the Museum of London, as societal institutions, have not been spared the challenges, which come from being part of the globalising world. We, too, are being challenged to redefine who we are, what our role and purpose is and how we understand ourselves and others. It is within this larger context that we must engage the discourse on repatriation, restitution and return.<sup>4</sup>

The language employed in the ongoing debate on repatriation, restitution and reparation reveals some of the inherent problems that attend this vexed debate. It is a language fraught with words such as “illicit”, “illegal”, “stolen”, “disputed”, “claim” and “demand”. It is, inherently, an argumentative and conflictual discourse, which involves responses of defence in the face of attack. These are also antagonistic words reinforcing the separation of museums from the people they serve.

We would do well to clarify the conceptual scope of what we understand by restitution, return and repatriation, all of which refer to the transfer of property to its previous location, and jointly seek to use one understanding internationally when applying these terms. Often the terms refer to the physical transfer of objects and are rarely applied to the non-tangible benefits of repatriation such as the transfer of authority (Pickering 2001). This issue is complicated by varying national applications of these words, such as the American use of the word ‘repatriation’ with regard to so called native or indigenous people’s loss of objects to colonisers, and often with regard to claims of human remains removed from graves and placed in museums.

We urgently require a new set of words and language around repatriation, shifting to the positive idea of museums and libraries sharing and presenting collections. We understand the issues around repatriation. They have been discussed, published, presented and generally thrashed to a point that has engendered, in some, a sense of frustration, as voiced in the words of Wojciech Kowalski, Ambassador with responsibilities for cultural restitution at the Polish Ministry of Foreign Affairs: “Restitution is a reaction to a violation of law – to robbery, frankly speaking. To conduct restitution is a duty... As a rule, however, restitution should be a straightforward restoration of the original state of affairs” (Kowalski 2001).

The discourse has not been without its fruits. Indeed, much good has come out of wrestling with this issue, as has been and continues to be done by members of the international museum community. Yet we are far from having reached a solution or consensus. The 2007 Repatriation Conference in Greenland holds its place in a long line of illustrious international meetings, held over many years, that have moved forward the debate, albeit painfully slowly (Pentz 2004: 11-17). Conferences and publications such as this are as a result of our recognition that this is not a static intellectual debate. It is an ongoing, living conversation about an ever-developing issue that impacts upon the lives of people and nations around the world as they themselves continue to develop socially, economically, politically and culturally.

Ours is an age of deep cultural transition, in which the cultures of our national and international institutions are being challenged as never before. And, yes, even museums, those bastions of immutability, are not being spared. Today they are playing leading roles in encouraging dialogue, civic development and

economic regeneration, responding to changes in society around them but also representing those changes.

That we continue to feel strongly enough about cultural repatriation to spend the time participating in international conferences is evidence of the fact that the museum community itself is involved in the global process of transformation. Ours is a time of opportunity and challenge, a time to reassess the role of institutions in the life of communities. Museums, as with all other cultural institutions, are confronted with challenges and choices. In facing these, we are profoundly aware that uniform action is difficult. We are operating in very different contexts of history, law, conventions and a multitude of factors unique to our circumstances. How are we to succeed where others are seemingly having great difficulty?

I would venture to suggest that we are facing something of a crisis in the sense that it is a time for decision-making, a moment of truth. The crisis has to do with the increasing sense of alienation as experienced by many in the developing nations of our globalising world. It is a time marked by both the "sense of loss" of a passing age and the sense of "losing out" on the coming age. It is no wonder then that the peoples of the world seek a sense of self, of identity, and attempt to piece together those parts of their history and heritage that have shaped and determined their sense of place and purpose. Entering into a globalised world and a global conversation is not just about modernizing yourself, it is about bringing a clear sense of who you are and having confidence in your own identity so that you can respond to that of others and accommodate them.

The question can therefore be put in this way: how can nations or cultural communities tell the story of their own heritage for their own people when some of the essential aspects of that narrative are in the possession of others? This is a question that goes beyond mere legal solutions. It is profoundly an ethical question and, while we in the museum community are as much under the obligation to behave ethically as everyone else, we are not ethicists by training. As part of our responsibility of presenting and opening cultural meaning, we should be setting a new skill set. But in the meantime, I suggest that the discourse would be greatly enhanced by the involvement of those who have such expertise. If we have learnt anything from the ongoing debate, it is this: we need to open and broaden the conversation through the inclusion and involvement both of other expert voices and the public as a whole.

There is no easy answer to this. Indeed, it is not so much about having the right answers as about asking the right questions and being in right relationship with what is happening. Jiddu Krishnamurthi, the Indian philosopher of the Sixties, spoke of the need to "free ourselves from the known" and Werner Heisenberg, the quantum physicist, challenged the classical concepts of science by introducing what he called "the uncertainty principle" through which he challenged



the strongly-held belief that the role of the scientist was merely that of a detached observer and an objective commentator.

George Soros sums it up in a recent publication:

*“The Age of Reason ought to yield to the Age of Fallibility...Unfortunately, we have left the Age of Reason behind us without coming to terms with our fallibility. The values and achievements of the Enlightenment are being abandoned without something better being put in place. Recognising our fallibility has a positive aspect that ought to outweigh the loss of an illusory perfection. What is imperfect can be improved, and the improvement can manifest itself not only in our thinking, but also in reality”* (Soros 2006: 14-15).

ICOM defines museums as “non-profit-making, permanent institutions in the service of society and its development, and open to the public, which acquire, conserve, communicate and exhibit, for purposes of study, education and enjoyment, material evidence of people and their environment”. This broadening of definition has shifted our role from being merely a “stage” to being “actors” on the broader stage of life itself where we are part of the larger cast made up of societies and nations and where together we develop the plot for our future. In this sense we are more than “actors”. We are “inter-actors” who present the multiple, diverse interactions between nature, culture, history, art, craft and, indeed, everything that makes us human.

The establishment of national museums at the turn of the 18<sup>th</sup> and throughout the 19<sup>th</sup> century was the result of a similar mood in Europe whereby nations sought to build, reinforce and assert their cultural identity. This role and definition of museums has come a long way since their formal establishment two hundred years ago as places for the display of artefacts and for study.

In this paper, however, I will address these questions: What are the obligations of museums in addressing the museological aspects of repatriation? How are the responses of Western museums towards this issue responsible for the formulation of international museum standards, and how are these standards being challenged when the objects are not requested for museum purposes but to be used in a living tradition, for instance the reuse of religious paraphernalia or the reburial of human remains? Also, why is Europe so reluctant to assist claimants in repatriation and how do we change the debate from focusing merely on conflicts to emphasising progress and partnerships?

The first question relates to our obligation as museums. Obligation is a strong word. It suggests duty. We are duty-bound and constrained not only to address but to act on the matter at hand.

From where does this obligation arise? We are all familiar with the origins of the obligation: two key instruments are, of course, the UNESCO Convention on



Cultural Property<sup>5</sup> and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.<sup>6</sup>

The UNESCO Convention has a clear and conscious political motivation, and addresses the issue of repatriation from the standpoint that developed nations have enriched their cultural store with the cultural and artistic property of developing nations, leaving them the poorer in every respect, not least in their sense of identity. Expatriation of other's heritage, or sourcing, (interesting euphemisms) could, in this sense, therefore be regarded as "national identity theft". The Convention is not without its detractors, who take affront at the accusation and who, as pointed out by Mira Rajan, refer to UNESCO's attitude as that of "cultural nationalism". Rajan, in his article entitled "A Time of Change in the United Kingdom" has this to say:

*"The strong stance of the UNESCO Convention on repatriation... has led to difficulties in securing its acceptance internationally. In particular, many art-market countries have been reluctant to join the Convention because of fears about its impact on cultural heritage and the lucrative art trade in their territories"* (Rajan 2002).

The UNIDROIT Convention has, as its distinguishing focus, objects acquired through illicit trade, but its success in attracting support has been even less satisfactory than that of the UNESCO Convention which, in recent years, as experienced in the UK and others' decision to participate, has begun to make some positive gains internationally.

Obligation is therefore tied up with being signatories to either or both of these Conventions, and, in the case of the UK, I am speaking primarily of the UNESCO Convention to which we are signatories. By acceding to the UNESCO Convention, the UK and other member states have a legal obligation to abide by all the tenets of the Convention.

The UNESCO Convention is, however, more than a legal obligation. It is also part of a wider conversation within the UN and, in particular, the UNDP on cultural liberty and human development in today's diverse world. It is in the context of this wider international conversation that the role of museums, in helping to forge the notion of national intellectual and cultural property made up of private and otherwise acquired collections in the formation of national identity, is to be understood.

Our role has been traditionally understood as conserving, studying and displaying in order that the place of cultural heritage can be understood as a fundamental aspect of our common yet diverse human story. It is precisely because of this that we cannot divorce ourselves from the significance of our role in helping to shape humanity's sense of meaning. The role of museums has been redefined since they first came into existence as institutions two hundred or so years ago.

The legal framework, too, has adapted to this but often agreement and approaches have not. This extends to the way that culture is viewed generally in society and emphasises the need to work with educationalists to build cultural literacy so that, when museums have adapted, the public is responsive. The UNESCO definition of the museum requires that *we* consider our obligation legally but also ethically.

The ethical dimension of our obligation has come about as a result of the global focus on the rights of individuals and nations, which has grown in momentum and urgency in recent decades. The development of a “culture of rights” and the concomitant issue of “cultural rights” has broadened the meaning of rights beyond a legal definition.

At this point, we may pause to consider what we mean by “ethics”. The Josephson Institute of Ethics defines it in this way:

*“Ethics refers to standards of conduct, standards that indicate how one should behave based on moral duties and virtues, which themselves are derived from principles of right and wrong. As a practical matter, ethics is about how we meet the challenge of doing the right thing when that will cost more than we want to pay”.*

I prefer this to the dictionary definition, which speaks of the philosophical study of the moral value of human conduct and the rules and principles that ought to govern it. This takes us into the moral sphere of human existence. It is a place that museums have not historically occupied and where we have been loathe to go. More, it demands of us a “cost more than we are willing to pay”.

Herein lies the heart of the problem regarding our inability to deal with the issue of repatriation. The problems of prevailing disparate legal conventions among source nations, and our concerns over the capacity and capability of claimants to look after their own cultural property are all real and rightly occupy our professional minds. But none of these are insurmountable problems. They are challenges that provide a host of opportunities to share expertise, to build capacity, to grow a sense of global community. Culture is going to play a vital part in growing this community – it is a medium of conversation. It is how we read others and so is not only dependent on ethics but is also a crucial part of what defines us and them.

Let me return to the notion of “obligation”. “Obligation” implies not what *is* but what ought to be. What you could term ethical considerations is germane to this discussion and I do not wish to re-cover this ground. But I want to suggest that we may be able to begin reconsidering the costs of making ethical decisions if we are faithful to the demands and dynamics of the world of which we are part and which is rethinking itself and that *we* begin to rethink the museum and our role not as it is but as it ought to be. In other words, in order to do what we ought,

we have to develop beyond what we have been and largely still are. Our Western museum tradition has given rise to policies and practices (including funding) that do not equip us to move easily beyond that which the museum currently is – an institution made up of collections - and our role in respect of this – that of preservers, conservers and scientific observers of such collections. We need to consciously move beyond this outdated model and way of thinking. This is why we feel so strongly about the formulation of international standards on repatriation, which are “our” standards, even when we are sympathetic to the deeply-held feelings of claimants who require the return of cultural property on the grounds of living tradition. We seek assurance, often deemed beyond the current capability of claimants, to care for their own property. Our motives are not, in most cases, entirely ignoble. Our concerns are based upon our need to fulfil our established sense of acting responsibly as curators, as those who care about the conservation of cultural objects. The challenge we face is to move beyond this known way of being.

Quoting Wojciech Kowalski once more:

*“When evoking the concepts of ‘national heritage’ or ‘national ownership’ we deal with a dual understanding of that law. There is, obviously, the ownership rights of individuals and that of institutions, even of the state but, from the perspective of safekeeping the heritage and fulfilling the duty to hand it over to future generations, this right takes second place to the concepts of preserving common human legacy and collections of cultural property which together constitute national heritage. I believe this is the way to interpret international and European conventions on the subject” (Kowalski 2001) .*

The past decade or so, in particular, has been a period of deep crisis marked by tension and clashes between and within nations. Such conflict has variously and contentiously been described as clashes of “civilizations”, “cultures”, “world-views” or “values”. It is a tension which is ongoing and which deepens in intensity daily. The role of culture in the 21<sup>st</sup> century has become central to the discourse on how an increasingly “global” world can survive without the threat of some being swamped by the overpowering cultural force of others.

Museums exist within this complex global environment and are not spared the pressures and challenges of transforming and finding our role and meaning. We are not able to stand apart from the societies in which we exist, inter alia, to interpret and reflect diverse society to itself. In another statement on culture, UNESCO has this to say:

*“...A museum works for the endogenous development of social communities whose testimonies it conserves while lending a voice to their cultural aspirations. Resolutely turned towards its public, community museums are attentive to social and*

*cultural change and help us to present our identity and diversity in an ever-changing world”.*

I see museums as faced with the challenge which both Krishnamurthi and Heisenberg presented decades ago: to free ourselves from the known ways of being museums by exploring the role of being an actively involved participant in society and allowing society to be actively involved, and not just a place where society collects its memories. We are part of the very story we tell and not just a place where the story is told and tellers of stories. In the case of repatriation, this means that we have to face the challenge being presented to us to respect the right of people to tell their own stories about their cultural journey and give their own meaning to those things which have shaped them as communities and nations.

Repatriation is essentially an act of justice, of right doing. As such, as we have seen in other areas of human endeavour, justice requires that truth be faced before reconciliation is possible. A part of that truth is concerned with our duty to be true to what and who we are, not only as curators of past heritage but as those who have the unique privilege of helping to cultivate the process of ongoing human development and creativity. I take strength from the example I began with, and from imagining a scenario where good faith, creativity and new ideas begin to shape a new way forward. ○

## Notes

- 1 This paper is a personal view and does not necessarily reflect the opinions of the Board of Governors of the Museum of London. I am grateful to Wojciech Kowalski, Samuel Jones and Darryl McIntyre for their suggestions and comments on an earlier draft of this paper.
- 2 I am grateful to Oliver Urquhart Irvine at the British Library for bringing this project to my attention.
- 3 The Codex Siniaticus now resides with four different institutions: the British Library, the Library of the University of Leipzig, the State Library of Russia in St Petersburg and Saint Catherine’s Monastery in the Sinai.
- 4 The Museum of London holds one of the largest and most important collections of archaeologically recovered human remains in the world. For more information see Lohman & Goodnow 2006.
- 5 Adopted Paris 17 November 1970.
- 6 Adopted 24 June 1995, drafted by the International Institute of the Unification of Private Law, Rome.

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# “UNIVERSAL MUSEUMS”: NEW CONTESTATIONS, NEW CONTROVERSIES

George O. Abungu

## Introduction

The power and role of cultural heritage in self-determination, in the promotion of interests, in ownership issues and in the whole of human existence and survival is not in doubt. It has become a common phenomenon in many parts of the world for people to turn to their cultural heritage, especially to places or items of spiritual significance, and particularly during times of difficulty.

In recent times, during conflicts based on nationhood and the right to independence, the world has seen a concerted effort by the warring parties to target and destroy places of cultural significance as a way of destroying the identity and history of others. All these experiences have led to an acute sense of belonging in various societies and the need not only to be a people but to be a people with culture. Coupled with the illicit traffic in cultural heritage, and the emergence of museums as major players in the dialogue of culture, the question of ownership and repatriation has come to the fore of international cultural heritage discussions. It is within this context that the “Universal Museum” concept was crafted.

This concept has not helped to resolve questions of provenance and ownership relating to some collections in major Western museums as was intended. On the contrary, it seems to have elicited more questions than answers and there now seems to be a concerted effort on the part of the “victims” to recover their heritage.

The declaration is meant to legalise the ownership by some Western museums of collections in their possession that originated from elsewhere, “legally” or not and whether contested or not, as discussed below. The victim here is used to refer to the original “owners” of the heritage, whether current governments, groups of people or even individuals who have a claim to the heritage. This group is often politely and more “universally” referred to as the source community, a term used in the paper from now on for reasons of consistency in the book.

The “Universal Museums” are seen and treated in this paper as a group of a few privileged museums whose actions have been perceived as promoting the Western world’s dominance and monopoly of interpretation over other peoples’

cultures and colonization. The whole concept is therefore seen to be in need of a strategic rethink.

## General background

There is no doubt that, in the past few years since the 2002 Declaration on the Importance and Value of Universal Museums (from now on the Declaration of Universal Museums) by a few large Western museums, this topic has dominated various museum discussion forums. One of these forums, a 2007 conference in Greenland, looked at the repatriation of cultural heritage, and dealt with - among other issues - "Ethical Considerations - Repatriation as a Ritual of Redemption". This paper addresses, among other things, the ethical aspect of repatriation. A number of questions are raised including, but not limited to, the following: does the Declaration of Universal Museums free the 19 signatories from any obligation in relation to repatriation? To whom do we owe our ethical considerations - the now deceased original owners, the creators, the living descendants of the culture at its origin, the present legitimate owners, or perhaps even humanity in general?

The issues above raise more questions than answers at first glance. This is particularly so when it is the intention of many that, through cultural heritage, the world needs "to create understanding and mutual respect between parties involved, in order to work out solutions and models for collaborations, in repatriation disputes", as it was put at the Greenlandic conference. Although this is a noble intention indeed, it is however one that will be difficult to achieve when the various positions, especially in relation to ownership of some museum objects, are still diametrically opposed. Thus some Western museums feel strongly that material collected during colonial times or donated by collectors should be allowed to have the same *status quo*, that of belonging to the holding institutions "on behalf of humanity".

Let us first look at the intention of the Declaration of Universal Museums. Was it a unilateral declaration on the part of elite and privileged institutions that have benefited immensely from their countries' historical (often colonial) past, a past that was often characterised by domination, plunder and human suffering in many parts of the world, now called the "developing countries"? Do these museums have issues such as ownership, rights of use or no use, and need for return, among others, with various communities, countries and professionals based on the way some of the museums' collections were acquired, either in the historical or recent past?

Was the intention of this Declaration, as is often alluded, to free the 19 museums of any obligations in relation to repatriation? It is obvious that they are major museums, judging by their size, the resources they command, the diversity of human heritage they hold and their perceived power, in that the 19 museums felt



that they alone could come up with a declaration that binds all humanity. And yet is the perception that they represent the world, as suggested, correct? Is this not based on the same global misconception that the world equals North America and Europe? Or to be more specific, the G8?

The other possible question is whether such a declaration is legally binding. The declaration may have no legal standing and, even if it were a Convention, this would still require the consent of States Parties. So, as many have asked, what is the relevance of this declaration except as an intention of non-cooperation on the part of some major Western museums with regard to the issue of contested ownership of particular heritage items within those institutions' collections? As for to whom we owe ethical consideration, the common practice in the West is as per both Common Law (practised in Britain) and Roman Law (in other parts of Europe) where inheritance is either through relationship or a will. If, indeed, this is the case then why are the living descendants of the creators of heritage in the West such as artwork able to inherit due to the fact that they are descendants of the creators of the artwork when this rule of law is not respected in other (non-Western) countries?

Although others may argue that the legal principle of "no continuity of title" may apply in cases where there are unknown original owners, for example, in relation to many of the archaeological finds, is it not reasonable that decisions, particularly of ownership, should be made by the governments on whose soil the objects are found? This was the case with the Nigerian terracotta in the French museums. Here, a decision involving the presidents of the countries at the time decided to recognise Nigeria's ownership while giving France the terracottas on permanent loan. Should it therefore not be universal practice that objects found within the boundary of a Nation State and declared a national heritage belong to the State, which acts as a trustee on behalf of its people?

It is therefore reasonable for us to conclude that, for one to understand the fallacy of the Declaration of Universal Museums, one needs to be aware of the institutions that were involved in its drafting and the spirit behind it. Further, that the history of human relations over a long period of time between the countries hosting these museums and the others (such as the history of the slave trade and slavery, the expansion of Christianity and colonisation) needs to be brought into consideration, as present relations do not exist outside of this historical reality. The history of museum collections and the illicit traffic in cultural property and – to a certain degree – the present state of affairs including globalisation, neo-colonialism and the "new conquest of the world" by the West, such as that promoted by the World Trade Organisation, are part of this historical discourse.

The resistance to the concept of "Universal Museum" could, to a certain extent, be seen as a form of resistance and a statement against domination. Is the idea of a "Universal Museum" an inherently bad concept? Not necessarily, except that it was introduced at the wrong time, in an atmosphere of intrigue, suspi-

cion, and in a world of fast changing political and economic landscapes that has tended to confine particular groups of countries to poverty and a few to riches.

In the minds of many, the word "Universal" denotes "One World, One Power based in the West, a globalized world that speaks one Language, accepts no Diversity, and dictates to others". The same can be said of the word "Declaration", which silently implies "Decree" or the old rule of "order" of an elite minority over the majority.

## **The historical factor**

The history of the world and of human relations over the years has been one of cooperation as well as conflict and contestation. For a continent like Africa, the periods that are most remembered are those of great achievements and those of great suffering. Sadly, suffering is more prominent in the memory of the past, including denial of rights, enslavement, destruction of heritage (the very foundation of communities and their identities), colonization, poverty and hunger, among others.

The wounds created by the slave trade, particularly the trans-Atlantic slave trade, are still felt today in many parts of Africa and among living communities on the continent. Some of the forts and castles that were used for keeping slaves have now become monuments and museums to the memory of this inhuman, immoral and discriminatory institution that did so much damage to the continent.

The fact that slavery was made to appear as something that was not man-made but of almost divine intent, with an acceptance of enslavement as a natural condition for the black person, has been engrained in the African psyche as the highest degree of denial by humanity. For the Christian West to engage in this dehumanising act, despite the fact that the slave system was incompatible with the teaching of Christianity, has not been lost on many Africans and others. Furthermore, the fact that the Bible was often used to prove the divine curse on the black race, and that scientists laboriously looked for a justification for enslavement, has remained a painful experience.

In most African societies, heritage (both cultural and natural) makes one who she or he is. There is a saying in Swahili that says "Mkosa mila ni Mtumwa": "A person without a culture is a slave". This shows how important heritage is and also how the institution of slavery was viewed. To decree unilaterally over other peoples' heritage in the name of humanity is not only seen as arrogance by the former colonial masters but also as the reintroduction of imperial tendencies.

Colonialism and the spread of Christianity saw the mass plunder of African heritage right across the continent. Some was destroyed in the name of a new religion: the evangelisation of the African continent and the "Black man's heart",

while others were collected and transported in the name of His or Her Majesty's government. This was not restricted to Africa but also happened in other parts of the world perceived to be in need of the White man's civilizing influence. In the process, communities, societies, families, even states were destroyed and their heritage plundered.

It is important to note that, for many countries that were colonised, the story of independence is hardly 40 years old. They share a common experience of destruction of religious sites, forced confessions and adoption of Christianity. The resistance to colonization and the repercussions of such resistance are still felt by families, especially the former ruling classes, who were in most cases the custodians of a community's ritual regalia.

The various invasions by the British, German and French, among others, at the beginning of colonialism left behind bad memories, the total annihilation of societal order as well as the breakdown of long-standing indigenous and intricate political systems. These were accompanied by punitive expeditions whose intentions were to plunder and destroy. Examples include the British expedition in Benin City, Nigeria, and those of the Asante kingdom at Kumasi in Ghana (Appiah 2006:38). Such expeditions were undertaken in Asia, South America and Africa and also among the first nations of North America. The "cultural treasures" looted through these punitive expeditions were seen as legitimate collecting rather than plunder (Appiah 2006: 38); spoils of war, if you will.

Many of the items went to some of the very museums that are now signatories to the Declaration of Universal Museums, either directly or through donations at some later date in time. The damage was done and now there is a need to develop a language of acceptance of the damage without necessarily blaming the present inheritors of the colonial loot. The inheritors, however, must also recognise the loss and damage created by their ancestors that still affects various communities negatively to this day. This is, however, unlike Appiah (2006: 41) who feels it is not a duty to return the heritage and goes even further to say that: "however self serving it may seem, the British Museum's claim to be repository of the heritage not of Britain but of the world strikes me as exactly right", which seems absurd. On the other hand, he seems to accept the principle of repatriation when he states that such cases could include "objects whose meaning would be deeply enriched by being returned to the setting from which they were taken – site-specific art of one kind or another" (ibid: 41). It is clear that many of the objects, including those that many of the major museums have insisted on retaining (in some cases including ancestral remains), have deep spiritual significance to the source communities.

During colonial times, the collection of "exotic" or "ethnic" cultural property continued, irrespective of what some of these items meant to their owners. Items of religion, spirituality, of power and even of a peoples' well-being were carted off in the name of ethnographic collection through "scientific" expeditions. To-

day, at least for Africa, if one wants to see the best African collections (from any part of the continent), then one has to go to Europe or North America.

As noted above, some of these collections are still held very close by the creators' descendants, as some are considered to this day as still holding spiritual significance. Despite the fact that this heritage may have been desecrated, there are some societies that still consider that the items have taken a long journey and one day will be returned to their rightful place, where they can again be given life and respect.

Another thing that has worked against the Declaration is the prevalence of illicit traffic in cultural property, despite relevant international Conventions that have been ratified by many nations. The problem is real, as is evidenced by the Universal Museum Declaration's first sentence, which states that: "The international community shares the conviction that illegal traffic in archaeological, artistic and ethnic objects must be firmly discouraged". The Declaration goes further to say that "...we should, however, recognise that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era. The objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that were not comparable with current ones."

While acknowledging the dilemma of these "universal" museums – the fact that they inherited some collections under historical/political circumstances, and that not all the collections have contentious issues –, to justify the plunder of the past based on a time period, and to claim that it differs from the current or recent plunder, is seen by many of the source countries - as well as the heritage professionals from those countries - as an insult bordering on historical mischief. The "easy exit" strategy adopted by the owners of the Declaration, whereby museums want to get out of a complicated but realistic problem, is one that is unpopular within the source countries. The plunder of the past was even more ruthless than today; people died, culturally significant heritage was destroyed and some societal set-ups were even eliminated through the destruction of their social and political structures. Why would this be termed "collecting" in the past when it is rightly considered "theft" today?

Today, the illicit traffic in cultural property continues internationally and is estimated to be worth \$4.5 billion a year; it is believed that Africa alone accounts for 10% of the market (Abungu 2006: 1). Kenya, for example, has for years been a major transit point for illicitly obtained cultural material from neighbouring Somalia and the Democratic Republic of Congo (DRC). While much of this trade could be due to instability as a result of wars and conflicts, the market remains the same: museums, private galleries and private collectors in North America and Europe.

Some of the museums that are signatories to the Declaration have, at times, found themselves embroiled in controversies regarding their acquisition meth-

ods (e.g. whether properties were sourced illegally or through persons engaged in the illicit traffic of cultural property). This brings to the fore the whole issue of ethics, and who should be able to protect whom, or who should speak on behalf of whom.

## Ethics and repatriation

The issue of repatriation should, in the first place, avoid blind emotion; two extremes will never lead to a justified solution. The issue of ownership should not always be tied to return but to a recognition of ownership that does not necessarily have to involve change of location. Where absolutely necessary, especially where the remains of ancestors are involved or where objects under consideration have particular spiritual, religious, political or social significance, then repatriation should be considered and done. There are many cases where negotiations have led to successful conclusions; one such example comes recently from Kenya.

Between the 1970s and early 1990s, the Mijikenda communities on the Kenyan coast lost many of their culturally significant items in the form of *Vigango* (*Kigango* – singular): grave posts or grave markers that are erected on the graves of the dead, signifying spirits of the departed ancestors. They are made from hardwood and are often decorated with unique motifs; the more important the person, the more elaborate the decoration. Importance here signifies the hierarchical position of the person within the society, the Mijikenda being a gerontocracy.

The *Vigango* are not just mere grave posts; on the contrary, they hold great ritual, religious and cultural meaning. It is in them that the spirit of the dead elder is held and represented and any desecration through theft or removal is believed to be a bad omen for the community. To remove or interfere with them is taboo. Yet through a vibrant illicit trade, the majority of the *Vigango* were removed and transported (mostly to Europe and North America), where they found their way into various museums, including university museums. It would not be surprising if some of the museums that have signed the Declaration have at least a few *Vigango* in their collections.

In the 1980s, two *Vigango* were stolen from a family graveyard. Before their theft, they were the subject of research work and were thus documented. The *Vigango* ended up at the University of Illinois (Springfield) and the University of Hampton, both in the USA. The researcher who had studied them recognised them in their new locations and promptly consulted the family and the National Museums of Kenya (NMK). They were subsequently confirmed to be the same ones and, after long and protracted negotiations over a number of years, the *Vigango* were brought back to Kenya at the end of 2006. Two interesting experiences

have emerged from this particular case of repatriation: on the one hand, the political dimension and, on the other, the religious and cultural dimensions.

### **The political dimension of the return of the *Vigango***

With regard to the political dimension, this showed how heritage has acquired political centre stage in the political dispensation within Kenya. It took no less than the Kenyan Minister of Heritage to travel to the USA to bring back one *Kigango* (Hampton at first refused to release theirs, declining even to see the Minister himself).

Accompanying the Minister was a delegation of senior NMK staff, and nobody can doubt that the return of stolen heritage has definitely become a priority issue for the government. The publicity given to the return of the *Vigango* both nationally and internationally has given the Kenyan Government mileage as a caring government that is serious about the cultural and spiritual well-being of its people.

The Minister, who in fact comes from the coastal region, demonstrated that he was a true "son of the soil" even though, as a practising Muslim, the traditions represented by the *Vigango* might be in conflict with his personal religious beliefs. He identified a cultural cause and political opportunity and recognised it as one that should not be lost. For the museum, it was a mission accomplished, with excellent results achieved after lengthy negotiations. It immediately became something to list as a success within the performance contracts of many people concerned with the return.

### **The cultural, social and religious dimensions**

According to the Mijikenda community and the family of the stolen *Vigango*, the loss of the *grave posts* was not only a physical loss but also a bad omen that manifested itself in various calamities that have befallen the family since the disappearance of the sacred objects. This has included deaths within the family, poverty and a general state of incapacity. It was confirmed that the family was indeed living in poverty and not in a position to pay for the rituals associated with the return and re-erection of the *Kigango*.

According to the family, since the theft of the *Vigango*, and upon learning of their existence abroad, they had always believed that the deceased had taken a long journey and would return back home at an appropriate time. This belief was eventually confirmed with the return of the second *Kigango* (Hampton changed its mind and agreed to return the other *Kigango* directly to the family in the form of a permanent loan never to be returned).

The return of the *Vigango* and the promise to the families that the *Vigango* were to be handed over to them by the Minister of Heritage resulted in high expectations, creating an economic dimension to the saga. Since the families were very poor, with the homesteads having neither toilets nor running water, the National Museums of Kenya decided to assist with the building of a pit latrine, at least a place for the Minister to go if he needed to. The museum, with assistance from the scholars who had studied the *Vigango*, promised to buy all the materials (including animals to be slaughtered) to be used in welcoming the *Vigango* back home and carrying out the required rituals. Seeing an opportunity coming their way, the families of the *Vigango* started to demand more in terms of long-term support and assistance. When even the already promised items were taking time to arrive, the families and the community started to threaten that the ritual would not be conducted and, if it were, the museum and their partners would not be welcome. In the end the situation was resolved, however, and the ritual took place.

What is clear from this case is that there are many dimensions to the return of cultural material. It provides many challenges as well as opportunities, and can be a contested issue even within source countries which, if not treated with care and speed, can result in further conflicts.

There are many Mijikenda families that have lost the sacred items that hold the spirit of their loved ones and ancestors, and who still believe they will come back after their long journey, oblivious to the fact that most of these are now the “property” of some museum, held in storage rooms or on display for the so-called “benefit of humanity”. These owners and their communities are unaware that there is a Declaration on the part of 19 Western museums that ensures that their wishes do not come true, and that the spirit of their loved ones will continue endlessly on their long journey.

## Conclusion

Based on the experience above, we should be able to answer the question: to whom do we owe ethical consideration? There cannot be a blanket repatriation policy, just as there cannot be a blanket denial of ownership and provenance. If the Declaration is meant to free the signatory museums of any obligations in relation to repatriation, then how do we deal with the aforementioned Kenyan case, which is just one out of many thousands?

In 2004, when discussions on Universal Museums emerged, some professionals cautioned that these museums were making a mistake by creating another pedigree of museum, without necessarily tackling the issues at hand. My submission, among others, was that: “I personally do not believe in mass repatriation, except for human remains and material of great emotional and spiritual value to



a group. I believe, however, that there should always be a dialogue between museums, and between museums and communities affected by issues of repatriation, in order to reach amicable solutions. Solutions may even include acceptance by the community concerned of the present ownership situation, and the museum may be provided with a permanent loan. However to declare that museums are universal, solely in order to avoid such discussions, is the wrong way to go about such issues. This is why I do not support the Declaration of Universal Museums". I have not changed my position and still feel that my 2004 recommendation is valid and the only way forward (Abungu 2004: 5).

A number of discussions have so far led to appropriate agreements between concerned parties, with mutually satisfactory results. We have seen cases whereby Western museums (such as the Museum of Ethnography in Stockholm, Sweden; University of Aberdeen in the UK; and the National Museum of Denmark) have held negotiations with the original owners of heritage culminating in successful repatriation and the development of positive relationships and collaboration. Other cases include that of Nigeria and France over the "Nok" terracotta statues, which led to France recognising Nigeria's ownership in return for a loan arrangement that was agreeable to both parties.

The power of heritage in issues of identity, ownership, social relations and spirituality is beyond doubt. It is short-sighted to imagine that discussions on repatriation can simply be wished away. Neither can the recently proposed digital or virtual repatriation be an alternative to physical repatriation. Heritage and heritage institutions are playing an important role in human life and issues of national development. In Africa, for example, a new "brand" of museum is now representing community aspirations and interests.

Many museums throughout the continent have become places of political dialogue and even contestation; some, like District Six in Cape Town, South Africa, have emerged as places to express resistance to oppression, land rights denial, and illegal and forced removals of people from private property. Today, District Six stands out as a reminder of the community's resistance to the Apartheid system, which institutionalised dispossession, discrimination and dislocation.

Robben Island Museum (RIM) is yet another example of a place of suffering, resistance, contestation and dialogue that has come to represent the spirit of the new South Africa: a spirit of reconciliation and freedom. RIM and its programmes now embrace the concept of many voices, contestation and dialogue that have become the hallmark of a "relevant" African museum. With its unique collection of buildings (a former prison), various paraphernalia and the rich intangible heritage in the form of memory, RIM stands out as one of the greatest testimonies to the resilience of human spirit in a situation of extreme adversity. Robben Island as a mixed natural and cultural heritage site – comprising intangible, tangible and immovable heritage – represents the very spirit of post-Apartheid South Africa.



Despite these achievements, particularly in Africa and other source countries, the Declaration seems to promote the idea of “one voice”: that of a dominant giant, globalising heritage, removing any discussion of ownership, dialogue or cultural rights that forms an integral part of human rights.

Instead of discouraging the discussion on repatriation and ownership of heritage on a global scale, the Declaration has encouraged the continued debate and even inspired the resurgence of “cultural activists”, particularly in the “developing world”. Worse still, the culturally imperialistic attitude has a potential to create “cultural militants” who might view anything Western as bad, oppressive and dictatorial, and that all heritage taken from marginalised or oppressed communities around the world, regardless of past histories, should be returned. This is unrealistic and completely inappropriate. A glance at professional heritage-based discussion lists such as AFRICOM-L (International Council of African Museums) and ICOM-L (International Council of Museums) shows what an emotional subject this is. There is still time for dialogue, but it is not yet time for unilateral declarations. ○

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# THINKING ABOUT THE RIGHT HOME: REPATRIATION AND THE UNIVERSITY OF ABERDEEN

Neil G. W. Curtis

From the forced return of refugees to the home-coming of ancestral remains, repatriation can mean many things. For museums, the possibility of repatriation from collections can also be feared, welcomed or even sought. On 29<sup>th</sup> January 2007, the University of Aberdeen returned nine *toi moko* (preserved tattooed heads of Māori people) from its museum collections to Te Papa Tongarewa Museum of New Zealand (Te Papa). As with other repatriations from Scotland, including the repatriation of a sacred headdress to the Horn Society of the Kainai Nation/Blood Tribe in Canada by the university in 2003, the decision to repatriate was not compelled by legislation but was the result of discussions about items considered to be the legal property of a museum.

This paper will outline the procedure that has been adopted by the University of Aberdeen when considering repatriation requests, with particular reference to the two cases mentioned above. This will highlight how the process of repatriation saw a sacred item and a group of ancestral remains cease to have the status of museum objects. I will also argue that basing decisions on ideas of 'human remains', 'cultural artefacts' and 'descent' maintains the dominance of Western thinking rather than engaging with other people's views of the world.

## Colonialism, collections and teaching

The museum collections of the University of Aberdeen have their origins in the 18<sup>th</sup> century museums of King's College and Marischal College and the exploits of Scots in the British Empire (Southwood 2003). They exemplify the complexity of contacts between people that resulted in the museums recently described as 'Universal', such as the British Museum (Curtis 2006). Recently recognised as being of national significance by the Scottish Government, the university's human culture collections include thousands of ethnographic items and collections of local archaeology and history, the archaeology of Egypt, Greece and Rome, fine art, and coins and medals. The stories of their collection can reveal as much about

the world from which the collectors came as they do about the people who originally made and used the items. For example, William MacGregor, the son of an Aberdeenshire farmer who trained as a medical doctor in Aberdeen, donated a large collection of items he had collected while serving as colonial governor in Fiji, Papua New Guinea, Canada, Nigeria and Australia (Hunt 1991). He hoped to show students that there was more to the world than “Aberdeen and twal mile roon” and so to encourage them to follow him into colonial service. While acting as the first Administrator of British New Guinea in 1889-98, he also wanted to make a “representative collection of the ordinary and remarkable items of cultural heritage for the indigenous people of British New Guinea “before it is too late” (Wright 1998: 4). Eventually, his hope that this collection would serve as the nucleus of a national museum of New Guinea was achieved when it was returned in the 1980s from Brisbane, Australia. Today, MacGregor’s collections can be used in ways he would not have anticipated, such as critiquing the impacts of colonialism, rather than recording an extinct culture as he would have expected.

The stories associated with items in the collection may thus be stories of creativity, celebration and exchange or exploitation, destruction and pain: all objects touching on the lives of many people in different ways. With two main exhibitions, one focusing on the stories of collectors and the other an alphabetically-ordered introduction to the identity of North-East Scotland, which also tries to challenge more conventional classification systems (Curtis 1995), the university’s displays in Marischal Museum aim to make it a place of uncertainty and disagreement rather than certainty and apparent consensus. The requests for the return of items from its collection have thus invigorated its core purpose rather than threatened its integrity. For example, repatriation has been the focus of an exhibition, the topic of teaching in a number of university courses, including Anthropology, Law, Education and Visual Culture, and the subject of local and international media exposure.

## **Creating an ‘educative’ procedure**

In 2002 the University Court, the institution’s governing body, approved a procedure for responding to requests for the return of items from its museum collections for which it either has legal title or other authority to decide. It should be noted that in Scotland there are no legal provisions resembling the Native American Graves Protection and Repatriation Act (NAGPRA), so decisions are entirely at the discretion of the legal owner, whether an individual or an institution like the university. This procedure sets out criteria to help discussions and a step-by-step procedure to be followed.

As the procedure is based on the university having legal title to the items in its museum collections under Scots Law, it cannot be claimed to be neutral. The

procedure does, however, aim to be as fair and balanced as possible. Both the people requesting the return of an item and the museum have to present evidence, such as the significance of the item to them and the consequences of a decision. If the museum opposed a request for return, it would therefore have to present a very clear case for retaining the item. This evidence is presented to a specially appointed panel, which has the responsibility of making a recommendation to senior management and the University Court. In both cases that have followed this procedure, the Court has accepted the panel's recommendation without further discussion, assured that the panel's discussions have been sensitive, rigorous and well-informed.

The appointment of the panel is therefore a critical part of the procedure. While it is not a truly neutral body, as it is appointed by the university, it aspires to fairness and openness. Its membership includes academics with anthropological and repatriation law expertise, an experienced member of staff of another Scottish museum and, of greatest significance, a nominee of the people making the request, alongside university curators and a representative of the University Court. In both cases, the panel was presented with written evidence produced by the claimant and the museum and a verbal presentation, which turned out to be very influential and answered many of the panel's questions.

The criteria are based on those established by Glasgow Museums when they considered the request for the return of the Lakota Sioux Ghost Dance shirt (Falconer 1998). As indicated above, however, the Aberdeen criteria have also been designed to ensure that both sides of a case have to be presented to the panel, rather than just that of the claimant. The criteria are:

**"Identity of the item**

Evidence should be presented relating to the identification of the item concerned to demonstrate that it is that requested by the claimant.

**History of possession and/or ownership of the item**

Evidence should be presented about the provenance of the item prior to its acquisition by the University and evidence relating to the University's title in the item and/or rights of possession. The use and treatment of the item since its acquisition by the University should also be described.

**Connection between the item and the claimant**

Evidence should be presented to demonstrate the connection between the claimant and the item. This may include evidence of the continuity of practices or group identity between the original possessors and those making the request. If the claimant is acting on behalf of another person or group, evidence must also be presented to demonstrate that they have the right to be a representative.

### **Significance of the item to the claimant and to the University**

Evidence should be presented to demonstrate the significance of the item to both the claimant and the University. This may include issues such as the religious, cultural, historical or scientific importance of the item.

### **Consequences of return to the claimant or retention by the University**

Evidence should be presented about the likely future treatment and use of the item if it is returned or if it is retained by the University. This may include information about aspects such as possible display, research, destruction, alteration or restrictions on access. Evidence relating to the broader implications of a decision to return or a decision not to return the item should also be presented. Suggestions about issues such as the creation of a replica and additions to the University's collections, as well as the use of images and research opportunities should also be discussed" (University of Aberdeen 2007).

When this revised version was approved in January 2007, the main change was to the wording, to ensure that the criteria offered guidance on the presentation of evidence rather than hurdles that had to be leapt. This followed discussion by Roger Homan (2006) about codes of ethics in which he differentiated 'prescriptive codes' from 'educative codes'. A prescriptive code,

*[...] calls for passive adherence on the part of investigators. The ideals are formulated by others for them to adopt. The educative code, by contrast, engages researchers in the mutual pursuit of good practice. They are required to 'strive' and to stay mindful of their obligations* (Homan 2006: 103).

The procedure therefore tries to follow the 'educative' approach. For example, the criterion relating to the 'significance of the item' does not specify a particular type of significance or threshold that must be reached. Likewise, the discussion of the 'consequences of return' of the item invites a discussion about the future treatment of an item rather than favouring any particular treatment such as expecting that repatriated items would continue to be afforded the same levels of access, security and conservation as they would in a museum.

Perhaps most important is the avoidance of definitions of categories of material, such as 'human remains', 'sacred items' or 'cultural artefacts'. The danger of using such terms, no matter how well intentioned, is that they are Western ideas and so may not be relevant to the reasons for the request for return. Considering the related field of indigenous rights, Tim Ingold (2000) has shown how the ways in which Western notions of what it is to be 'indigenous' are rooted in a model that emphasises descent from one generation to another as the way of linking people today with an ancestral population in a particular place. This is quite un-

like the way that many indigenous peoples have traditionally considered their relationship to a place as being a result of their lived experiences of their environment. As people articulate their claims for land or objects now in Western hands, they are forced to do so in ways that may be unlike their traditional beliefs, ultimately affecting their own view of themselves. For this reason, the use of 'item' in the procedure is acknowledged to be a museum term and the university "recognises that items in the collection may also be considered as ancestral remains and sacred items: the use of the term 'item' in this policy does not diminish the importance of other terms" (University of Aberdeen 2007).

It can be argued that the lack of a legal provision on repatriation governing the discussions ensures that there is a particular need for rigorous and careful thought when addressing the terms of a request itself, rather than a focus on the neatness of fit with a legal instrument. In the two cases summarised below, it should be noted that the discussions each had a different focus, reflecting the experience and approach of the people making the request as well as the nature of the items being requested.

### **The return of a sacred bundle to the Kainai Horn Society**

The headdress that was returned in 2003 (Curtis 2005) was donated to the museum in 1934 by Mrs Bruce Miller of Aberdeen, about whom little is known. She appears to have collected it, a decorated buckskin shirt, moccasins and some other items while visiting the Blackfoot reservation in Montana, USA in the 1920s. She did not record any tribal names or other details, so the headdress was merely catalogued as a 'war bonnet'. This reflects European attitudes towards Native American people and an ignorance of the headdress being part of a sacred bundle.

21<sup>st</sup> century contact between the university and the Kainai (part of the Blackfoot Confederacy) began when an Aberdeen graduate, Alison Brown, who was working with them, realised that a description of a missing headdress reminded her of one in Aberdeen. In November 2002, a delegation from the Kainai Horn Society visited Aberdeen to see if this headdress was the final sacred bundle for which they had been searching. They were welcomed to the university by the Principal and museum staff after which they smudged and prayed before identifying the headdress, discussing their request and looking at other probable Blackfoot objects in the collection. It was striking that, although they believed that it was likely that a buckskin shirt had been worn by the last keeper of the headdress, it was merely a shirt and not part of the sacred bundle, so they did not ask for it to be repatriated. Issues such as photography and the making of a replica were also discussed. They explained that there could only be four headdresses (an analogy might be North, South, East and West), so making a replica



*Ceremony in Marischal Museum marking the repatriation of the toi moko from the University of Aberdeen to Te Papa Museum of New Zealand in 2007. Photo: Marischal Museum*

would be impossible, while the photography of sacred objects would be seen as disrespectful. They did, however, accept that the museum should have photographs for its archive and for use in exhibitions and lectures within the university.

It was clear that the members of the Horn Society were the most appropriate to make the request, while the circumstances of collection or possible future treatment were not considered to be significant factors. Instead, it was the clear significance of the headdress as a sacred bundle that lay at the heart of the Panel's recommendation in favour of repatriation. This was approved by the University Court in May 2003 and the headdress was returned at a ceremony in July of that year. To satisfy the legal need for transfer of title to a corporate body, the Kainai had established the Mookaakin Cultural and Heritage Foundation for previous repatriations. That body was then able to ensure that the actual care of the headdress could follow traditional practice and transfer between keepers. The importance of the present-day connection was emphasised by my being invited to Canada to see the headdress danced at the Sundance in 2004 and by the purchase of a Prince Charlie kilt jacket by its current keeper to wear when it is danced. Likewise an exhibition in Marischal Museum in 2003 *Going Home: Museums and Repatriation* showed the importance of the repatriation to the university.



## The return of the nine toi moko to the Papa

At the end of January 2007, a ceremony in Aberdeen marked the return of nine toi moko to Te Papa. There are records of five having been acquired during the 1820s from travellers in the South Pacific, with others entering the collection over the following century. Traditionally, after death the heads of revered ancestors were preserved by their kin, with the complex and beautiful tattoos showing identity and status. During the early 19<sup>th</sup> century, contact between Māori people and European explorers, traders and colonists led to conflict and disruption of Māori society and a growing trade in Māori treasures and toi moko. In some cases the heads of slaves were tattooed and sold to satisfy this demand and it is therefore significant that some of those toi moko that reached Aberdeen had partial or full post-mortem tattooing. While this history was acknowledged and discussed, it was not a significant factor in the decision.

Museum records show that the toi moko were on display in an exhibition that appears to have lasted without much change from 1907 until the early 1980s. In 1985, a new exhibition *Only Connect: About Human Beings Being Human* opened, taking an innovative and influential cross-cultural thematic approach. It included one of the toi moko in a section that highlighted the tattooing as a symbol of power and prestige. Following representations by the New Zealand High Commission and some visitors that the display of toi moko was disrespectful, and on the recommendation of the university's Museums and Galleries Committee, it was removed from display in 1988 and replaced by a photograph and text explaining the reasons for its removal.

When considering the repatriation request, the panel followed the same procedure as it had done a couple of years earlier, including a presentation by representatives of Te Papa which, like that of the Horn Society, was particularly helpful. Alongside a discussion about the significance of ancestral remains in Māori culture, the Panel also discussed the scientific potential of the toi moko, concluding that their use as a source of DNA samples was likely to be very limited and that the historical and anthropological research potential of the toi moko would be much greater if repatriated to Te Papa. The panel acknowledged that returning the toi moko would remove some of the earliest acquisitions of one of the earliest surviving museum collections in Scotland, of great significance to an understanding of Scottish history. This significance was outweighed, however, by their role as ancestors, while a photographic record (including X-ray tomography) and full documentation would satisfy most research questions. Protocols governing access to such images and their use in displays and publications are still to be discussed with Te Papa, recognising that the toi moko are no longer museum objects.

A major focus of discussion was the role of Te Papa as the appropriate representative of the Māori people, as well as the mandate from the New Zealand Government. The panel was satisfied by the way that Te Papa operated as a bi-

cultural organisation, with its repatriation work supported by a Repatriation Advisory Panel made up of kaumatua, or iwi (tribe) elders, and other external experts and with active consultation processes with a wider Māori representation. Te Papa's role was as an intermediary, with the ultimate hope being the return of the toi moko to their iwi who would be responsible for decisions regarding their long-term treatment.

As with the return of the headdress, the return of the toi moko was preceded by the signing of a Memorandum of Understanding between both parties to guide future relationships and to help nurture a long-standing partnership. Coincidentally, the museum had an artist-in-residence in 2006-7, Rhondda Greig, who is an artist from New Zealand. The ceremony therefore had as its backdrop her painted window 'Tears for the return home of the toi moko' and her installation 'Vessels for the return home of the toi moko'. These added a visual component to the return ceremony which was welcomed by the media who attended the ceremony, as it had been agreed that the toi moko would not be displayed.

## **Conclusion: thinking about repatriation and museums**

Rather than being detrimental, these two cases have clearly benefited the university. As well as gaining widespread publicity, the people who have requested items have offered far greater knowledge about the items that remain in the collection and about different cultures, as well as about the items that have been returned. Less tangibly, the university has shown that its aim to 'understand' has now taken on an extra meaning for its museum collections: 'understanding' as showing empathy as well as gaining knowledge.

These two cases of requests for the return of items from the museum show how a procedure has been developed, and revised, that tries to accommodate what could be a fundamental challenge to the museum. By taking an approach that tries to follow a request in its own terms, this procedure aims to avoid the problems caused by museum classifications. Such an objective is very difficult to achieve, as even the most eloquent attempts to recognise non-Western approaches can inadvertently codify Western beliefs. For example, the first four of the six principles of the Vermillion Accord of the World Archaeological Congress (Southworth 1994 and WAC 1989) speak of 'respect'. Of these it is striking that items 2, 3 and 4 refer to what can be clearly articulated by different groups of people (the wishes of the dead, the wishes of the local community and scientific research value). On the other hand, item 1 uses a very different meaning in its demand that archaeologists should show 'respect for the mortal remains of the dead'. This is much more abstract, ambiguous and dependent on the beliefs of the people showing respect.

As Sarah Tarlow has argued, “Do we have to show respect in ways that they themselves would have recognised as respectful, or in the terms of those who claim cultural descent from the dead, or should we show respect by acting in ways that we, the modern scientific community, customarily and culturally understand as appropriately ‘respectful’?” (Tarlow 2001: 249). It is impossible to escape this complex of tangled understandings. Similarly, the university’s procedure does not escape the fact that its approach is based on its legal title to its collection and so its right to act as defence, judge and jury when considering a repatriation case. All the process can do is to aspire to be fair and rigorous.

Both cases outlined above have been conducted as bilateral discussions, without the involvement of a third party such as the International Council of Museums (ICOM). Across the world, many of the best examples of repatriation practice have been where there is a strong link between a museum and a particular group of people living near the museum, such as in Australia, New Zealand and North America, ensuring that such bilateral relationships can flourish. One of the clearest examples of the potential for such partnerships has been the return of material from the National Museum of Denmark to Greenland (Pentz (ed) 2004). While such repatriations have created bilateral links with particular people, this is not the only impact on the museum; nor is the benefit to ‘source communities’ the only moral justification for repatriation.

There is a problem with this approach for museums like those of the University of Aberdeen as the collections embody links with many hundreds of different groups all over the world rather than one particular one. While perhaps desirable, it would not be possible to develop close relations with the many such groups represented in the university’s collections. For museums with ‘universal’ collections, this brings a particular opportunity to incorporate thinking about repatriation and the challenging perspectives it highlights into the heart of their practice. This is not to denigrate the importance of each individual decision to return items to better homes; rather it argues for museums to think also of the impact on their own purpose.

Decisions such as those to return the headdress and *toi moko* challenge museum curators to think differently about their collections. If collections are classified as ‘material culture’, ‘artefacts’ or ‘human remains’ they lose much of their ability to challenge our ways of thinking about the world. The translation of part of the world into a museum ‘object’ is a specific action in a specific context. It is not a neutral way of ordering or understanding the world, nor can it hope to capture meanings. What makes some aspects of the tangible world resonant with powerful meanings?

At the same time, the conventional museum approach fails to recognise the powerful meanings that are created by museums themselves. Museums are not simply places of information and codified knowledge. Perhaps by seeing muse-



ums as sacred places in Western culture (Curtis 2003) we would be better able to understand that museum collections,

*[...] belong to a category of taboo material. They share this category with corpses, household refuse, bodily excretions, etc. which have in common the property of being regarded as polluting, i.e. as being dangerous to touch, smell, see or mention. As such, materials are kept within explicitly defined locations whose boundaries are signified and protected by more or less complex rites of passage (Hunt 1993: 122).*

Allowing items to be transferred to different homes also reminds us that museums cannot be seen as the ultimate and permanent locations of their collections. Even long-standing museums like those of the University of Aberdeen have existed for only a small fraction of the length of time of some of the items in their collections, which have passed through many different homes in their histories. Both the people to whom items have been repatriated and the university now have more complex and nuanced stories to tell about contacts between different parts of the world. By embracing repatriation, museums can therefore establish themselves as centres for rigorous – and vigorous – public ethical debate, not just as treasure houses in an unequal world. ○

## Note

- 1 The full text of the current version of the University of Aberdeen's procedure for responding to requests for repatriation is available as part of the museum's collection policy at [www.abdn.ac.uk/museums](http://www.abdn.ac.uk/museums).

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## RIGHTING WRONGS? THREE RATIONALES OF REPATRIATION AND WHAT ANTHROPOLOGY MIGHT HAVE TO SAY ABOUT THEM

Martin Skrydstrup

Should museums honor claims for repatriation or should they not? What is legal and what is legitimate? What previous cases are considered as successes or as failures? Could *'Utimit'* serve as a more general model worthy of application elsewhere or is this case a unique product of Greenlandic-Danish relations? These questions seem timely and relevant. As such, they constitute a specific challenge to the museum community and a more general challenge to contemporary society at large. Drawing on the late Columbia professor Edward Said's distinction between what he termed the "role of the expert" and the "responsibility of the intellectual" (Said 1994), we might say that this genre of questions typically face the expert. According to Said, experts come up with answers to normative questions posed by society, whereas intellectuals critically engage such questions. Applying Said's distinction to the cultural heritage sector, we might say that we have professionals such as curators, directors, bureaucrats and cultural resource managers who face "should/should-not questions" at the institutional level, and we have intellectuals asking what histories, relations and modes of thinking that produce and prefigure contemporary "should/should-not questions". In this paper, I shall attempt to straddle both modes of thinking, asking a more general question: if the act of repatriation represents a solution, what then is the problem this solution is envisaged to address?

I shall endeavor to answer this question by way of identifying and exploring what seem to be three compelling rationales for repatriation. In my doctoral research, these rationales have brought me to consider legal doctrines and legislation about "cultural property" as an ethnographic subject in its own right. Anthropology might seem an unlikely discipline from which to mount such a study of cultural property doctrines. Yet, this terrain is by far uncharted waters for the discipline. In fact, legal knowledge about property seems a promising new hunting ground for much current anthropological research: Rosemary Coombe

(Coombe 1998), Annelise Riles (Riles 2004) and Inger Sjørsev (Sjørsev 2001) tackle legal doctrines such as copyright and Michael Brown (Brown 2003) analyzes jurisprudential debates and makes suggestions concerning the ways in which legal doctrines should be interpreted and applied to Indigenous peoples. However, given the interdisciplinary character of this publication, I shall not foreground anthropological reflections on the concept of property, the construction of a perhaps unconventional anthropological field nor the particular problems that legal knowledge poses for ethnographic description. Instead, I shall now proceed to three principal rationales for repatriation which seem to be at work in the contemporary debate.

### **Inalienable objects**

The first compelling rationale for repatriation is that material objects are intricately tied to and constitutive of cultural identity. The principle of a connection between object, territoriality and people was put into practice at the Congress of Vienna in 1815 (Merryman and Elsen 2002). In the aftermath of the Napoleonic Wars, partial restitutions were imposed on the French delegation: the four bronze horses of San Marco went back to Venice, Rembrandt's paintings were sent back to Antwerp and Venus of Medici traveled back to Florence. The rationale underwriting these early instances of restitution was that objects are imbued with a unique identity linking them to their place of origin or "source country" in an inherent way. The Vienna restitutions in 1815 rested on the premise of a homology between a particular place and a material object. What we have before us here is a conception of material culture which is rooted in 19<sup>th</sup> century European nationalism. We find its contemporary legacy in the *UNESCO 1970 Convention* and the *UNESCO Intergovernmental Committee for the Return and Restitution of Cultural Property* set up in 1978. We also find it in *ICOMs Code of Ethics*: "Museum collections reflect the cultural and natural heritage of the communities from which they have been derived. As such they have a character beyond that of ordinary property, which may include strong affinities with national, regional, local, ethnic, religious or political identity." (ICOM Denmark 2006: 38)

The flipside to this view of material culture is found in the post-WWII legal instrument known as the *Hague Convention* of 1954, which stipulates that material culture is "the cultural heritage of all mankind". This vision rests on the 18<sup>th</sup> century Enlightenment view of material culture as encyclopaedic and vested with public interest. The legacy of the Enlightenment is currently evoked by the 19 self-proclaimed "Universal Museums" of the world, which in chorus argue that material culture is transcendent. The argument here is that the language of great art – be that the Parthenon Sculptures or the Benin Bronzes – speaks across cultural borders and distinctions, ultimately revealing essential characteristics



and experiences about what it is like to be human. The Director of the Metropolitan Museum in New York, Philippe de Montebello, has given this line of argument the following wording: "Masterpieces of art produced by all the world's great civilizations offer our visitors a cultural family tree where all people can find their roots" (Cotter March 29th, 2006).

For modern anthropology, both these conceptions of material culture are equally unsettling. The first notion of an immutable, intrinsic identity vested in an object, being forever attached to a social entity - be that a group, community, region or nation - is compromised by the simple fact that the status of an object is constantly subject to ongoing processes of cultural redefinition. Moreover, the idea of objects being constitutive of a single cultural identity is significantly compromised in the international arena with the exclusive legal recognition of the Nation State as being the only legitimate claimant. The problem for anthropology here is that the idea of congruence between Nation State and culture is an invention of the 19<sup>th</sup> century, which is at best fictitious. On the other hand, Montebello's notion of material culture in "universal museums" enabling all cultures to find their roots in a "cultural family tree" is compromised by the fact that "cultural roots" more often turn out to be "cultural routes," as James Clifford has remarked (Clifford 1997). Such routes are made up of different histories, which are constituted and reconstituted in ways that are difficult to display by the curatorial approach known as "encyclopaedic" featured in many "universal museums". The self-proclaimed universality is provincial, because it merely reflects a cultural specific perspective on material culture, which is already conditioned by an imperial history of acquisition and collecting - a legacy which leads us to the next rationale.

## **Objects improperly removed**

The second compelling rationale for repatriation is that the object left its original context improperly, without the consent of the original possessor. The example *par excellence* of this mode of appropriation is the 1897 punitive expedition mounted against Benin, led by Admiral Rawson. Here we move into the particulars of historical acquisition contexts coupled with property rights, asserting that the original possessor - be that a person or a group - in fact never lost their ownership rights to the object in question. This rationale is differently articulated in common and civil law systems. Within the common law family, NAGPRA<sup>1</sup> defines right of possession as: "... possession obtained with the voluntary consent of an individual or group that had authority of alienation" (§C;13). In the absence of evidence that the tribe itself sold or gifted the object in question, NAGPRA is prompting the return of objects removed without the consent of the tribe, regardless of *when* the object in question was appropriated. In contrast, both the

UNESCO 1970 Convention and the UNIDROIT 1995 Convention entail clear statutes of limitation, i.e. they cannot be retroactively enforced. The later two are essentially aimed at curbing contemporary illicit trafficking in cultural property, leaving the circumstances under which colonial appropriations took place outside the purview of these legal regimes. International claims for objects removed during colonial times can only be made with recourse to the UNESCO concept of *return*, implying voluntary action at a state level. To simplify matters, we might argue that NAGPRA favors the original owners, whereas UNESCO and UNIDROIT gravitate towards the doctrine of repose, that is, existing title holders should remain beneficiaries unless contemporary criminal evidence suggests otherwise.

Several critiques have been leveled at applying property rights to material culture and as a rationale for repatriation. The Australian law professors, Lyndell Prott and Patrick O'Keefe, have in an influential article argued for steering clear of property concepts altogether, contending that *preservation* should be the name of the game and the first and foremost objective of any cultural heritage policy (Prott and O'Keefe 1992). From a somewhat different perspective, the American law professor Jeremy Waldron has argued that compensatory measures which seek to correct a historic injustice and reinstate a situation that would have prevailed had the injustice not occurred are exceedingly difficult to justify (Waldron 1992). According to Waldron, full compensation for past injustices presents the basic problem that we cannot turn the clock back. The logic of Waldron's argument is that compensating a group for the wrongful loss of their property entails that they are *still* entitled to the property in question and yet with the passage of time entitlement fades, because expectations decrease.

From the perspective of historical anthropology, I would like to open up a series of questions about what might be projections of contemporary moral sensibilities to a range of very diverse acquisition contexts: what constituted in fact "voluntary consent" and "authority of alienation" in distant cultural encounters between museum collectors and original possessors? Reflecting back on the first Danish-American expedition to Point Hope in Alaska in 1940, the American archaeologist Froelich Rainey offers the following account of voluntary consent and authority of alienation: "We first landed in a rough sea off the sand spit at Point Hope – a native village of about 250 persons. We found a very considerable archaeological excavation already underway at the old site. A group of Eskimo women were systematically digging in search of artifacts that could be sold to Coast Guard crews each summer. That created a difficulty. The Eskimo council that controlled the village saw absolutely no reason why we should interfere with the business of their wives. For two days we sat in the council trying to explain why, until Helge [the Danish archaeologist Helge Larsen] finally won the argument with his statement that Knud Rasmussen [a famous Arctic explorer of Danish/Greenlandic origin] had recommended such an excavation as ours. All the old men remembered him...We agreed to set up an excavation that would not

interfere with the wives, and then proceeded with the expert advice of the women.” (Rainey 1992). Rainey’s narrative about this acquisition context spurs a number of questions: is “voluntary consent” mostly a matter of negotiation, or even manipulation? Who did actually have “authority of alienation” in Point Hope in 1940? And with recourse to what arguments could the local population be considered as titleholders to a material culture dating back to between 100 and 550 AD, construed as the *Ipiutak Culture* by archaeologists? Within NAGPRA, the last question hinges on representations of cultural continuity, or the “cultural affiliation” between claimant and object. Note that such criteria of cultural authenticity were not at stake when the Metropolitan Museum of Art in New York and the Italian Culture Minister Rocco Buttiglione signed an agreement for the return of the Euphronios Krater in February 2006. The object in question was an ancient Greek vase used for mixing wine and water, decorated with motifs from the Trojan War. It is commonly held to have been painted by the renowned Euphronios around the year 515 BC. This centerpiece of the Met collection is the only complete example of the 27 vases known to exist from Euphronios’ hand. As with Alaska, the rationale for restitution was wrongful taking in the past conditioned not, however, by the “cultural affiliation” between modern Italy and the material culture of ancient Hellas but simply on the basis of evidence indicating that the piece was looted, i.e. improperly had left an Etruscan tomb near Rome around 1971. We see here how the logic of the improperly removed rationale works differently according to the boundaries being transgressed and the sovereignties being recognized. Within Alaska, a NAGPRA claim for Ipiutak funerary objects would have to be made by a descendant group on the grounds of “cultural affiliation”, whereas Italy could claim the Euphronios Krater based on evidence that the piece had left its *political dominion* (sovereign territory) improperly. Clearly, it could seem as if evidence regimes applied to “improperly removed” are dependent upon more than bare evidence. The concept of the political seems to be at play here, which leads us to the final rationale.

### **Promoting cultural diversity**

The third compelling rationale for repatriation is the contemporary obligation to promote cultural diversity. As the legal scholar Anna Vrdoljak contends, with the emergence of the notion of repatriation, we have moved from “Cultural Darwinism to Cultural Pluralism” (Vrdoljak 2006). Her argument is that, parallel to our obligation to preserve the biological diversity of species in this world, we have a commitment to enable all peoples to preserve and develop their cultural identities. This rationale and its analogy to natural species is a central tenet of the oft-cited UNESCO World Report on Cultural Diversity (UNESCO 2000). This rationale seems an amalgamation of the first and second rationales sketched here.

Where does this notion of cultural diversity stem from? In his groundbreaking work on identity and modernity, the Canadian philosopher Charles Taylor (Taylor 1994) traces the modern notion of cultural identity back to Johann Gottfried Herder (1744-1803). Herder protested against the tendency of many German intellectuals to prefer writing in French, at that time the *lingua franca* of a transnational academic discourse. Herder argued that every people had a duty to develop the spirit (Geist) implicit in their own language and in the creations of their particular past, rather than produce pale and unauthentic copies of the achievements of other peoples. Thus, every people face the task of defining their originality and then holding on to it. Consequently, every culture carries its own measure and worth in and by itself embodied in its unique language, traditions and material culture. Herder's call to return to one's roots in the search for cultural authenticity seems to provide much of the backdrop for repatriation claims in our times.

What might current anthropology have to say about this? The discipline has come a long way since Herder and considers his notion of culture as inadequate and anachronistic. In the past decades, anthropology has documented that cultures do not have sharply demarcated borders, nor are they territorialized, coherent and homogeneous, as Herder believed. On the contrary, cultures migrate and mutate. They neither have containment nor essence. As the anthropologist Kirsten Hastrup has poignantly phrased it: "Culture is not something one possesses or owns, but a particular perspective on the world, which changes over time" (Hastrup 2001). If we see the world as a global patchwork of discrete cultural entities, analogous to biotopes, which are threatened by modernity, globalization and ultimately extinction, then repatriation makes a lot of sense as an instrument of cultural revitalization and is ultimately remedial. However, we should realize that claims for repatriation occur within modern political societies, which in many ways set the terms and define the rules of the game. The American anthropologist Elizabeth Povinelli has shown in her work how Aboriginal claims in Australia have to meet a set of impossible standards of authentic traditional culture to be recognized as valid (Povinelli 2002). Her argument is that the recognition of indigeneity as criterion for special rights to culture does not flow from an ethical commitment to cultural diversity but from a postcolonial desire for reconciliation and national cohesion. In a similar vein, the Australian anthropologist, Philip Batty has argued that repatriation "is more about white redemption and the amelioration of guilt, than about whether this or that object was stolen, sold or gifted" (Batty (forthcoming)). Drawing on this body of critical work, we may contend that acts of repatriation are perhaps more adequately understood as stately attempts to overcome and close vexing colonial legacies. Povinelli and Batty's contributions seem to call into question whether repatriation of material culture is about promoting "cultural diversity" or perhaps stately

attempts to manage postcoloniality on the pretense of recognizing cultural differences?

### **If repatriation is the solution, what then is the problem?**

In this paper, I have tried to examine some trouble spots in three dominant rationales for repatriation, by adhering to the academic principle that posing the right question is far more important than providing correct answers. I have done so from historical and anthropological perspectives, because these are needed if we want to unpack some of the many complex issues inherent to the repatriation of cultural heritage. The issue of repatriation of material culture has been with us at least since the French archaeologist Quatremère de Quincy (1755-1849) argued that Napoleon's appropriations of art during his Italian and low countries campaigns should remain *in situ*, and not be exhibited at the *Musée Napoléon* in Paris, later to become the *Louvre* (Héritier 2003). Could it be that this problem refuses to go away because we have an abundance of approaches, arguments and answers, but have yet to pose the right questions? Let me return to where I began and pose the question: if repatriation is the solution what then is the problem?

Much of the debate has been one of assertions, assumptions and abstractions which wash over important factual and historical circumstances as well as analytic rigor. Perhaps distinctions between "source and market countries" or between "national and universal heritage" and anachronistic concepts of culture have brought the debate to an impasse. Perhaps the real problem is that we have yet to invent a new language, a new lexicography, less loaded with Darwinian and colonial legacies. Perhaps the real problem is how to recover past memories and forge new knowledge relations between museum collections long held and what we might, for lack of a better term, call "source communities".

Perhaps the real problem is that there is an inherent coloniality to the curatorial approach of self-proclaimed Universal Museums, which we have yet to overcome. Perhaps the real problem is that we have yet to fully realize that most museum collections were produced by intercultural encounters in the past. I believe that the real challenge for many museums today is not repatriation, but to reinvent themselves and create a civic space where the different historical relations and knowledge systems vested in their holdings are exposed on an equal footing. For this to happen, we need first to realize that any heritage telling that aspires to universality cannot be told unilaterally. Secondly, we need the museum institution to embody what the Director of the National Museum of the American Indian, Richard West, has called a "safe place for unsafe ideas".<sup>2</sup> ○

## Notes

- 1 Public Law 101-601 – Nov. 16, 1990 *Native American Grave Protection and Repatriation Act* (NAG-PRA)
- 2 At a somewhat parallel event to the *Conference on Repatriation of Cultural Heritage* in Nuuk, at UNESCO Headquarters in Paris, entitled *Memory and Universality: New Challenges Facing Museums* (February 5, 2007).

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## INDIGENOUS HERITAGE AND REPATRIATION — A STIMULUS FOR CULTURAL RENEWAL

**Moira G. Simpson**

Over the past twenty years, much of the discourse concerning repatriation has dealt with the processes of negotiation and decision-making from the perspective of the museum, focusing on issues such as: the ethics of acquisition; the legality of ownership; and legislation or policies either prohibiting or enabling de-accessioning and repatriation. Policy and legislative changes have enabled Indigenous communities in some countries to successfully claim back culturally significant objects and ancestral remains. Yet, the responsibilities of museums are still predominantly seen to lie with those who donated items to collections, and with present and future generations of visitors and researchers. Only rarely do we hear about the outcomes of repatriation in terms of the beneficial effects that repatriation has had for source communities and their efforts to preserve and revitalise their cultural heritage.

The return of objects or human remains to source communities is often presented as the end result of lengthy negotiations between museums and claimant. However, repatriation is not the end of the process but marks a new beginning for the objects and often for the communities who are reclaiming ancestral remains or objects not seen for generations. Repatriation facilitates the re-socialisation of objects in community settings where their intended function is renewed and new roles are created, and where they contribute to the production of living heritage through the revitalisation of cultural practices.

This essay moves beyond discussions of museum collections and policies to look at the social, cultural and spiritual benefits that Indigenous communities can experience during and after the return of cultural material and human remains, and emphasises the importance of these factors as essential components of repatriation discussions, negotiations, policy development and decision-making. It is suggested here that heritage preservation and the repatriation of ancestral remains and sacred and ceremonial objects should be viewed within the broader frame of discourse concerning Indigenous rights and human rights. The adoption of a rights-based perspective when considering heritage preservation re-positions repatriation as an issue inextricably linked to Indigenous social, cul-



tural, religious and political rights and to contemporary socio-cultural circumstances as Indigenous peoples struggle to deal with the cultural and psychological damage caused by colonialism in the past, as well as the effects of ongoing internal colonialism.

### **The birth of the modern museums and the preservation of a record of 'dying' races**

By the mid-late 19th century, many Indigenous populations in colonised areas of the Americas, Australia and the Pacific Islands had been decimated by warfare and by diseases to which they had no immunity, and colonial policies of Christianisation and assimilation sought to eradicate traditional languages, social systems, and cultural and ceremonial practices. Anthropologists and colonial governments believed that many were dying races, pushed to the brink of extinction or doomed to disappear as distinct cultures. Ethnographic objects and human remains were collected to document and maintain a visual record of the 'doomed' peoples and their cultures. In 1832, George Bennett, a British medical practitioner and naturalist who became curator of the Australian Museum in Sydney from 1835-41, suggested that the Museum should collect Aboriginal skulls and artefacts which would serve "as lasting memorials of the former races inhabiting the lands, when they had ceased to exist" (Bennett 1834: 68-69).

In 1906, the Bishop of North Queensland described the work of the Christian Missionary Society amongst the Aboriginal population of Northern Queensland, saying that: "Any work they could do might be merely smoothing the pillow of a dying race; but that pillow should be smoothed" (Dewar 1995: 9). As time went on, mass collecting was thought to be a necessary and urgent process. Baldwin Spencer and Frank Gillen, who carried out anthropological collecting and research in Central Australia in the late 19th and early 20th centuries, warned that:

*The time in which it will be possible to investigate the Australian native tribes is rapidly drawing to a close ... yet our knowledge is very incomplete, and unless some special effort be made, many tribes will practically die out without our gaining any knowledge of the details of their organisation, or of their sacred customs and beliefs (Spencer & Gillen 1938: xiii).*

The confiscation and mass collection of cultural materials undertaken in an effort to record cultural practices further contributed to their decline. This decline can be attributed to two factors: the removal of objects required for ceremonial purposes and the consequent absence of models for later carvers (Jacknis 2002: 67). In 1902 Franz Boas, who collected materials on the north west coast of North



America on behalf of the American Museum of Natural History, warned that: "With every specimen that is removed from the [Kwakwaka'wakw] tribe the tribal tradition is weakened", leading him to stress the need for better ethnographic training and selective collecting of the best examples with thorough documentation of artefacts (Boas 1902, cited in Jacknis 2002: 66). In 1924, Thomas McIlwraith, collecting Nuxalk material for Cambridge University Museum of Archaeology and Ethnology, expressed his "unwillingness to take away many of the few [items] which remain; practically no new ceremonial objects are being made, and any losses curtail the already too much curtailed sacred life" (cited in Jacknis 2002: 66).

It is an indisputable fact that the collection of ethnographic material played an immensely important role in preserving the material culture of societies undergoing dramatic changes during periods of huge social and cultural upheaval. Yet, collecting, like other colonial processes that led to the removal of heritage materials from Indigenous communities, also disrupted, eroded or destroyed many of the traditional mechanisms for maintaining and transmitting knowledge and skills. It is one of the paradoxes of museums that, through the process of collecting for the purpose of preserving a cultural record, collectors and museums also contributed to the destructive effects of colonisation and acculturation, along with governments, schools and churches.

The colonial circumstances that facilitated the accumulation of large collections of ethnographic material in Western museums have left many communities with few historical cultural materials. Francis Musonda, Director of the Lusaka Museum in Zambia, laments that: "Decades of colonial rule have left yawning gaps in Africa's cultural heritage" (Musonda 1996: 164).

For many Indigenous peoples, this history and loss of cultural heritage has created an enduring legacy of distrust and suspicion of museums and anthropologists that is only beginning to be healed. Museums, with their extensive collections of ethnographic material, are often regarded as repositories of colonial loot. As noted in the Canadian Royal Commission for Aboriginal People: "the very word 'museum' is often a reminder of what has been lost to Aboriginal people, not what has been preserved for their use" (RCAP 1993: Vol 3, ch 6: 1.1).

## **Heritage and healing**

Many colonised Indigenous people experience severe social, cultural, economic and emotional difficulties in dealing with the effects of internal colonialism, alienation and disempowerment, and trying to reconcile a way of life torn between Indigenous and non-Indigenous cultures and laws (Moore 2003; Trudgen 2000). The links between the effects of colonisation and mental health problems and violence are increasingly being identified by psychologists working with In-

Indigenous people (Duran & Duran 1995; 2000; Duran, Duran & Brave Heart, 1998; Durie 1998; 1999; O'Neil 1996; Salzman & Halloran, 2004). Native American psychologists Eduardo and Bonnie Duran contend that colonial oppression 'wounds the soul' of Native Americans and contributes to high rates of alcoholism, depression and suicide (Duran & Duran 1995; 2000). The emotional and psychological turmoil is described by Native American (Anishinabe) author, Gerald Vizenor as 'cultural schizophrenia' (Vizenor 1990: 289) and Maori politician and Associate Minister of Aboriginal Affairs, Tariana Turia, as 'post-colonial traumatic stress disorder' (Turia 2000). Research in Canada suggests that self-governance is linked to improved health and well-being and lower suicide rates amongst young people in First Nations communities (Chandler & Lalonde 1998; Chandler et al. 2003).

Amongst many Indigenous people there is a belief that cultural renewal and a return to traditional values offer a means of relieving some of the social and psychological problems that result from post-colonial trauma. In 'Peace, Power, Righteousness: An Indigenous Manifesto', Mohawk author Taiaiake Alfred contends that the future of Aboriginal peoples requires the rediscovery and renewal of traditional laws (Alfred 1999). The return to traditional ways is not a return to out-dated practices that have no relevance in the modern world, but involves renewal of cultural identity and pride, and utilisation of Indigenous ways of communicating, teaching, governing and healing. Robert Yazzie, a former Chief Justice of the Navajo Nation, observes that "imbalances of power perpetrate and perpetuate violence" (Yazzie 2000: 47). Such a response applies as much to 'epistemic violence' (Spivak, 1988: 126) as to physical violence. In dealing with 'post-colonial colonialism', Yazzie suggests that:

*The best response to violence is healing. It is a personal process and an internal process to be shared with others. .... Taking control of one's life is a healing issue .... Given the structure of our colonies within, and our relationship with the colonizers, all we can do is to declare community and spiritual independence (Yazzie 2000: 47).*

For many Indigenous peoples seeking that spiritual independence, the protection and preservation of cultural heritage is closely tied to Indigenous education, sovereignty, language renewal, cultural revitalization, intellectual property rights, land rights, and health and well-being. Combined with these processes of cultural renewal and indigenisation is a shift from seeing heritage as evidence of the past, valued for its historical research potential and as the basis for a thriving heritage industry to recognition of the contemporary value of objects for living cultures. Indigenous peoples' voices and interests have contributed to a broader understanding of how culture is defined, reflected in the content of a number of recent UNESCO conventions designed to promote recognition and protection of

cultural diversity, intangible heritage and the rights of Indigenous peoples. Indigenous people frequently refer to the limitations of museum display as a means of expressing and preserving culture, emphasizing that culture is a living process that incorporates both continuity and change. As expressed by Kalpana Nand, Education Officer of Fiji Museum:

*To the indigenous Pacific Islanders, culture is a living, dynamic, ever-changing and yet ever-constant thing – it is a story, a song, a dance performance, never a ‘dead thing’ to be represented in the form of an artefact to be looked at through glass (Nand 2000: 2).*

Asserting religious rights, regaining control of heritage items and passing on cultural traditions can help to heal some of the effects of post-colonial trauma and contribute to cultural pride and renewal. This view is supported by psychologists working with Indigenous communities and studying Indigenous mental health who recognize that spirituality is a vital component of Indigenous health (Dapice 2006; Duran & Duran 1998; Duran et al. 1998; Durie 1998). These practitioners and researchers are collecting data that demonstrate that the revitalization of the spiritual dimension of Indigenous peoples’ lives contributes to the process of healing physiological, mental and emotional illnesses caused by post-colonial stress. Ann Dapice, a Native American psychologist, contends that good health requires balancing physical, mental, emotional and spiritual aspects of life. Using the traditional Native American medicine wheel as a conceptual framework for a holistic approach to health care, she demonstrates that spiritual renewal is a necessary component of Indigenous health, in conjunction with medicinal and counselling treatments that address both psychological and physiological illnesses (Dapice 2006). Chandler and Lalonde’s research has shown that, amongst First Nations communities of British Columbia, those “that have taken active steps to preserve and rehabilitate their own cultures are shown to be those in which youth suicide rates are dramatically lower” (Chandler & Lalonde 1998: 192).

Efforts to counteract the destructive effects of post-colonial trauma by facilitating the renewal of cultural and spiritual knowledge, skills and ceremonies, may also involve the adoption of the museum concept in a form adapted to local cultural practices and concepts of heritage and its preservation. This enables ceremonial objects and knowledge to be collected, preserved, protected and used in cultural renewal projects. These initiatives give new impetus to Indigenous peoples’ claims for the return of cultural heritage, especially artefacts associated with religious and ceremonial practices that were discouraged or banned by colonial governments, Christian missionaries and residential school authorities.

The following case studies from Canada demonstrate the ways in which repatriation has had a significant impact upon the lives of members of two First Nations communities, contributing to cultural revitalisation, ceremonial and spirit-

ual renewal, and social well-being. They illustrate the inextricability of tangible and intangible heritage, the importance of focusing heritage preservation efforts upon contemporary community needs, and demonstrate that repatriation can facilitate the continuity or revival of cultural values, knowledge and practices.

The first example refers to cultural renewal and the repatriation of sacred medicine bundles to the Blackfoot Peigan and Kainai communities of southern Alberta. The second describes outcomes of the repatriation of ancestral remains by the Haida community of Haida Gwaii, a group of islands lying off the north Pacific coast of British Columbia.<sup>1</sup>

### **The repatriation of blackfoot medicine bundles**

On the Plains, the near extinction of the buffalo in the late 19th century brought about the demise of a way of life based upon hunting and resulted in starvation for some Plains tribes. This, combined with the devastation wrought by the smallpox epidemics, helped to erode any remaining active resistance that Plains Indian had to white settlement. With the promise of financial and educational incentives, the Blackfoot, like a number of other Plains tribes in the United States and Canada, entered into treaties with the US government and the British Crown, and moved onto small reservation lands in northern Montana, USA, and southern Alberta, Canada, where the introduction of farming and ranching practices had mixed success. Canadian government policy sought to suppress traditional languages, ceremonial life and other cultural practices and the Indian Act of 1884 banned ceremonies. Many people ignored the ban and continued to practice their ceremonies, while others abandoned traditional ways and turned to Christianity. Today, many Blackfoot are Christians, while others follow traditional religious pathways, sometimes in combination with Christianity. However, disruption of many Blackfoot cultural and ceremonial practices has seen a decline in the numbers of those participating in more traditional forms of ceremonialism.

Realizing that the passing of elders meant the loss of traditional knowledge, members of the Blackfoot communities have embarked upon a program of ceremonial and spiritual development, which they hope will stimulate cultural and economic renewal within the community. They are using the knowledge of the elders to assist in the revival of ceremonial life and traditional knowledge, which are seen as crucial to the cultural survival of the community and the wellbeing of individuals.

According to traditional Blackfoot law, ceremonial knowledge can only be shared or taught to others if a person has been transferred the right to do so through the appropriate ceremony. Central to these ceremonies are sacred medicine bundles, some of the most sacred items in Blackfoot culture, which are “the physical and abstract manifestations of the traditional Blackfoot belief and social

system" (Crowshoe & Manneschmidt 2002: 19). The bundles consist of objects such as feathers, animal fur, sacred stones and pipe stems, which are wrapped in a skin or in cloth. The objects are physical representations of elements of the natural world and also physical symbols of rights to knowledge, songs, ceremonies and rituals given to the Blackfoot by the Spirit Beings.

Medicine bundles are not owned by individuals in a Western legal sense but are cared for by a custodian or bundle keeper. Ceremonial processes have to be observed before an individual gains the rights to a bundle and the associated knowledge. The bundle transfer ceremonies require years of training to learn the necessary traditional knowledge and ceremonies. These processes give formal recognition to the knowledge that the individual has gained and, in turn, give that individual the right to share their knowledge with others and perform certain ceremonies.

The presence of medicine bundles in museum collections rendered them inaccessible to ceremonialists and, without the bundles, they were unable to perform certain ceremonies. Many of the medicine bundles in museums were acquired many decades ago. Some may have been found after being ritually buried due to their declining physical condition, or purchased from tribal members when traditional cultural practices were being deliberately suppressed by non-Indian teachers, Indian agents and missionaries. In the 1950s and 1960s, a number of bundles were sold and some ceremonially transferred to a non-Native curator of the Provincial Museum of Alberta (now called the Royal Alberta Museum) by Blackfoot ceremonialists who feared that younger members of the community were not learning the appropriate knowledge and ceremonies.

In the 1970s, when the Blackfoot were beginning to revive ceremonial practices, they sought the return of the bundles from the Provincial Museum of Alberta. Initially the bundles were returned only on temporary loan; however, the Blackfoot ceremonialists were seeking their permanent return into the care of Blackfoot bundle-keepers and, in an act of resistance, refused to hand them back to the museum. Since then, the Provincial Museum of Alberta and Glenbow Museum in Calgary have returned more bundles and, in 2000, the Provincial Government of Alberta passed the First Nations Sacred Ceremonial Objects Repatriation Act to further facilitate the return of Blackfoot bundles.

Repatriation has reintegrated medicine bundles back into community life, enabling the renewal of ceremonies associated with the transfer of bundles from one keeper to another. It has also rekindled interest in membership of cultural societies, which traditionally provided the social structure in Blackfoot communities and defined the roles of individuals in community life. Peigan ceremonialists, Reg Crowshoe and Jeff Crow Eagle, operate the Oldman River Cultural Centre in Brocket, the centre of the Peigan Reserve, one of the Blackfoot communities in southern Alberta. They work with Peigan youth to teach them Peigan language, cultural knowledge and practices and have renewed some of the age-

graded societies for children and young people. The revival of traditional values, ceremonies and other cultural practices is contributing to a strengthening of identity and a sense of well-being for both community and individuals, and enabling the intangible aspects of culture to be revitalised and transmitted to the next generations. Spirituality and ceremonialism are major components of their work at the Oldman River Cultural Centre, and there are plans to build a Peigan Medicine Lodge Museum and Cultural Renewal Centre as part of the band's cultural renewal strategy (Peigan Nation 1993).

## **The repatriation of Haida ancestors**

Before Europeans arrived in the mid-18th century, the Haida inhabited many villages dotted around the shores and inlets of the islands that make up the archipelago of Haida Gwaii. However, successive epidemics of measles and smallpox swept through the islands in the 19th century, killing an estimated 90% of the population. The surviving Haida, numbering about 500, moved to two villages where European mission settlements had been established, the sites of the present day Haida villages of Skidegate and Old Masset.

Over the years, the cedar plank houses and totem poles in the abandoned Haida villages decayed and disintegrated, a process of cyclical renewal in the eyes of the Haida. For anthropologists and archaeologists, however, the deserted village sites provided the remaining physical evidence of what they believed was a doomed and dying people. In the late nineteenth and early twentieth centuries, a number of totem poles were removed, including house posts and tall heraldic posts, which proclaimed the heritage of families, and mortuary posts, which held the remains of the deceased in boxes at the tops of the posts. The poles, artefacts and human remains were taken to universities and museums in Canada, the USA and overseas.

Around 1990, the Haida became aware of the presence of ancestral remains in museums in North America and overseas and decided to begin a campaign to have the ancestors' remains returned to Haida Gwaii. They formed the Haida Repatriation Committee and set about tracking down and requesting their return.

*The main goal ...is to bring home and rebury our ancestors with honour and respect. As long as the remains of our ancestors are stored in museums and other unnatural locations, we believe that the souls of these people are wandering and unhappy. Once they are returned to their homeland of Haida Gwaii, and laid to rest with respect and honour, their spirits can rest, and our communities heal a bit more (Collison & Collison 2002: 8).*

This initiative coincided with ideological changes that were taking place within the fields of archaeology, anthropology and museology, leading to a greater degree of sympathy and flexibility being shown towards repatriation claimants in many Canadian and US museums. Haida Repatriation Committee members have also approached the process of identifying and claiming ancestral remains methodically and diplomatically but with great persistence, and have successfully negotiated the return of 466 ancestors and associated grave materials.

While the return of the ancestors was welcomed, it presented the Haida with the problem of how to deal with their return and reburial at both spiritual and ceremonial levels. The repatriation required the creation of a new ceremonial protocol for reburial, a process that no Haida had undertaken previously; in addition, no Haida burial traditions had persisted. As with many other Indigenous peoples who were subjected to European colonial occupation, the Haida were forced to cease speaking their language and performing their ceremonies. The Indian Act of 1884 banned ceremonies including the potlatch, one of the most important ceremonial events amongst peoples of the Northwest Coast. Many Haida became Christians and traditional ceremonies were performed in great secrecy, if at all, and for many decades there were no potlatches and no totem poles raised in Haida Gwaii. Although the ban on ceremonies was not renewed when the Indian Act was amended in 1951, the effects of cultural suppression and assimilation had eroded much of the knowledge associated with traditional songs, dances and ceremonial practices.

Under the direction of hereditary leaders and elders, the Haida Repatriation Committee organised spirituality workshops to consider the ceremonial process and drew upon traditional cultural practices to formulate a procedure which they felt would provide a respectful mechanism for collecting, transporting and reburying the remains. For the repatriation and reburial ceremonies of the ancestors, it was felt that it would be most appropriate to use “traditional materials and ceremonial formats that would be in harmony with the age of the remains and the forms of ceremony that would have been used in their initial burial” (Collison & Collison 2002).

The remains were to be wrapped in woven cedar mats and placed in traditional kerfed or bent wood boxes, with button blanket covers. This required the production of cedar wooden boxes, cedar mats and button-blankets for each ancestor, a task that became the focus for collaborative community action involving Haida of all ages. Women skilled in weaving with cedar bark and spruce root made woven mats as wrappings for the remains. Young school children were given the task of making and decorating small button blankets that were used to cover each box. They cut out and applied crest symbols to a fabric backing and sewed buttons around the edges of the blanket and the crest.

As no-one on Haida Gwaii had the knowledge to make the boxes, a carver from Kasaan, a Haida community on Prince of Wales Island in southeast Alaska,



was brought to Haida Gwaii to teach the technique to local carvers. Boxes in the museum collections were also studied to analyse the construction techniques. Local Haida artists Christian White and Andy Wilson started production of the first fifty or so boxes that would be required but, as the work of the repatriation committee continued, it became evident that far more boxes would be required. An apprenticeship programme was established and a number of teenage boys were selected to work with White and Wilson and learn the skills of preparing the wood, steaming it, and pegging and stitching the corners of the boxes (White 2004a and b; Wilson 2004a and b). The boxes were then painted with traditional designs by school students.

Ceremonies involving speeches, songs, dances, feasting and gift-giving were performed at each museum and again in Haida Gwaii to welcome the ancestors home and provide them with a respectful reburial. These included the renewal of traditional ceremonies and the creation of a number of new elements. The butterfly was adopted as a symbol for repatriation, reflecting the insect's symbolic meaning as a wandering spirit with nowhere to go, and has since been used on stationery and documents produced by the repatriation committee, and also on a line of clothing items that are sold for fundraising. When 160 ancestral remains were collected from the Field Museum in Chicago in October 2003, an old dance, the butterfly dance was learned for the occasion. An observer recalls that: "The Butterfly dance was performed by two women wearing white button blankets with black butterfly crests. When the dancers used their fingertips to ruffle the edges of the blanket, the wings of the butterfly literally fluttered" (Price 2004: 1). Three 19th century Haida masks from the museum's collection – a dogfish, raven and frog - were also used in dances, and a new prayer song entitled 'Where have all my treasures gone?' was sung to accompany the dancing of the frog mask (Price 2004: 1).

By 2005, the Haida Repatriation Committee had repatriated the remains of over 466 Haida ancestors and associated grave materials from eight museums in the US and Canada. In Haida tradition, an initial ceremony accompanies the burial of the deceased and, at a later date, an End of Mourning ceremony is held. On June 21, 2005 the Haida held an End of Mourning ceremony to:

*[...] allow the spirits of the ancestors to rest and to end the public mourning and grieving for - not only their loss of life but - how their remains were treated afterwards. We began the day with food burning to feed the ancestors, and then there was a procession to our graveyard where the grave-markers were unveiled, the memorial plaques honouring our ancestors. Later in the evening there was a feast, that's where we all shared food, then there was an end of mourning ceremony with the spirit dance that officially signifies that that stage is done, and then celebrations can begin (Collison 2005).*



The retrieval of the remains from museums and their reburial in Haida Gwaii became the focus for collaborative community action providing a stimulus for the production of traditional artefacts and the performance of traditional ceremonies. This resulted in an intergenerational process of teaching and learning involving Haida of all ages from young children to elders, which contributed to the renewal of skills and knowledge associated with box-making, and with the performance of language, songs, dances and ceremonies. Nika and Vince Collison, two members of the repatriation committee, have written about the outcomes of the process in terms of cultural renewal and healing:

*More and more people learn the Haida language so that we can speak to and pray for the ancestors. Elders and cultural historians teach traditional songs, dances and rituals. Many more people have begun to look towards and embrace traditions that until Repatriation began, only a handful of people participated in on a regular basis. And perhaps most important, after each ceremony, one can feel that the air has been cleared, that spirits are resting, that our ancestors are at peace, and that healing is visible on the faces of the Haida community (Collison & Collison 2002).*

## Conclusion

These examples illustrate the benefits that were gained by two First Nations communities when museums repatriated essential cultural objects and the remains of ancestors. In both cases, repatriation provided a stimulus for cultural revitalisation, leading to the renewal of ceremonies associated with transfers and reburials; the revival of songs, dances, ceremonies, rituals, and associated knowledge and skills; the creation of new forms of visual and performance culture; and the transfer of knowledge, skills and values from one generation to another.

This presents a different dimension to the repatriation debate and places a responsibility upon museums that has yet to be fully realised, indicating that the cultural and social outcomes that source communities may gain from repatriation should receive far greater attention in repatriation debates and decision-making processes than has previously been the case. Decisions concerning the repatriation of important cultural materials, rather than being concerned primarily with maintaining a record of the past, should be based upon consideration of the current and future socio-cultural circumstances of traditional owners and the benefits that can be gained by communities when objects and ancestors are brought home.

Nineteenth century ethnographic collections were designed to preserve materials and record the cultural practices of 'dying' cultures. They protected important cultural and ceremonial objects from loss or destruction during a period of

great social upheaval and cultural disruption, and preserved them for the benefit of future generations. However, Robert Janes and Gerry Conaty, who were actively involved in the repatriation of Blackfoot medicine bundles from Glenbow Museum have remarked that: "We have always said that we are holding our collections for posterity. Perhaps, for native peoples, posterity has arrived" (Janes & Conaty 1992: 12).

These case studies demonstrate that repatriation is a social force that can have a tangible and positive influence upon the cultural and spiritual well-being of individuals and the community as a whole. Through this process cultural preservation, which is central to museums, can take a much more active form whereby culture is preserved, not in a frozen state in a museum but in the dynamic form of living culture. Museums have the capacity to become more actively concerned with the renewal of the cultural practices, knowledge and skills that can lead to the creation of new forms of living heritage and contribute to the social well-being and cultural healing of living cultures. While this means relinquishing control of some materials in their collections, the benefits can be great for societies suffering loss of heritage and post-colonial trauma. ○

## Acknowledgements

I would like to acknowledge the financial assistance of Flinders University and the Association of Canadian Studies in Australia and New Zealand, which enabled me to carry out research in Canada that contributed to the writing of this essay. I would also like to thank members of the Blackfoot and Haida communities who have shared their thoughts with me.

## Note

- 1 Frequently referred to by the non-Haida population as the Queen Charlotte Islands, the name given by Capt. George Dixon in 1787, but for the Haida they remain Haida Gwaii meaning 'the Islands of the People'.

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## SHARING THE HUNT: REPATRIATION AS A HUMAN RIGHT

Aqqaluk Lyngø

**I**t is important to address the theme of repatriation as a ritual of redemption from a human rights perspective and to do this in the context of partnership and sharing of the hunt.

When developing partnerships – any kind of partnerships – and one throws the language of “human rights” into the mix, sometimes it complicates matters. And when it does, we cannot turn our back on this language and shy away from complexity. We all have partners. Some are personal, and some are professional. Some are with groups and some are with individuals. Many of us have experienced unequal partnerships, I’m sure. Some of us are lucky enough to be in an arrangement of equality and respect. When thinking through partnerships, it is my position that one cannot turn a blind eye to the issue of rights. Many questions need to be addressed as partnerships are contemplated and created. At a personal level, whether it is friendship or marriage, each individual has a right to be respected and heard, and to be treated justly. Otherwise failure will quickly ensue. At a collective level, the human rights of peoples, the human rights of indigenous peoples, must always be at the forefront and central. Otherwise, the result will be collective failure.

The return of cultural heritage from Denmark to Greenland is often characterized as a successful partnership between a state and a former colonized territory. When I see the word “partnership”, I think, “How does the human rights element fit into the concept of partnership?” I also think about sharing – given that true partnership is about sharing, and a good partnership is about sharing equitably. Note that I did not say “equally”. A human rights perspective does not simply divide the pie 50/50. It delves deeper and assesses whose lives are most affected by an action. It seeks a comprehensive understanding of a situation and asks: who are the key stakeholders? Whose lives and whose culture is at stake?

I will certainly not argue against the viewpoint that the repatriation partnership between Greenland and Denmark is a good one. It is. But, as the Swedish social anthropologist, Dr. Claes Hallgren (2005), noted after Sweden passed its own repatriation act and started to send human remains and other artefacts back

to Australia and elsewhere, one must look back and put things in context. In his words,

*The repatriation act was widely applauded by the media and in a sense everything was fine in that all the parties involved were satisfied. Still there is something disturbing in the fact that our own past in this respect seems to be so fundamentally forgotten.*

I think, as does Dr. Hallgren, that once one has looked back at one's past, then one can look forward and make better partnerships. "Redemption" can only come about if we first look back. Being united by colonial relationships, this position is relevant to both partners. Repatriation touches upon a wide variety of political, legal, ethical and cultural issues, to which should be added human rights, which is my main concern in this context.

Inuit are the indigenous people of Arctic Canada, Alaska, the coast of Chukotka in Russia, and all of Greenland. Artificial boundaries were cut through our lands and seas during the European and American colonial expansion into the North. Long before there were such places now known as Canada, Alaska, or even Greenland, we Inuit were here in the Arctic. It was not until 1977 that Inuit from Greenland, Canada and Alaska came together in Barrow, Alaska for an assembly at which the Inuit Circumpolar Conference – now Council – was born. Today, the Inuit Circumpolar Council – or ICC – has offices in each of the four countries, Russia included.

Although I am fully committed to the idea of Inuit unity across these four countries, I also see the reality – and necessity – of developing Greenland as an autonomous region. I believe that, depending upon our self-government process, this could be done either with or without Denmark as a political partner. Either way, history now dictates that we will always be partners in some way or another and sharing various matters, not least of which is how to address repatriation.

In 1977, Inuit from the North Slope of Alaska shared with we visitors from Greenland and Canada a large portion of their bowhead whale hunt. It is something that all Inuit do. When a hunter brings home a seal, even today, some of that meat is given to others. The following week, the favour will be returned by another hunter. We try to make sure that everyone, including visitors, is taken care of.

When Europeans came to Greenland in the 1700s, they took part in a different hunt, although eventually some sharing did occur. With their missionaries as allies, they hunted for our souls. Most of us were converted to a new and foreign religion as we were taken over by a foreign power. Only when they had converted most of the Greenlanders did the new Church give back some power. They made us priests and gave us other positions in the new religion. First they

took our shamans, and gave us their shamans, whom they called priests. But they were no longer our shamans. A kind of false repatriation, you might say. An unequal sharing of the hunt.

A second hunt by the Europeans – in which some form of sharing went on – was that of the commercial bowhead whaling that decimated our stocks. There was some contact between us. We were given token jobs on their ships and helped them with various tasks on land. We have never recovered from this hunt. Now we have to go to Alaska to eat bowhead *mattak* (whale skin) as our stocks are too low. In recent times, we have started to reclaim the right to hunt whales, which were decimated by the Europeans. And we are even given some support from Europe. There are, however, conditions to this support and we have to adhere to rules laid down by the International Whaling Commission. We should practice what they call “aboriginal whaling”, and some whales can only be hunted for subsistence.

A third kind of hunt is what Hallgren called “skeleton hunting” (ibid.). Although he situates the analysis in a Swedish – Australian context based upon Eric Mjöberg’s 1915 book, *Bland Vilda Djur och Folk i Australien*, we may be able to apply this term to the Greenlandic context. All skeletons taken to Denmark have been given back to the Greenland National Museum. In the case of Sweden, they too are now “giving back” the hundreds of aboriginal skeletons that were stolen and displayed in Sweden. Another shared hunt that seems to work along the lines of the motto: “We take, we keep, and then we eventually give some back”.

A fourth kind of hunt that took place – and continues to this day – in Greenland is the hunt for non-renewable resources. Oil, shrimp, gold. Again, it is a shared hunt. And again, this shared hunt only began after it was first taken completely from us. In 1979, we negotiated a form of home rule. Since that time, we have negotiated various arrangements with others, including Denmark, the European Union and so forth. We are getting some of our resources back. They say we can have some – but not all. This sharing is not based upon the human rights of indigenous peoples, and we therefore continue to negotiate.

A fifth sharing is the hunt for power. It cuts across all of the hunts I have described above. It seems to be a pattern. They take, they give some back, and then we negotiate further. In the 1700s, Europeans came and took our land and seas from us. In the early 1950s, they made us a part of Denmark. We were called North Denmark. Then, due to some strong-willed young adults in the 1970s, myself included, we demanded and eventually negotiated a form of home rule that shared some of the power. Into the new millennium, we were back at it with another self-government commission composed of both Greenlanders and Danes.

The pattern is strikingly similar everywhere. Maybe we should ask if the process of cultural repatriation simply follows an established order of things? Things were taken and now things are given back but with conditions? Or is that too harsh? I did say earlier that our repatriation partnership with Denmark is a

good one and I stand by that. Yet we can do better. Although not a repatriation expert, I must stress that the political, legal, ethical and cultural aspects of repatriation are all elements of the human rights approach. To understand the present situation in relation to this, I found it necessary to look back at our history.

In general terms we need to bring back the materials that were appropriated in colonial times. And we need to do it now. However, we also need the resources, the facilities and the knowledge to do it right. I ask the anthropologists, museum curators, historians and archivists not to send back the “skeletons” that were taken unless we Inuit and other indigenous peoples also have the resources to adequately store them, to display them, to safely and securely allow researchers to work with them when appropriate, and so on. Redemption is not always easy. Sending back artefacts should not make anyone feel good, or even provide space for redemption. It has to be done in partnership, yes. But it does not mean that the anthropologists get to keep what they want. We need a partnership based upon equity to help us to reclaim our past, not necessarily a partnership that equally shares the hunt. When this type of partnership is established on the basis of human rights, redemption will be at hand.

Such partnerships should be established at many different levels. The Inuit Circumpolar Council, with which I have been associated for many years, has consistently raised these issues. New opportunities arose when the United Nations established the Permanent Forum on Indigenous Issues in 2000. The Permanent Forum is a high-level body that includes 16 members, eight of which are nominated by states and eight by indigenous peoples’ organizations. The Forum has a broad mandate, namely to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. It makes recommendations to ECOSOC and the whole UN system. The indigenous representatives in particular, myself included, view human rights as a cross-cutting theme to all their mandates. Numerous recommendations have already been made to ECOSOC on matters of culture. The repatriation conference in Nuuk in February 2007 spurred me on to take an even more serious look at repatriation within the context of human rights.

A new opportunity to raise these issues came when the UN General Assembly in September 2007 finally adopted a Declaration on the Rights of Indigenous Peoples after having worked on it for 24 years. Although this Declaration is a compromise between governments and between indigenous peoples and governments, it firmly stresses the inherent cultural rights of indigenous peoples. Article 12.2 is key in relation to repatriation: “States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned”. And the same article (12.1) says that “Indigenous peoples have .. the right to the repatriation of their human remains”. The adoption of the Declaration was only possible with strong support from a



number of countries, including Denmark, that have often supported Greenlanders, Inuit and all indigenous peoples in human rights matters. ○

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# CAUGHT IN THE MIDDLE - AN ARCHAEOLOGICAL PERSPECTIVE ON REPATRIATION AND REBURIAL

Liv Nilsson Stutz

## Introduction

The repatriation movement has radically changed the way that archaeology and anthropology are practiced around the world. While legal instruments regulating the process internationally are still lacking, laws have been passed on a national level, such as NAGPRA in the United States. Such legislation has had a significant impact on archaeology as a discipline, often beyond national boundaries, because the repatriation movement has become a global phenomenon. All over the world, indigenous peoples and minorities are claiming the right to their cultural heritage, and thousands of objects and human remains are finding their way back to their original communities, to become a part of living traditions, to be exhibited in museums, or to be reburied. While this transfer of control and ownership of cultural heritage can be regarded as an improvement in human rights and a necessary step toward self-determination for many indigenous peoples and minorities, it still presents complications that challenge archaeology as a discipline.

This article will discuss the different dimensions of this challenge. In the debate, the voices that object to or question repatriation have mainly come from a perspective with a focus on the protection of the scientific source material. I argue that this focus has not only tended to reproduce an image of archaeology as insensitive to the emotional and intellectual needs of the people whose past we study, but it has also overshadowed what I argue may be more serious difficulties for archaeology - namely, the possible abuse of cultural heritage by various groups in the present, and ultimately also the questioning of archaeology at its very core, as the "value" of our knowledge and work is being subtly but significantly redefined. Repatriation may challenge the idea of an ongoing process of interpretation, a fundamental component of contemporary critical archaeology, which recognizes that science is fluid and prone to change. We should be aware that, through repatriation, a permanency might be imposed on interpretation. In the light of well-known historical cases of strong connections between archaeology,

cultural heritage and the politics of ultra-nationalist movements, there are reasons to look at the present cases of repatriation in critical terms.

While the loss of archaeological source material may be of concern to many, there are other reasons to problematize - although not necessarily to object to - the process of repatriation, and these must be given a more prominent place in the debate. My purpose here is not at all to undermine the process of repatriation of cultural items and human remains. Rather, it is to clarify the complex situation in which the archaeologist may find her/himself today. Hopefully, this approach can also provide a better understanding of this dilemma for other stakeholders. After discussing some of the historical background and the development toward new usages of the past and of cultural heritage, this article looks at the challenge of repatriation from an archaeologist's point of view, with a comparison of three different national cases: the United States, Sweden and Israel.

### **Through the mirror: the past in the present**

Archaeology, like all other sciences, is a mirror of the times in which the research is produced. Our research not only reflects the "facts" of the past but also contemporary agendas, conflicts, perspectives and interests. This tends to become especially obvious in retrospect. The dominant view of archaeology and anthropology within the repatriation debate is based on the atrocities committed by our predecessors, mainly in colonial contexts (Lowenthal 1990; Thomas 2000; Fine Dare 2002; Fforde et al. 2002; Fforde 2004 a.o.). This very dark past explains why some prominent repatriation activists still perceive archaeologists as looters and grave robbers (Mihesuah 1996; Riding In 2000:106; Riding In et al. 2004). Even if we may object to the most blatant caricatures, we must be aware of the fact that there is a widespread mistrust of archaeology and anthropology in many indigenous communities (Forsman 1997; Zimmerman 1997), and we must also understand that this image is, to a great extent, deserved. Archaeology and biological anthropology were not only instrumental and integral parts of the practices of stealing or in other ways removing cultural heritage and human remains from colonized groups but they also provided "scientific evidence" to support the colonial project, by defining the colonized as "more primitive" and even in need of "civilization" brought about by the colonial presence. For the most part, the places from which claims for repatriation emerge today have a colonial history.

But, even if this part of our past must not be underestimated, archaeology played a slightly different role in other contexts. In Europe, archaeology and cultural heritage were cast within a nationalist context, where the past was glorified and a historical link of past-present continuity was established with the majority population, which was also often defined as indigenous (Dietler 1994; Kohl & Fawcett 1995; Atkinson et al. 1996; Olsen 2001, see also contributions in Kohl &

Fawcett 1995; Díaz-Andreu & Champion 1996; Kane 2003). In Sweden, for example, prehistory became a central component in the nationalistic and romantic discourse of the 19<sup>th</sup> century. The ideology that glorified Germanic and, especially, Nordic culture was based on a direct continuity between the prehistoric past and the present population and culture of Scandinavia (and in the process excluded indigenous peoples such as the Sámi, and immigrants such as Slavs, Jews and Roma). This perspective could be found in art, literature, and even the Arts and Crafts Movement. Yet, it was archaeology and biological anthropology that provided the scientific foundation for the movement (Hagerman 2006, see also Ljungström 2004). The line between national romanticism and racism was fine, and in the shadow of this idealization of the Germanic people, race biology flourished. This ideology had strong ties with the political arena, and it was eventually to become a centerpiece in the most infamous of fascist regimes, as Nazi Germany drew significant inspiration from Scandinavian prehistory to construct its mythological ideology. This abuse of the Scandinavian cultural heritage can still be seen today in the use of Viking Age symbols and paraphernalia among right-wing extremist groups in Europe and the United States (Gardell 2003).

This aspect of the use of the past has earned little or no attention in the repatriation debate, for the obvious reason that it has not been dominant in the (post-) colonial contexts that now set the agenda. But, for the archaeologist, this nationalist past is as problematic as the colonial one. The colonialist and nationalist projects differed in many significant ways, including in the interpretation, identification and positioning of indigenes. However, they both shared in a process of history production that was dominated by a political structure that monopolized the right to define the roles of different peoples and cultures. This view of the world, which blended nationalism and colonialism and simultaneously exoticized and dehumanized the “Other”, could be found throughout the societies in which archaeology and anthropology emerged as sciences. Thus we can argue today that anthropology and archaeology bear a significant responsibility, especially since they contributed to legitimizing the nationalist-colonialist ideology by lending it a scientific aura. Archaeologists today are especially worried that these histories of abuses will be repeated to support various contemporary political agendas.

The extent of the crimes committed by our predecessors cannot and should not be underestimated or forgotten. However, when we approach the issue of repatriation today, it is also important to acknowledge that archaeology and anthropology have gone through significant changes over the past 100 years. Today, there is a significant awareness of our dark past and of the production of knowledge that followed from it. This awareness has had a tremendous impact on the disciplines, both as historiography and changes in methodology. The theoretical developments within archaeology today emphasize the subjectivity of the process of interpretation. This has resulted in a more inclusive archaeology - one that is

open to multivocality, embracing the perspectives of previously marginalized groups. Strong sub-fields like gender and queer archaeology are the result of this process and, within this development, we also see how indigenous voices are more successfully claiming their place. Unfortunately, these developments have not been as successfully communicated outside of the academic communities themselves, and the outdated image of the archaeologist and anthropologist as adventurer or looter is still prominent in many circles including, unfortunately, within some repatriation activist circles. This has affected the repatriation debate, where mutual understanding and respect are fundamental for a productive dialogue.

### **The archaeologist's dilemma**

From a perspective that recognizes the significant subjectivity of the research process and the importance of contributions by voices from outside of the academic discipline, archaeology today encounters repatriation as a dilemma. On the one hand, the call for repatriation of cultural items and human remains is intimately linked to a more general emancipatory movement towards the self-determination of historically colonized peoples. The right to one's cultural heritage and history has become a mark of equality in today's world (Barkan 2002: 16). To make claims of a right to culture is a growing trend (Cowan et al. 2001, Eriksen 1997) and some even suggest that it is possible to see a tendency among these claims to replace struggles for political and economic equality, which have been abandoned in disillusionment with a lack of progress (Fraser 1997: 2, quoted in Cowan et al. 2001: 2). So why is this so significant? It is true that repatriation transfers something material but, more importantly, it restores respect and dignity and provides the tools for self-definition, which can be linked to what Charles Taylor calls the politics of recognition (Taylor 1992). Taylor, who draws on Fanon's writings (Fanon 1995), recognizes that since identity is shaped by other people's recognition, or absence thereof, the right to self-definition must be seen as a fundamental human right, and self-determination, the foundation of liberation (see also Eriksson et al. 2005: 41). When applied to archaeology, this means that freedom from the colonial past, and true liberation, must pass through a revision of the histories written by past archaeologists and anthropologists. The control over cultural heritage through repatriation becomes a vital component of this process. It is clear that from this perspective, the repatriation process, at its core, is a positive process toward democratization and liberation.

And yet repatriation presents a series of significant challenges and problems for the archaeologist. The emergence of new and diverse identities, the legitimacy of which has been achieved through new and diverse practices, characterizes the contemporary post-colonial and increasingly globalized world. This has led to

complex and contradictory uses of cultural heritage and the past. It is hard to argue against the idea that everybody should have a right to their culture and to self-determination. And, for many, the past and cultural heritage have played a central role in this process. However, we must also acknowledge that the notion of a right to culture is hardly a new idea. It is not limited to processes of post-colonial emancipation. On the contrary, an earlier expression of a “right to culture” may be found as a strong component in romantic nationalism across Europe in the 19<sup>th</sup> and early 20<sup>th</sup> centuries. In fact, romantic notions of folk identity were central in shaping nationalist and colonialist archaeology during this period. The right to self-definition may encompass dimensions of conflict, domination and ethnocentrism. And while it may not be a dominant element in the repatriation movement, on a theoretical level it may be used in processes of self-definition that exclude other stakeholders or even appropriate their pasts.

From a simultaneously critical and scientific perspective, one of the most problematic aspects of European romanticism was the assertion of past-present continuity. This idea, which was indeed fundamental to nationalist archaeologies, saw a direct link between prehistory and the modern community, and it is often, as has been argued by Bjørnar Olsen, associated with an ideal of “purified spatial identities”, which became closely associated with early European archaeology, biological anthropology and museum technologies (Olsen 2001: 44). This notion of past-present continuity was embedded in essentialism. In the 19<sup>th</sup> and early 20<sup>th</sup> centuries, many self-defined essentialized cultures had nationalist aspirations. And they also had a biological base, in the form of pure races, assumed by biological anthropologists to be the key units of human variability. Today, essentialism and past-present continuity form the basis for many post-colonial stakeholders’ claims to self-definition through repatriation, although the biological dimension has been abandoned and cultural difference has become emphasized (Eriksson et al. 2005: 42). Here, culture is often seen as a natural entity that must be preserved from the destruction that would be brought about through assimilation or mixing with others. This kind of essentialist discourse can be found in general statements about indigenous peoples, not uncommon in the repatriation debate. The problem with this is that it tends to create an artificial boundary between indigenous peoples and the “West” that ignores variability within these defined categories. This, in turn, probably contributes to making understanding and connection across this boundary more difficult to achieve. In negotiations over repatriation, essentialism is sometimes used as a strategic tool in order to make one’s voice heard (Cowan et al. 2001: 10), and sometimes those working on behalf of indigenous peoples are forced into an essentialist discourse, since the legal system through which rights can be obtained requires the use of clearly defined categories. However, even when used strategically, essentialism still produces the same results as ontic essentialism (i.e. the position that essential differences between different peoples truly exist) (Eriksson et al. 2005). Olsen has

also pointed out that this kind of discourse tends to hurt the indigenous groups themselves, since it reinforces “a reactionary museum image so long forced upon them by outside scholars and politicians [...]. It attributes to them an unchanging essence, freezing them forever as always-the-same ‘traditional societies’” (Olsen 2001: 50). This critique, which can be voiced against both essentialism and past-present continuity, is common within academic archaeology and anthropology, and can also be heard in the repatriation debate, which criticizes the image of indigenous peoples as relics of the past, unable to change, and instead sees them as active and equal parties in contemporary society. But despite this, essentialism and past-present continuity remain important concepts in both the debates and policies. Past-present continuity is, for example, used as a fundamental concept in legislation such as NAGPRA. So, while many archaeologists and anthropologists deconstruct and critically examine their own history in order to right the wrongs and participate in the empowerment of indigenous groups, many activists within the repatriation movement use past-present continuity and essentialist arguments in order to achieve legal instruments for self-definition.

To some, it may seem obvious that archaeologists - with a starting point in critical theory or in science - should criticize essentialism, but the more encompassing phenomenon of identity formation reveals additional complexity and ambiguity. The “right to difference” (Taylor 1992) of indigenous claimants remains both central and problematic within the debate. Claims for repatriation can become part of a strategy to extricate oneself from the dominant culture and establish a self-centered autonomy (Friedman 1994: 132). In the repatriation debate, this view is commonly expressed through a rejection of so-called “Western values”, including science. This strategy defends cultural identity from the perceived threats of assimilation, and it tends to reproduce a situation whereby difference and specificity are celebrated (Taylor 1992: 40) and, in the process, it regards the meeting, exchange and blending of peoples and cultures as threatening. It is evident that whether or not this is a problem is a question of political conviction.

Past-present continuity, essentialism and the right to difference are often present and sometimes even fundamental in the repatriation debate. They not only occur as rhetorical embellishments but often constitute a fundament for the arguments presented on behalf of the claimants. At the same time, they have been problematized and questioned by recent archaeology and anthropology and, ironically, a significant amount of this critique emerged through a critical examination of our own colonial and nationalist past. It is therefore problematic for the archaeologist who wants to take on an active role in society today not to object when the same arguments are presented, even if they come from a party with whom we sympathize – as is often the case in repatriation cases. For the archaeologist, who still in many ways remains the *scientific* authority (which does not have to be the only authority), the dilemma involves considering the human



needs of living communities while simultaneously bearing a broader, abstractly defined responsibility for both the past and the future in preventing what we may consider to be potential abuses of cultural heritage.

Here, it is important to underline that while the repatriation debate focuses on disenfranchised groups claiming their human rights, the process itself can also be used by other actors. Cultural claims, of which repatriation is one example, are central to the processes of different kinds of identity production. Thomas Hylland Erikson has noted that “culture” and “cultural identity” are put to different political uses and are used by “political leaders of hegemonic majorities as well as by spokesmen of weak minorities” (Eriksen 1997: 54). Jane Cowan and colleagues have argued that “the political implications of such claims cannot be generalized because culture may be called upon to legitimize reactionary projects as easily as progressive ones” (Cowan et al. 2001: 10). Professional archaeologists like myself may not easily discriminate based on our personal political preferences. Our role is different. The option open to us is to clarify the position based on the evidence, and with an insistence that our considerations include the past and the present, and also the future.

Moreover, archaeologists today defend the idea that interpretation is changeable and ongoing. Confronted by repatriation, archaeology is faced with a situation in which permanence may be imposed on the interpretation. Once an item is repatriated, it often becomes impossible to make new observations and analyses. It may become impossible to change an existing interpretation. This is especially the case when the remains have been reburied. In archaeology, the idea of achieving absolute security of interpretation may have been a possible position in the past but, with the recognition of the changing and partially political component of every interpretation, this permanence does not correspond to the acknowledged subjectivity of the process. Today, we value the opportunity to return to a material source and reinterpret it. This is not a matter of monopolizing “the truth” about the past. Instead, it recognizes that science is fluid and interpretations change. To defend this position is more important than to defend access to the material. While on a philosophical level these two are separate as ideas, they are linked in practice, since access is what allows reinterpretation.

Archaeologists thus often find themselves caught in the middle. On the one hand, we feel a deep responsibility for the crimes committed by our predecessors in the past. On the other, we feel sympathy for the emotional needs of historically oppressed, often still marginalized people, recognizing the importance of their right to self-definition. But our professional role goes beyond following our political sympathies. It also includes recognition of the responsibility we believe that we have to the past and the future as well as to the present. In order to maintain this position, I believe that we must defend the right to critically examine claims to culture and to cultural heritage in all cases. In the end, this should not only be the concern of the archaeologist but also of the other stakeholders, since

it constitutes a certain, if not complete, protection against possible abuse, which may end up being to the detriment of marginalized and disenfranchised groups as well.

### **Three cases: The United States, Sweden and Israel**

Repatriation is typically discussed on a regional and even local level. This makes sense, since the focus is on the regional and local past. However, the dilemma of the archaeologist is better illustrated when the perspective is widened to an international comparison, which allows us to contrast different historical, academic and political contexts. In order to discuss this, I will briefly introduce, contrast and compare three very different cases: the United States, Sweden and Israel. These cases are chosen because of their interesting national differences and similarities with regard to the history of the disciplines, the current political situation, the nature of the claims for repatriation, the motivations of the stakeholders, and the attitudes to repatriation among professional archaeologists. The purpose here is not to fundamentally challenge the idea of repatriation but to point to the complexities facing the archaeologist. It is my hope that this discussion can contribute to a better understanding and a more nuanced image of archaeology than that which typically dominates the debate. The concerns presented here lead to a series of questions concerning our role as archaeologists – caught in the middle between different ideals, different stakeholders and different considerations –, questions that in turn lead us to reflect on our role in the debate on repatriation and in society as a whole.

#### **The United States**

The history of archaeology and anthropology in the United States is intimately linked to the colonial history of the country (Thomas 2000; Fine Dare 2002 a.o.). Archaeology and anthropology participated in the colonial process both by legitimizing it, and concretely by collecting, stealing and looting human remains and cultural heritage from Native communities. Most archaeologists today are aware of this past, and the situation has changed radically. The turning point came during the 1960s when Native Americans, inspired by the civil rights movement, gained momentum in claiming their rights, including the right to their cultural heritage and to their dead, housed in collections all over the country and the rest of the world (for the historical background to the process, see Hammil & Cruz 1989; Bray 2001a; Hill 2001; Trope & Echo-Hawk 2001; Lovis et al. 2004; Richman 2004; Sebastian 2004; Ousley et al. 2005). These claims resulted in an administrative and legal reality in 1990, when the *Native American Graves Protec-*

*tion and Repatriation Act* (NAGPRA) was passed by the US Congress and signed into law by President George H. W. Bush. NAGPRA regulates excavation of Native sites and provides a process for the return of certain items from museums and research institutions to affiliated tribes. Within legally defined limits, it also imposes consultation with Native American tribes as a basic principle of archaeological research into their past. The legal situation regarding cultural heritage in the United States is too complex to account for in detail here. However it is fair to say that, compared to the other cases in this study, cultural heritage has comparatively weak protection. For example, artifacts found on private land are not protected and belong to the landowner. Moreover, the idea that cultural heritage can be owned constitutes a basis for NAGPRA, where the ownership lies with the community of origin.

NAGPRA has had a tremendous impact on the practice of archaeology and anthropology in the US. The discussions and negotiations that preceded NAGPRA and those that followed it - as it began to be implemented - has spurred great debate and a significant number of publications, often with interesting complementary points of view (see for example Swidler et al. 1997; Bray 2001b), and this achievement alone makes the case of the United States extremely interesting, since it has contributed to changing not only practice but also attitudes within the archaeological community. All archaeologists that I have interviewed in the US, including those who retain some criticism about different aspects of the process, recognize the importance of the leveled playing field that NAGPRA has created by transferring the ownership of cultural items and human remains to the Native American tribes affiliated to them. Moreover, the impact of NAGPRA in transferring the ownership of cultural items from museums and collections has had an important impact on revitalization processes in the Native communities.

Of course, this development has not been free from conflict. The issues surrounding the legal understanding of cultural affiliation, the fate of the so-called unidentifiable human remains and the legal implementation of the concept remain outstanding problems (Owsley et al. 2005). The Kennewick litigation may be the best known example of this (Owsley & Jantz 2002; Gerstenblith 2002; Thomas 2000). While the case has been studied and discussed in length by many already, I want discuss it briefly since I think that it illustrates some of the dilemmas that I would like to highlight in this comparative study. As claims for repatriation were put forward from five local tribes, the claim was contested by a group of scientists who argued that affiliation could not be established, mainly because of the significant age of the remains. One biological anthropologist also remarked that, according to his study, the remains were "Caucasian". This remark opened the door to a third stakeholder, Stephen McNallen from the Asatru Folk Assembly, an organized group of believers in Asatru, a self-proclaimed "ethnic religion native to Northern Europe" (Gardell 2003: 258). If the remains were

those of a “white man”, McNallen argued, he could claim them as his ancestor, an ancestor - he continued - that could indeed have been present on the continent before the Native Americans. While this claim seems absurd, the reasoning behind it as a claim to culture is not significantly different from that made by the five local tribes who also argued affiliation based on a conviction that they had always lived in the area and therefore the remains must be those of their ancestor (an argument which also rejects the idea of human evolution). This example, as absurd as it may seem, remains important since it shows that if we as archaeologists and anthropologists want to be able to protest claims like those made by McNallen, we have to make sure that we do not undermine our authority by remaining uncritical when the claims come from groups whose cause we sympathize with – including the five local Indian tribes who also claimed the remains.

## Sweden

In many aspects, Sweden provides an interesting contrast to the US. Here, archaeology has historically had strong ties to romantic nationalism (Hagerman 2006), while “foreign” cultures (including the indigenous Sámi) were mainly the object of study for ethnography. It is therefore not surprising that the focus on the dark side of the discipline has been devoted to a critical examination of the appropriation of the past by particular groups in order to glorify the nation. While most Swedes are outraged by the most extreme consequences of this ideology (including the use of Nordic cultural heritage by historic and contemporary right-wing extremist movements, the prominent place of Sweden in racial biology in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, the forced sterilizations of individuals from certain social and ethnic backgrounds into the 1960s), most are comfortable with the display of the remains of the past in museums and have not found it offensive that the human remains of their “ancestors” are placed on exhibit and studied by anthropologists. Likewise, there is great public support for the comparatively strict legislation protecting cultural heritage, including archaeological remains found on private land.

While the protection of cultural heritage is strong and has support among the public, the debate concerning repatriation and reburial that is so intense in other parts of the world today has gone relatively unnoticed. There have been occasional objections from the public when historical Christian burials have been excavated (Iregren & Redin 1995), and there have been cases of reburial of medieval human remains after these kinds of public reaction. However, these reburials have had very little impact on the general debate and there is no legislation regulating these procedures. Recently, this changed dramatically. In 2007, the Swedish Sámi Parliament decided to support claims for the repatriation and reburial of Sámi human remains from museum collections in Sweden. The question has been

debated by a handful of Swedish archaeologists before (Iregren 2002; Mulk 2002; Zachrisson 2002; Ojala in press) but many are facing the issue for the first time. The claims on behalf of the Sámi today show great similarities with the claims made by Native Americans in the United States. The experience of the colonial situation and the role of ethnography and biological anthropology in the area also show similarities with the history in the United States. However, the reaction from the archaeological community is different. Swedish archaeologists tend to be extremely critical of all kinds of appropriation of the past by a particular group. This skepticism is a result of a critical examination of the nationalist past of archaeology. The current theoretical debate regarding the political role of archaeology is directed toward finding a place for the cultural heritage within an increasingly multi-cultural society and, for example, including an interest in the immigrant communities in Sweden and making Swedish prehistory relevant to them (Burström & Rönby 2006, see also Svanberg & Wahlgren 2007). There is thus a strong presence of the idea that cultural heritage belongs to all of humanity, and not only to the groups that produced it (this contrasts with the debate in the US, where the repatriation process is founded on the notion of specific group affiliation). In this context, the recent claims by the Sámi constitute a dilemma. Should mainstream Swedish archaeology hold on to its proclaimed humanistic, *anti-nationalist* values and use its substantial social influence - historically inherited by virtue of romantic Swedish longing for national identity - in order to suppress the Sámi repatriation claim, essentially an effort at self-determination? Or should Swedish archaeologists support the Sámi in their claim for specific affiliation, in order to pay a kind of cultural restitution?

## Israel

Finally, the situation in Israel provides another context altogether. As in Sweden, the archaeology of Israel has strong ties to nationalism (Abu El-Hajj 2001) and a regulated strong protection of cultural heritage, including human remains. However, unlike in Sweden, Israel today has an extremely strict law concerning the excavation of human remains. The law is religiously motivated and states that human remains are not to be regarded as “antiquities” and must be reburied if they occur in an archaeological context (Nagar 2004). The law is motivated by a religious conviction among ultra-orthodox Jews who, even if they constitute a small minority of the population, have grown increasingly powerful politically over the past 20 years. The law initially stirred up a great deal of conflict between secular archaeologists and religious groups. The fact that many archaeologists were, and still are, very upset about this became apparent in my interviews. Obviously, this battle is about more than just archaeology. For the ultra-orthodox, it is motivated by a sincere belief that they are responsible for making sure no Jew-

ish remains are disturbed. A policy of extreme caution is often applied. This has recently stirred up a conflict surrounding a Roman cemetery in Akko, where the religious authorities claimed that because there might be a Jewish soldier among the dead, everything has to be reburied. Interestingly, they have made no protest at the excavation of an old Muslim cemetery in Jerusalem, located on the grounds of a future Museum of Tolerance and Human Dignity. Here it becomes obvious that the legislation, initially based on religious conviction, carries the potential to become a politically discriminatory instrument. The intersection between faith, science and politics becomes very clear in this case, since the ultra-orthodox rabbis actually retain the right to define what remains are to be considered "Jewish". Many Israeli archaeologists see an aggressive assault on science, an assault they believe to be dangerous, especially because many of them are also aware that religion is becoming increasingly influential in a nation that until recently was dominated by secular notions of socialism and modernism. Others may see a danger in how the process can create "facts on the ground", in which the appropriation of the past can generate political momentum in an ongoing conflict over land rights.

## Conclusion

From the brief comparison of the three cases above, I argue that the repatriation debate constitutes an interesting and difficult challenge for an archaeology that wishes to take on a responsible role in the contemporary world. At first glance, it may seem unproblematic to give people what they argue they need to achieve self-determination and liberation. And yet we must be careful when addressing these claims, since they may be used for many different purposes. It is important to underline the fact that the problematization of repatriation and reburial does not automatically come from a line of thought that refuses to acknowledge the burden of our colonial and nationalist pasts, or that puts scientific interests ahead of human rights. Instead, the problematization of repatriation and reburial can be supported from a perspective that acknowledges the subjectivity of the scientific process and that wants to avoid repeating the mistakes and crimes committed by our predecessors. The problem is that if we are to maintain our authority to protest when the past is being used or redefined by people such as McNallen or the ultra-orthodox rabbis in Israel - both examples involving a claim to cultural rights and right to difference that denies others the right to do the same - then we have to remain critical in every case. Otherwise, we undermine our authority to speak out when we see actual abuse being carried out. Unfortunately, many other stakeholders in the repatriation debate do not see the problematizing efforts in this light but instead interpret them as an aggressive protectionist stand on behalf of

scientific interests alone. It is my hope that we can move beyond this conflict and see the benefits of cooperation, even when our interpretations may differ. ○

## Acknowledgements

I would like to express my gratitude to the Swedish Research Council (Vetenskapsrådet) for funding my ongoing research project on repatriation and providing the funds that allowed me to participate in the Conference on Repatriation of Cultural Heritage in Nuuk.

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# WHO'S RIGHT AND WHAT'S LEFT ON THE MIDDLE GROUND? REPATRIATION AS POLITICAL ACTION

Joe Watkins

## Introduction

The physical act of repatriation involves not only the return of material culture but also the metaphysical acts of social, political and symbolic recognition of certain cultural groups, perhaps to the detriment of other groups. While repatriation in principle may be a social responsibility to address historic wrongs, the repatriation of objects in practice by museums and governments can be seen as a *de facto* recognition of legal standing that can serve to further galvanize differences between 'recognized' and 'unrecognized' groups. This paper focuses on the Native American Graves Protection and Repatriation Act (NAGPRA) as it relates to contemporary relationships between American Indian groups, American museums and the American government.

In 2005, I wrote: "The debate between the 'cultural internationalists'—those who believe cultural heritage is the property of all humankind – and the 'cultural nationalists' – those who believe that it is first and foremost the property of source nations ... seems to be short-sighted. It is important to remember that the 'source nations' often include within their borders groups of people that are even more peripheral than the Third World nations that serve as fodder for the 'internationalist appetite' for cultural property. ... Perhaps one could call this third group of people competing for the right to gain (or maintain) control of heritage items 'cultural intra-nationalists'" (Watkins 2005: 78-79).

In Mexico, for example, political rulers appropriated the greatest heritage items from the social and cultural "peripheries" to construct a national identity that suited their needs, with little involvement of the Indigenous people. But now the politics of cultural patrimony is moving away from centralization toward regionalization; Mexico City's National Museum of Anthropology is no longer the location for the country's material culture; regional museums such as at Oaxaca's Monte Alban highlight regional accomplishments rather than national ones. Museums contribute to the issue of cultural segregation, as Michael Ames notes, by presenting "traditional societies ... not as things of equal value with the present, but as 'tourist attractions'" (Ames 2000: 23). Thus, as museums continue

to represent Indigenous groups as tourist attractions, those Indigenous groups must fight against that representation to be considered "valid" in today's society.

As Indigenous groups move to gain more control over their economic, political, territorial and social spheres, they also seek control over the objects they see that define their heritage - either through negotiation or through legislation. Often this is in conflict with perspectives held by the dominant culture or carried by visitors to the area. These conflicts are brought to mind when authors ask such questions as "Is Australia the appropriate 'representation' of Aboriginal culture?" (Barkan 2002: 13), and call our attention to the contrast between the industrialized, modern, bustling country of Australia and the "primitive", "quaint", "relaxed" culture of Aboriginal cultures.

Industrialized societies perhaps do not see their representations of Indigenous heritage as an act of cultural internationalism but the politics of representation can "act to legitimise existing social and political values and structures" (Timothy & Boyd 2003: 257). With the public's acceptance of these structures, it becomes more difficult to see the act of cultural internationalism as benign. Sarah Harding writes: "One of the most important issues with respect to cultural heritage is the historical denial of Indigenous peoples' right to determine the fate of their own cultural heritage and to protect it from violation and theft" (Harding 1999: 302). In this, it is important to recognize that she is writing not only about *physical* violation and theft of cultural heritage by looters but also the *metaphysical* violation and theft of cultural heritage by national governments, as well by the ways those governments choose to represent Indigenous groups.

## Repatriation In The United States

In the United States, the repatriation of human remains has been one of the most hotly contested issues in returning items of cultural property. Human remains, identified in the list of 'intangible objects' within Article 12 of the Daes Report (Daes 1995), have been subjected to legislation as part of an attempt to allow Native American tribal groups to gain more control over the skeletal remains of their ancestors - both real and perceived. While the literature on the repatriation of human remains is immense and growing, Sarah Harding offers a relative succinct analysis of the underlying principles upon which it has been based: "The work that has been done on understanding and justifying repatriation ... tends to focus on the rights of cultural groups or the political value of cultural heritage [while people] who argue against repatriation and restrictive laws stress its educational and scientific value or other benefits derived from having open access to a wealth of objects and customs" (Harding 1999: 294).

Most repatriation is conducted under the National Museum of the American Indian Act of 1989 (covering the Smithsonian Institute) or the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (all other museums which might be required to comply). These two laws outline the processes to be followed as museums return specific classes and types of heritage to federally recognized tribes. Federal recognition carries with it specific rights for American Indian tribes and responsibilities of the federal government to those tribes. It is also this federal recognition that makes repatriation relevant to the politics of repatriation.

In the 1830s, Samuel J. Worcester, a missionary residing within the Cherokee country lands in Georgia, was placed in a Georgia jail for refusing to take an oath of allegiance to the state and for failing to obtain a permit to allow him to reside in Cherokee country. The case went all the way to the Supreme Court and, in 1832, the Court decided that the Cherokees (and all Indian tribes, by extension) were sovereign nations not under the jurisdiction of the states. The decision, written by Chief Justice John Marshall, established the idea that American Indians were "domestic dependent nations" - separate nations that exist within the borders of the United States but which rely upon the United States government for particular benefits. However, Andrew Jackson, the President of the United States at the time, refused to enforce Marshall's decision (Prucha 1962: 245).

In the 1930s, the United States government tried to change the ways American Indians' relationship with the United States government was structured. The Indian Reorganization Act of 1934 encouraged the creation of tribal councils and constitutions in the hope that giving American Indian groups self-government would change the existing injustices on the reservations and point the Indians on the road to "progress". Some tribes did make progress toward establishing better tribal control of their affairs but, in 1953, with the passage of House Current Resolution 108, the U.S. Congress tried to 'terminate' federal relations with tribes. This act would have allowed the United States government to ignore all the treaties they had entered into with the Indian tribes and force Indians to assimilate into the American mainstream society. This proposed program was met with resistance by the tribes although some (such as the Menominee) actually chose to "terminate" and divide its holdings among tribal members. Finally, however, in 1958, the government ceased trying to terminate Indian tribes and reinstated programs aimed at providing care and support to them (see d'Errico 2000 for a more detailed discussion of the history of the concept of tribal sovereignty in Indian law).

## **The politics of recognition and repatriation**

In 1997, the NAGPRA Working Group of the Seven Tribes of the Anadarko Agency, Bureau of Indian Affairs (BIA) in south-west Oklahoma asked me to convey a

'position paper' regarding the participation of non-federally recognized tribes within the NAGPRA repatriation arena. While all of the tribes agreed that human remains of non-federally recognized American Indian groups are, have been, and always will be American Indian, they were concerned about extending rights to groups under NAGPRA; they expressed a concern that to repatriate human remains to non-federally recognized tribes could potentially assign rights and authority to groups that have come into existence without a legitimate claim of continuity.

At issue is the implication in the Definitions section of NAGPRA, where "Indian tribe" is defined as "any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 et seq.], which is *recognized as eligible for the special programs and services* provided by the United States to Indians because of their status as Indians" [25 U.S.C. 3001, § 2(7), (emphasis added)]. The tribes were afraid that a federal agency could grant an implied status of 'Indian tribe' to a non-federally recognized Indian tribe by 'recognizing' the tribe as eligible to participate in the repatriation process; they were afraid that the recognition of the tribe "as eligible for the special programs and services" of a federal agency might allow the tribal group to apply their eligibility to other programs and become federally recognized without undergoing the rigorous BIA recognition process.

This might be seen by federal agency personnel responsible to be an ungrounded fear, but it becomes a political issue when further sharing of a shrinking federal budgetary pie is at stake. Another example serves to illustrate concerns that arise when Indian people question the extent of their participation in the repatriation arena.

On July 15, 2004, land rights issues became a question of the Jemez Pueblo of New Mexico during a workshop I conducted on NAGPRA. The Pueblo had not entered a claim of cultural affiliation for material from well-known archaeological sites and culture areas of New Mexico and Colorado. Previous tribal leaders and tribal archaeologists had focused on a more closely bounded 'core homeland' within which all archaeological material would be claimed and outside of which materials would be examined on a case by case basis. During the workshop, the current tribal officials made it known that they were concerned that their failure to enter affiliation claims for other areas might be used against them in any future land claims, the implication being that a failure to act now might somehow prevent their action in the future. Such a concern is logical, since the tribes see affiliation with archaeological cultures and archaeological sites as indicative of an aboriginal presence (and claim) on land areas.

This is but a minuscule glimpse into the many potential political conflicts regarding the use of objects from the cultural past. Some tribes feel their physical control of the landscape can be strengthened through the cultural affiliation as-

pects of NAGPRA, and wonder if their failure to file affiliation claims might hinder future land claims, especially if another tribal claimant that is recognized as culturally affiliated to archaeological cultures enters a competing claim. While such fears cannot be discounted, the tribes have certainly not failed to recognize that the lines of evidence used under NAGPRA to demonstrate 'cultural affiliation' (geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical evidence and other information or expert opinion) would form the nucleus for successful land claims.

There are numerous other examples but these are not the only form of politics that is played out in the repatriation arena. The Kennewick Man/Ancient One case is perhaps the most famous example of the political uses to which the conflict over repatriation can be put. Rather than examining the issue in detail, I will focus only on some of the political uses to which the scientific "truth" on the early peopling of the New World could be put.

### **Politics as usual?**

American anthropologists Douglas Owsley and Richard Jantz (Owsley & Jantz 2001; 2002) write about the court case brought to allow scientific study of the 9,200-year-old set of human remains, against the wishes of American Indian groups in the American north-west. They declare that the "... legal challenge is not against Native Americans per se ... It is in the interest of all people that a clear and accurate understanding of the past be available to everyone" (Owsley & Jantz 2002: 141). Such a statement implies first that anyone can discover 'the past', and secondly that everyone has the 'right' to delve into anyone's past: other writers challenge this view, among them Gerstenblith (2002: 175), Pardoe (1992: 140) and Tsosie (1999: 632) to name a few.

But to what use might that past be put? Lowell Ponte, a right-wing political writer, took research by Walter Neves (Neves et al. 1998) that indicated that the skulls of ancient South Americans more closely resemble ancient and modern peoples of Africa and Australo-Melanesia. Ponte then proposed that the earlier people of South America had been wiped out by later migrating Mongoloid groups. Ponte wrote: "... we have solid scientific evidence that among the earliest settlers of the Americas were people of African ancestry, people whose skin presumably was not red or brown but ebony. What a different, braver New World ours might have been! Columbus arrives in 1492 and is greeted by smiling black faces. Instead of human-sacrificing Aztecs and socialist Incas, Europeans might have found the gentle culture of Africa or the dreamtime of Australian aboriginal people" (Ponte 1999a).

And when Dennis Stanford and Bruce Bradley (2002) of the Smithsonian Institution proposed that south-western Europeans migrating along the pack ice of

the North Atlantic might have been the first colonizers of the New World, Ponte offered: "Kennewick Man might prove ... that the true Native Americans were white, victims of murderous genocide by the ancestors of today's Indians who seized their land. The European invasion of the past five centuries, in this potential revisionist history, merely reclaimed land stolen 9,000 years earlier from their murdered kin" (Ponte 1999b).

The political implication, of course, is that if the dominant population was merely reclaiming property originally stolen from its original ancestors, then it would be unnecessary for them to honor any of their treaties.

But perhaps more scary than either of these interpretations is the comment made by White Supremacist, Perry Kiraly: "When the European settlers came over to this continent, what did they encounter? Savage mongrels. Take a cue from Kennewick Man, who was here long before them. His ancient bones cry out to us from the grave – their message: Separate, Preserve and Fight for your existence, White Man, otherwise you will cease to exist. Act on these words and live" (Kiraly 2001).

Colin Pardoe noted that bones may mean many different things to many different people: "political domination, subculture identification, cheap thrills in horror movies, religious iconography. Bones also represent science and history. Past patterns of human social behavior are carved on the skeleton as holes, bony bridges, accessory bones and suture lines and as shape and size" (Pardoe 1994: 182). We must also recognize that the political aspects of those bones can take on a life of their own outside of our control and far beyond our original intentions.

Repatriation is politics, as is science. And when repatriation and science conflict, it is up to us to recognize that we must defuse that political structure wherever we can. We must also work together to move the public discussion toward a middle ground where human remains are not linchpins in political games. We need to recognize that repatriation is about power and control, but we must look beyond the academic/professional debate and look to the political uses to which the material remains of the past are often put.

We all spring from a common genetic heritage, but it is the cultural issues that tend to separate us. Repatriation as a process must involve all communities on as equitable a level as is ethically, morally and legally possible. ○

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# REPATRIATION, CULTURAL REVITALIZATION AND INDIGENOUS HEALING IN ALASKA

Gordon L. Pullar

## Introduction

All of the indigenous cultures of Alaska have experienced the negative impacts of colonization to one degree or another. The Unangan (Aleut) culture of the Aleutian Islands and the Sugpiaq<sup>1</sup> (Alutiiq) culture of south-central Alaska, including Kodiak Island, were impacted the earliest and perhaps the most because they experienced colonization by two outside powers, Russia and the United States. The Russians' brutal conquest of Kodiak Island took place in 1784 when Russian fur traders led by Grigorii Shelikhov massacred several hundred Sugpiat at Refuge Rock near present-day Old Harbor (Black 1992: 170-172). The Russian rule lasted until 1867, when control of Alaska was turned over to the United States. Assimilation and acculturation began soon after the Russian takeover and an erosion of traditional culture began. In time, especially after the U.S. takeover, this loss spread all across Alaska. Over the past two decades or so, however, indigenous peoples of Alaska have set about reclaiming the parts of their cultures that have been taken away. This process involves both repatriation and spiritual healing from the assaults on both the cultures and the physical well-being of indigenous people.

Where human remains and grave goods were stolen, virtually all Alaska Native peoples agree that they should be returned. There is no unanimous agreement, however, that the repatriation of intangible items such as cultural knowledge and art forms has a healing effect and can aid in cultural revitalization. At the 2007 National Congress of American Indians Mid-Year Convention held in Anchorage, Alaska, the topic of repatriation was discussed. Several people shared stories of how human remains and cultural objects had been removed from their areas in years past. Others spoke of efforts to get them returned. Some were most concerned with the legal aspects of these cases and framed them in the context of the violation of cultural and intellectual property rights. One Alaska Native man spoke passionately against the idea that the return of the traditional masks or images of the masks had any positive effect. His argument was that cultural items such as masks are not living if they have not been used properly in the appropri-

ate ceremonies. He claimed they are “dead objects” and can serve no purpose in reviving Native cultures. While there is some truth in what he says, he is also missing much of the point. The masks themselves are not the culture, but they are a visual representation of the culture in the past, a representation that can help instill a sense of pride in people.

A rather bizarre twist of American culture has been the desire to collect the remains of indigenous people, often in the name of science. This practice may have begun out of simple curiosity, however. Soon after the pilgrims landed in 1620 at Plymouth Rock in Massachusetts, they began looting Indian graves (Mihesuah 2000: 2). Even Thomas Jefferson, one of the “founding fathers” of the United States, is known to have looted Indian burials (Mihesuah 2000: 2). By the 19th century, the reasons for collecting human remains had switched to science. Under orders from the US surgeon general, the US Army shipped thousands of American Indians remains, many of which were from massacres by US army troops, from the western plains of the US to Washington, D.C. (Mihesuah 2000: 2). While there seemed to have been no interest in collecting human remains in Alaska by the Russian occupiers during the previous 83 years, the collection of indigenous remains began on Kodiak Island soon after the 1867 transfer of control of Alaska from Russia to the US (Dall 1878: 27).<sup>2</sup>

## **The Kodiak Island repatriation case**

Much of my focus will be on the Sugpiat, the indigenous people of Kodiak Island, because as a Sugpiaq myself, these are the people I am most familiar with. The trauma from the effects of genocide, epidemics and forced assimilation caused much of the traditional culture here to be suppressed. As a result, many aspects of traditional culture were “misplaced”. I say “misplaced” instead of “lost” as this cultural knowledge still lurked in the shadows of Sugpiaq consciousness, seemingly waiting patiently to be discovered again and brought to the forefront.

By the latter part of the 20th century, some believed that Sugpiaq culture was a thing of the past. This proved not to be the case. Concerted efforts to revitalize the culture began in the 1980s and many aspects of traditional Sugpiaq culture have been brought to the fore. These include language programs, a world class museum that promotes the culture, and organized efforts that have produced numerous artists and craftspeople carving traditional masks, making traditional clothing and many other material culture items. Much of the knowledge to implement these programs came from a form of repatriation, the retrieving of knowledge that was, in some cases, half a world away stored in European museums. This focus on Kodiak Island should not diminish the fact that Natives of other parts of Alaska have also experienced trauma and suffered the loss of cul-

ture, including cultural property, that came with conquest and colonization from outside forces and are taking steps to regain what was taken.

The Sugpiat have experienced the repatriation of human remains in a highly publicized case involving the return of the remains of more than 1,000 people excavated from the village of Larsen Bay on the west coast of Kodiak Island in the 1930s. After a contentious struggle with the Smithsonian Institution's National Museum of Natural History, the remains were returned and reburied in 1991. This reburial brought a sense of relief to the Sugpiat after so many difficult years of tensions between themselves and the US government over this issue. The notion that the US government could "own" ancestral remains as it claimed it did was outrageous to Kodiak Island's indigenous people (Pullar 1994: 21).

In 1926, Aleš Hrdlička, the curator of physical anthropology at the Smithsonian Institution's National Museum of Natural History, made his first trip to Alaska and, for the next five years, collected skeletons from indigenous burials in the interior, western and north-western regions of Alaska (Loring & Prokopec 1994:31). While he purported to want only "very old" skeletons, Hrdlička's own published accounts reveal that he was robbing graves from contemporary Alaska Native cemeteries, only being deterred when a body was "too fresh". (Pullar 1994: 22). In 1931, he arrived on Kodiak Island and spent much of the next ten years collecting skeletal remains, which he referred to as "specimens", at the village of Larsen Bay as well as other locations around the island (Pullar 2001: 91). Hrdlička's position as a government scientist, together with his intimidating personality, caused village people to believe they had no choice but to allow him to dig in their cemeteries. Some could not comprehend that he was digging for human remains and assumed he must be digging in graves to retrieve jewelry buried with the deceased (Pullar 2001: 94).

The practice of removing indigenous ancestral remains from their resting places was in place until the 1980s when indigenous peoples across the US protested so loudly that laws were passed forbidding the practice. These federal laws, the National Museum of the American Indian Act (NMAIA 1989) and the Native American Graves Protection and Repatriation Act (NAGPRA 1990), required the Smithsonian Institution along with any other museum that received federal funds, to conduct an inventory of Native American human remains and funerary objects and notify the appropriate tribe of what they had. If the tribe then so desired, it would have the human remains and accompanying funerary objects repatriated.

In the mid-1980s, a concerted effort began among the Sugpiat of Kodiak Island to reclaim much of the culture that seemed to be missing after two hundred years of colonization. It was felt that those with a strong sense of cultural identity would be better able to address the myriad of social problems that were facing Alaska Native communities (Pullar 1992: 182). Thus, as mentioned earlier, a revival of traditional dancing, mask carving, basket making and language use be-

gan. There were severe challenges to implementing such a revival, however. For example, in the mid-1980s, virtually no indigenous person on Kodiak Island had ever laid eyes on a traditional mask such as those used by their ancestors. Very few people were aware that such masks even existed. And, certainly, there were none on Kodiak Island.

When the Larsen Bay Tribal Council and the Kodiak Area Native Association (of which I was president) requested the return of the ancestral remains, the Smithsonian Institution did not respond. After a second request, the Smithsonian claimed it would not return them as they needed to hold them "for the benefit of all people, not just discrete interest groups" (Bray & Killion 1994: 188). Later Smithsonian letters strongly stated the value to science that the remains had as a reason why they could not be returned (Bray & Killion 1994: 188-192). A 1989 letter to me from the Chair of the Department of Anthropology at the National Museum of Natural History, Smithsonian Institution, stated that "the collection is carefully maintained and is only examined for medical and scientific research. It is not subject to any mishandling". (Bray & Killion 1994: 191). I was also assured in personal conversations that no human remains from Kodiak Island were on display. In a visit to the museum, I found this not to be true. A display case with the questionable title of "Back defects among Eskimos have increased through inbreeding" included spinal columns that were labeled, "Kodiak, Alaska".

The Smithsonian eventually relented and the more than 1,000 ancestral remains from Larsen Bay were returned and reburied in 1991. Those taken from other parts of Kodiak Island remain stored in the Smithsonian although efforts are underway by the Alutiiq Museum in Kodiak to have them repatriated as well. The museum was designated by all of the tribal governments on Kodiak Island to represent them in this repatriation effort.<sup>3</sup>

## **A new kind of repatriation**

Much of what is needed in a cultural revitalization movement is information. It is not possible to bring back traditional ways if there is no-one around that knows the traditional ways. It is not possible to produce ceremonial objects and artwork if no one has even seen pictures of objects, let alone seen them in person. Some people may proclaim a culture "dead" because the modern representatives of that culture no longer speak their language, do not wear the clothing of their ancestors, and do not produce artwork or other traditional cultural items. Cultures do not die easily. Even when many visual representations of a culture are missing, the remaining survivors of a group of indigenous people often retain a longing for the ways of their ancestors. For some, this is an identifiable feeling but for others it is a mysterious pain they carry with them with no explanation.

They are yearning for something but they cannot identify what it is. The “something” is often a cultural identity and a connection with ancestors.

One of the ways indigenous peoples can find this identity is through tangible objects that provide a visual representation of a culture. Thus, when they are able to carve traditional masks, make traditional clothing and other traditional objects they develop a stronger sense of who they are and how they fit in the world. In order to learn what these items from their past even look like they must see them, or at least see pictures of them. This is where a new kind of repatriation emerges. This is the repatriation of traditional knowledge, often embedded in scientific field notes, photos, other documents, or in the design of a specific object that is often housed in museums far from the homeland of the indigenous people who originally owned it.

While having a long departed cultural item return to its original home has its own healing effect, it is usually more important just to have the knowledge associated with that item. If the item is a carved traditional mask, for example, in order to make them once again indigenous artists first need to know what they look like and then know more detail about how it was made. What are the dimensions? What kind of wood is it made from? What was it used for? What is the significance of the design? Photos showing masks are usually taken only from the front view. This tells nothing about the depth or other measurements of the mask. In order to answer these questions, the artists need to see the mask in person, measure it, photograph it from many angles, and read any field notes that may be associated with it. Retrieving this type of information from faraway museums is a type of repatriation.

There have been times in the past when some museums have been reluctant to allow indigenous people to have access to their collections for fear they would try to press formal repatriation efforts. First of all, there are no international repatriation laws that could force this type of return. But, more importantly, it is not the return of the articles that is the main concern of indigenous peoples. It is the knowledge surrounding the objects. Most indigenous people are aware that cultural items in museums all across America and Europe were not stolen. They were usually legitimately purchased, either for the museum or for private collections that later ended up in museums. As indigenous people were adjusting to the new culture they also began learning about the cash economy and the “need” for money. Selling cultural items to willing buyers became a way for them to make money with which they could purchase goods, food and other items they had developed a desire to own.

Indigenous peoples all across Alaska have been actively involved in revitalizing and protecting their cultures. There are several Native-owned museums in Alaska. Some are quite sophisticated, with professional curators and climate-controlled storage areas. Others, mainly at the local level in villages, are labors of love. While they may have none of the advanced technical equipment and the

professional expertise that the larger museums have, they represent their cultures with a passion that can only come from tribal people protecting what is dear to them. These museums also provide a retail outlet for arts and crafts that are sought by the increasing number of tourists visiting rural Alaska. With places to sell their work, there is a noticeable increase in the number of artists.

## **An indigenous museum**

The Alutiiq Museum opened in Kodiak in 1995 and has been a leader in Native owned and controlled museums. The director is Dr. Sven Haakanson, Jr., a Harvard-educated Sugpiaq from the Kodiak Island village of Old Harbor. Under his leadership, the museum has made great strides in taking its programs out to the villages on the island. An artist himself, he leads workshops in the villages in several different fields, including woodcarving. He has also worked very hard on the repatriation of cultural knowledge to Kodiak Island.

Alphonse Pinart, a Frenchman, came to Kodiak Island in 1871 and traveled to a number of villages where he purchased various arts and crafts. Among the many items he purchased were over 70 traditional masks. He took these masks to his hometown in France, Boulogne-sur-Mer, where they have resided in the local museum ever since. The collection was largely unknown to the people of Kodiak Island until a French student, Dominique Desson, began researching her doctoral dissertation on the collection in the 1980s. Through rather poor quality photos of the collection, people were able to gain an idea of the wealth of knowledge that was there and excitement mounted. The French museum at that time was not very open to people examining the masks, which were held in storage. It was speculated that there was a fear that the indigenous people of Kodiak Island would attempt a repatriation effort.

Haakanson made a number of visits to the *Musée du Château* in Boulogne-sur-Mer and was able to visit the mask collection. The museum had changed its former tight policies under new leadership and Haakanson was able to develop a trusting relationship with them, convincing them that the mask collection was not in danger. He arranged a trip of Sugpiaq artists to visit the collections and they were provided unlimited access and were able to photograph and measure each mask.

Working with the directors of the French museum and the Anchorage Museum of History and Art, a partnership emerged by which an exhibit of the masks will travel to Kodiak and Anchorage, Alaska in the spring of 2008. This will be the first time these traditional masks have been in Alaska for over 135 years. There is great anticipation among the indigenous people of Kodiak Island, especially the artists, for the opportunity to see at first hand the work of their ancestors.



## Conclusion

Repatriation does not have to be the actual return of custody of cultural items but rather the sharing of knowledge that those items represent. This sharing greatly enhances the pursuit of the misplaced cultural knowledge of the past and helps indigenous people reclaim that knowledge, which is needed to re-invigorate their cultures. Partnerships and collaborations between indigenous peoples' organizations and the museums that store the representations of their cultures are often a key to recapturing important components of cultural heritage and healing from past traumatic events that resulted in cultural loss. ○

## Notes

- 1 Sugpiaq translates as "a genuine human being" (plural Sugpiat).
- 2 Dall also describes the robbing of burial caves in the Aleutian Islands during this same period. (Dall 1878:8)
- 3 In the American legal system, tribal governments, or "federally recognized tribes", are the only indigenous entities that have an official "government-to-government" relationship with the US government. These tribal governments can, however, assign authority by formal written resolution passed by their governing councils to another indigenous organization (such as the Alutiiq Museum) for specific purposes.

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## REVISITING THE PARTHENON — NATIONAL HERITAGE IN A GLOBAL AGE

Nicoletta Divari-Valakou

The restitution of the Parthenon Marbles must be seen as a unique case, given its historical, scientific, ethical and legal aspects

### The case - the monument

The claim for the return of the architectural sculptures and structural elements of the Parthenon on the Acropolis of Athens must now be reconsidered from a new perspective. The return of the Parthenon Sculptures from the British Museum would not create a precedent for other monuments or collections of antiquities around the world. The Parthenon is a unique case, different from all other claims, given its stature as a monument of outstanding universal value, included on UNESCO's list of World Heritage Sites since 1987 and, indeed, on UNESCO's logo. The Parthenon represents the symbol of Athenian democracy, and of the spiritual reserve bequeathed by the Athens of the 5<sup>th</sup> century B.C. to humanity. It has been termed the "golden rule" of ancient Greek architecture, being an unparalleled fusion of engineering, architecture and art. It is, indeed, a superb artistic creation that has had an effect, through the ages, particularly on European art but also on humanity in general. It is moreover symbolic because it shows how the spirit reveals itself through matter. It is a monument that marks an awakening of the individual consciousness within a collective and social framework guaranteed by the principles of democracy (Delivorrias 2004; Tournikiotis 1994).

The Marbles were removed from Greece by Lord Elgin, then Ambassador to the Sublime Porte, by processes of dubious legitimacy in the early 19<sup>th</sup> century, when Greece was still part of the Ottoman Empire. Because the exact circumstances of their acquisition were known, the British position in the past was frequently that it was keeping the Marbles so that they could to be returned to Greece in the future (St. Clair 1967; Cook 1997; Hitchens 1987; Koukou 2002).

The decoration of the Temple (the pedimental sculptures, the metopes of the Dorian frieze and the blocks of the Ionian frieze that depict scenes of the religious life of the Athenians and of mythology) demonstrates many innovations in style

and subject, and it is unique in its wealth, conception and perfection. Of the 97 surviving blocks of the Parthenon frieze, 56 are in London, 40 in Athens and 1 in the Louvre. Some more fragments belonging to the frieze or the metopes are also scattered throughout other museums or collections in Denmark, Switzerland, Germany etc. Of the 64 surviving metopes, 48 are in Athens and 15 in London. Finally, of the 28 surviving figures of the pediments, 19 are in London and 9 in Athens. The Sculptures exhibited in the British Museum constitute approximately 60% of the whole of the surviving sculptural decoration of the Parthenon, while around 40% is in Athens (Boardman & Finn 1985; Hadjiaslani & Mavromatis 2000; Korka 2003; Mantis 1997).

The Parthenon Sculptures are not free-standing works of art. They were conceived and designed as integral parts of the Temple of the goddess Athena on the Acropolis. They acquire their real conceptual meaning only in their natural and historic environment. It is evident that only if the unity of the whole is again acquired, by reuniting all its dismembered parts, can the Parthenon be re-established as a supreme symbol of universal spirit. One could hardly imagine the 'Last Supper' of Michelangelo divided in pieces throughout Europe, with Jesus in Italy, Peter in England and Paul somewhere else.

The request for the return and reunification of the Parthenon Sculptures transcends the idea of country and goes beyond national borders, or any concept of nationalism. It is universal in dimension. It is being promoted on behalf of the international community, particularly since 1982 when the Greek authorities brought the case before UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or Restitution in the Case of Illicit Appropriation. In the last few years, a favorable climate has been created both in Great Britain, and in other foreign countries in favour of the reunification of the Parthenon Sculptures. This can be seen in the increasing number of supporters of reunification throughout the world, as well as in the extremely encouraging results of the relevant polls (Hellenic Ministry of Culture 2000; Howland 2000).

## **The New Acropolis Museum**

A new and important consideration to be taken into account is the New Acropolis Museum, which will very soon open its gates to the public, hosting antiquities only from the Acropolis.

The climax of the Acropolis Museum is the Parthenon Hall. This is the first time that reunification of the surviving parts of the sculptured decoration of the Parthenon has been possible, through visual contact with the actual monument. The sculptures will be exhibited as a unified whole, in their original sequence and correct relationship, as a large and homogeneous collection, which will – we

hope – include the sculptures from the British Museum: that is, the missing, organic elements of the Parthenon which, at present, lack the cohesion, homogeneity and historicity of the monument to which they belong.

For every sculpture that is still in Britain, a special place is being provided in the Parthenon Hall, corresponding to its original place on the monument. Without a doubt, the New Acropolis Museum will be the most appropriate place to exhibit all the Parthenon Marbles and it will receive hundreds of thousands of visitors. The New Acropolis Museum will not only be an exhibition hall; it will provide a place for study and research for scholars and artists from the entire world (Organisation for the Construction of the New Acropolis Museum 2004).

Museums are living organisms, guardians of the cultural bonds linking different people and civilizations. The Greek suggestions respect British sensitivities and aim to promote co-operation between the two countries in the field of museology, as well as strengthen bilateral cultural relationships. The Greek proposals have been formulated in a spirit of respect towards Britain's historical, cultural and legal concerns, with due deference to the importance of the institutional role of the British Museum, while at the same time highlighting the overall framework of cultural dialogue already in place between the two countries and encouraging closer and more fruitful cooperation between the two museums.

The reunification of the Parthenon Sculptures in Athens, the city in which they were created, would thus bring about their reintegration into their own historical, topographical and cultural context, and would contribute to their fuller understanding and interpretation.

## Recent UN Resolution

The case for the restitution of the Parthenon Marbles must be examined in the spirit of the recent Resolution of the United Nations General Assembly for the *Return or Restitution of Cultural Properties to their Country of Origin* (November 30, 2006)<sup>1</sup> and in the framework of the new developments in the world museum community for a new 'Ethical Code' for the acquisition and exhibition of artefacts (ICOM 2006)<sup>2</sup>.

Greece took the initiative to propose this Resolution, in an effort to demonstrate the important need to protect cultural heritage. It is also a reflection of initiatives taking place on an international level through UNESCO treaties, conventions and policies.

The Resolution promotes cooperation between nations within the UN and UNESCO aimed at preserving the cultural heritage of humankind and the timeless humanitarian values it represents. It provides for the return and restitution of cultural treasures illegally removed from their place of origin, and highlights the need for their return.

The adoption by consensus and the co-sponsorship of this Resolution by an important number of member states clearly demonstrates its importance to the international community and the clear intention of all countries to promote bilateral and multilateral cooperation in order to resolve all outstanding issues.

The Resolution itself refers to the recommendations of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. The first recommendation of the Intergovernmental Committee was to invite the Director-General of UNESCO to assist in facilitating further meetings between the United Kingdom and Greece before the next session of the committee in 2007, with a view to resolving the issue of the Parthenon Marbles, and simultaneously taking into account the sensitivities of both sides.

## **Museums acquisition code**

In recent years, a new position has begun to take shape within the worldwide museum community. Increasingly, museums recognize the moral obligation of ensuring that their acquisition policies conform to ethical codes. Through a formal acquisition code, the museums will accept that it is inappropriate to buy illicit or unprovenanced antiquities. Many museums, including the British Museum, the Berlin museums etc., have adopted such a code but there are many others, among them Universal Museums (see Abungu in this volume), that have not.

Within the international scientific community, which includes archaeologists, curators, conservators and others, voices are being raised with regard to protecting cultural heritage globally. A halt to the looting of archaeological sites and the illicit trafficking of antiquities has been demanded. New strict laws are being passed. Finally, international public opinion and public sentiment have been alerted to the issue. These new trends are reflected in the recent agreements signed between Italy and the Metropolitan Museum and the Boston Museum of Fine Arts, by which many archaeological artifacts have been returned to Italy, settling controversial issues and creating important precedents (Renfrew 2000; 2006).

It should be noted that the Greek government, following ratification of the most important European and UNESCO conventions and with the aim of achieving greater efficiency in the fight against the illegal transport of cultural items, recently ratified the UNIDROIT Convention (Act 3348/23.6.2005), the Convention for the Protection and Promotion of Cultural Diversity (Act 3520/22.12.2006) and the Convention for the Protection of Intangible Cultural Heritage (Act 3521/22.12.2006)<sup>3</sup>.

## Restitution of antiquities to Greece

It is fortunate that Greece, through its collaboration with other countries, institutions and museums, has been successful in retrieving a number of antiquities exiled abroad. Two important ancient works were returned from the J. Paul Getty Museum in Los Angeles<sup>4</sup>: an engraved funerary Beotian stele of the Classical Period and part of an Archaic relief stele from Thasos, following years of negotiations between the Greek state and the Getty Museum. Two more precious works, a golden funerary wreath from Macedonia and a statue of an Ionic 'Kore' will soon be returned to Greece from the same museum. It has been successfully proven that all these pieces were illegally exported by looters. Moreover, some years earlier, in 1996, the Greek authorities achieved the repatriation of a treasure of Mycenaean jewellery and seals that had been put up for auction at the Michael Ward Art Gallery in New York (1993). It was subsequently shown by Greek archaeologists to have come from illegal excavations of a rich chamber tomb cemetery at Aidonia in the Peloponnese (Demakopoulou 1996).

We can finally report on two more restitutions of extremely symbolic value: on September 4<sup>th</sup> 2006, in a gesture of great magnitude, the Heidelberg University conducted the first historic return to Greece of the scattered Parthenon fragments that had, until then, been held in the University Collection. The fragment in question belongs to and joins the lower part of figure 28 of Block VIII of the North Frieze of the Parthenon. The University of Heidelberg arrived at this decision in recognition of the importance of the Parthenon as a unique monument, part of the cultural heritage of all humanity. This act has paved the way for the restoration of the integrity of a monument that constitutes an internationally recognized symbol.

The aforementioned return was followed by the restitution on November 10<sup>th</sup> 2006 of a relief fragment of an anta capital, belonging to the Erechtheion, another outstanding monument of the Athenian Acropolis. The fragment had been a private donation to the Museum of Mediterranean and Near Eastern Antiquities in Sweden, which decided to return it to its country and monument of origin.

We believe that all these cases have strengthened mutual understanding, cooperation and support between the European and worldwide cultural establishments that are entrusted with the safekeeping, preservation and promotion of the cultural heritage of each country within the framework of current globalism. ○

## Notes

- 1 United Nations General Assembly, 61st session, Agenda item 43, *Resolution on the Return or Restitution of Cultural Property to the Countries of Origin*, A/61/L.15/Rev.1, November 30, 2006.
- 2 Cf. the *ICOM Code of Ethics for Museums*, ICOM 2006, with an introduction by G. Lewis, see esp. chapter 2, §2.1-2.11.

- 3 Apart from these aforementioned Acts of the Greek legislation, see furthermore: Hellenic Ministry of Culture, Directorate of Prehistoric and Classical Antiquities (ed.), *Cultural Property: Return and Illicit Trade. Proceedings of the Meeting held at the Archaeological Museum, Thessaloniki, March 27, 2000*, Athens 2000.
- 4 See the *Common Declaration between the Hellenic Ministry of Culture and the J.P. Getty Museum*, signed by the Minister G. Voulgarakis and the Director of the Museum Dr. Brand, December 11, 2006 (Hellenic Ministry of Culture Press Release).

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# “REPATRIATION”, “RESTITUTION” AND “RETURN” OF “CULTURAL PROPERTY”: INTERNATIONAL LAW AND PRACTICE

Guido Carducci <sup>1</sup>

The term “repatriation” deserves some clarification in order to understand its relationship to “return” or “restitution” of “cultural property”. Such clarifications, of a legal nature, will follow a brief presentation on the illicit trafficking of cultural property.

## Illicit trafficking and “restitution” or “return” of cultural property

### Some basic facts

Before dealing with the main international legal instruments available to combat the illicit trafficking of cultural property, one fundamental assumption is essential: to a varying extent, illicit trafficking concerns every country.

For instance, in the year 2000, Interpol recorded more than 27,000 art thefts in Italy, 3,000 in Russia and 1,000 in Greece, amongst others. Obviously, as with the theft of any property and not only “cultural” property, more thefts actually occur than are reported nationally, and even more than are reported internationally.

Taken in its present dimensions, the illicit trafficking of cultural property is a vast worldwide phenomenon. It creates great practical and legal problems. On an international level, UNESCO collaborates with valued partners such as INTERPOL, the International Council of Museums (ICOM) and the World Customs Organization (WCO) and, in particular, from a normative standpoint, with the International Institute for the Unification of Private Law (UNIDROIT).

The main features of present-day illicit trafficking of cultural property can be summarized by focusing on the main questions it raises:

*Why is trafficking of cultural property so common worldwide?*

Mainly because, over the last 20-30 years, artefacts and (movable) cultural property have become:

- of increasing commercial value on the art market;
- readily saleable objects;
- potential targets for investment and financial speculation.

*Why is such trafficking so often "international"?*

- Firstly, for a major logistical reason: the cultural property at stake is movable and, as such, can be easily relocated or hidden, and quickly transferred from person to person;
- Secondly, for a financial reason: objects can be sold in countries where the market may offer a higher price than in the country of origin;
- Last but not least, legal reasons too play an important role.
  - With regard to criminal legal aspects, the risk of indictment for theft under the criminal law of the State of origin is drastically reduced by exporting the object, since the main evidence - and object - of the theft is no longer on the territory. This hinders the work of investigators and the applicability of criminal law (in the State of origin).<sup>2</sup>
  - With regard to civil law aspects, by exporting the item, the seller of stolen or looted cultural property, although he/she is not the owner<sup>3</sup> may, if well informed, use private international law technicalities and loopholes to succeed in having the buyer acquire title to the object.

This happens if the object is sold in a country whose legislation grants ownership to a good faith possessor. This rule applies to acquisition by original means (i.e. not derivative acquisition), based on possession, immediate or prolonged, according to the applicable law.<sup>4</sup> Among several examples, the *Winkworth v. Christie* case (UK, Chancery Division, 5 Nov. 1979<sup>5</sup>) is clear in this regard. Some Japanese cultural objects had been stolen in England, then exported and sold in Italy, and later brought back to England by the buyer to offer them for sale at Christie's in London. The British judge applied Italian law, as *lex situs*, and declared that the purchaser had become the owner in good faith, even if the sale was *a non domino* (the seller was not the owner).

As this example demonstrates, private international law does not, as a general rule, ensure restitution of stolen cultural property, and relies on the content of the applicable law.<sup>6</sup> Restitution is usually even less likely in respect of cultural property that is not stolen but illicitly exported, as violation of foreign public law is

generally disregarded by the judge under general rules of private international law.

From the standpoint of an “ordinary” movable object, the low success rate of restitution claims is somehow to be expected in view of the fact that private law generally facilitates the transfer of such objects and, thereby, the circulation of wealth. If the property is stolen, acquisition of its ownership by a third person in good faith is admitted in principle, under some conditions, in Civil Law countries, unlike some Anglo-Saxon jurisdictions.<sup>7</sup>

However, such uncertainties are far less acceptable with regard to cultural property, which is closely linked to the history and culture of the State of origin.

To avoid, or at least reduce, these uncertainties with regard to the restitution of cultural property of illicit provenance through general private international law rules, the international community - within UNESCO first, and then within UNIDROIT - produced two important international conventions. To the extent that they establish uniform law rules, these Conventions operate (within their scope of application and unless differently provided for) irrespective of the general private international law rules of the States Parties.

### **The contribution of the 1970 UNESCO Convention**

The *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, adopted by the UNESCO General Conference in November 1970, was quite revolutionary in several ways at the time of its adoption. It has recently reached a watershed in that new important market countries such as the United Kingdom and Japan are now among its 115 States Parties. The Convention operates through international cooperation. In its main features:

- It introduces a system of export certificates for each exported item; the export of cultural objects not accompanied by such an export certificate is prohibited (Art. 6).
- Under Article 7, the State Party undertakes to
  - a. take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned.
  - b. to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another

State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

- c. at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.
- It allows any State Party whose cultural heritage is endangered by pillage of archaeological or ethnological objects to call upon other States Parties to adopt concrete measures, including control of exports and imports (Art.9).

### Cooperation between UNESCO and UNIDROIT

As UNESCO has no specific mandate in private law, the 1970 Convention focuses more on international cooperation and public law issues. In order to improve the functioning of the 1970 Convention in private law matters, and bearing in mind that these latter are extremely common for movable objects rapidly transferred from hand to hand, UNESCO started a fruitful cooperation with the International Institute for the Unification of Private Law (UNIDROIT) in Rome. This cooperation resulted in the *UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects*, adopted in 1995.

This Convention benefited from the 25 years' existence and experience of the 1970 UNESCO Convention and from UNIDROIT's well-rooted private law tradition.

Although an in-depth analysis of the UNIDROIT Convention is impossible within this brief presentation,<sup>8</sup> its main features may be briefly presented as follows:

- a. Concerning any stolen cultural property,<sup>9</sup> the Convention rules out the possibility that title potentially granted by domestic (applicable) law to the buyer may hinder the restitution of the cultural object (Art.3).

- b. Once the restitution of stolen cultural property is granted under the Convention, the possessor is entitled to fair and reasonable compensation; in order to moralize the art trade, however, this is only applicable if the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that due diligence was exercised when acquiring the object;
- c. Quite unlike general private international law solutions, the Convention also grants the return of cultural objects illegally exported from a State Party albeit with interesting conditions.<sup>10</sup> This rather innovative set of provisions is particularly important for the numerous States suffering a high number of illicit exports of cultural property, on the part of the owner him/herself or a third party, mostly with a view to offering the object for a higher sale price abroad (Art.5);
- d. The claim is processed through national courts, instead of diplomatic offices.<sup>11</sup> Claims are therefore generally easier and more accessible to individual plaintiffs in particular.<sup>12</sup> On the other hand, direct claims filed abroad are often faced with considerable litigation costs, unlike diplomatic negotiations between states;
- e. Unlike the degree of unpredictability found in ordinary international litigation, the Convention establishes special statutes of limitations rules for claiming the return of stolen or illegally exported cultural property;
- f. The Convention provides specific provisions for illicitly excavated cultural objects. In some cases, they benefit from the regime of stolen cultural property<sup>13</sup> (Art.3).

While the UNESCO 1970 and especially the UNIDROIT 1995 conventions focus mostly on restitution or return of stolen or illicitly exported cultural property, it cannot be overemphasized that states should also focus on *preventing* the illicit trafficking of cultural property, primarily through accurately drafted legislation, the dissemination of Object ID standards for inventories and public awareness campaigns.

### **Legal specificity of “cultural” property and its “legal protection”**

One basic question needs to be asked: are works of art and cultural property “specific” vis-à-vis “ordinary” objects, and as such distinct from them? The answer is quite clear in general terms, as are the protection and conservation needs, and the cultural and scientific values of such objects.

However, the distinct “cultural” and “legal” specificity of such objects must not be confused and, on the contrary, should be maintained. Actually, even if the cultural specificity is certain vis-à-vis a given object (or category of objects) the

legal specificity only follows insofar as the national authorities (government, law makers, judiciary through case law) deem it appropriate and, consequently, enact specific provisions which result in a legal regime for these objects that is (in part or in full) *different* from the regime applicable to "ordinary" objects.

The national authorities of each legal domestic system decide whether, to what extent and under which forms and contents, legal specificity is to be added to the cultural specificity of a given object (or category of objects). Although the term objects (or movable property) is used here, the same reasoning generally applies generally to immovable (cultural) property.

Because legal characterizations are so important, it is crucial to identify what the applicable law is, and thus that which is entitled to potentially legally "characterize" and "protect" the movable cultural property at stake. Such identification is usually simple but it has become more complex as various legal regimes, national and/or international, may interact on the same category of objects.

This risk of coexistence of various regimes increases in exceptional situations, with regard to which the international community may enact *ad hoc* international measures. A good example is that which occurred after the looting of the Baghdad Museum.<sup>14</sup>

### **The importance also of legal characterizations of "return", "restitution" and "repatriation"**

Legal characterizations are crucial for tangible manifestations of culture (objects, sites etc.) but are important also with regard to intangible forms of heritage, such as for instance rituals.<sup>15</sup>

Legal characterizations are important with regard to definitions and, obviously, the legal regimes they imply. For the purposes of the Conference in Nuuk, many questions arise, such as for instance: what is meant by "repatriation"? Is it any different from "return" or "restitution"? And to what does "repatriation" apply: to "cultural property"? To "human remains"? To both? etc.

Such potential questions are numerous and key to ensuring a proper mutual understanding around these sensitive matters. Each question is likely to have more than one answer, depending on the background and/or origin and/or perspective of each person and/or stakeholder from the community concerned. This is normal, although this "normality" may at times reduce clarity in the debate and accuracy in words.

Repatriation attempts undertaken with mutual understanding and respect among the various stakeholders may, and usually do, lead to success and agreements.

However, as soon as these "matters" ("repatriation", "return", "restitution" etc.) and "materials" ("cultural property", "human remains" etc.) become "le-

gal”, for various possible reasons (ranging from disagreement to dispute in a formal sense, enactment and/or implementation of legislation on these matters, administrative enquires etc.) then the *legal* definition and the regime it implies is what is relevant, and not the variety of definitions that different speakers may offer on these issues.

“Restitution” is a quite clear legal term in many domestic legal systems and in international law. In the framework of reparation in international law, it is generally stated that restitution in kind, i.e. specific restitution, is generally the exception while pecuniary compensation is most often the rule.<sup>16</sup>

Applied to cultural property (or heritage), restitution generally refers to cultural material that has been removed illegally from its country of origin. This illegality refers to the legislation in force in the country of origin at the time that the material was removed.<sup>17</sup> Such illegality obviously requires the existence of legislation applicable to cultural property, with regard *inter alia* to its (unauthorized) removal and a breach thereof. Few countries had such legislation in the past but, more recently, many more countries have enacted it, while some still have to make a decision. This requires a policy decision regarding the extent to which “cultural” property should be protected and thus differentiated from the legal system relevant to “ordinary” property.

“Return” generally refers to cultural property that is to be returned to the country of origin, without a specific judgment as to whether removal from that country was illegal or not at the time it occurred. It is thus a broader term than restitution. Reference to it allows common language between parties that do not share the same view with regard to the (il)legality of the removal. It also covers all those cases where legislation on the (unauthorized) removal of cultural property was not yet in force.

“Repatriation” is a less frequent term. It may be defined by legislation in some countries worldwide. However, “repatriation” is not (currently) internationally codified as a distinct and autonomous term in a multilateral treaty (convention), which would define it and provide its legal regime in detail.

What has just been summarized on terms such as “restitution”, “return” and “repatriation” of cultural property reflects their general meaning and understanding at an international level, without implying that any of these meanings is necessarily a part of international law as clearly stated in a treaty (thus relevant only within its scope) or in customary law.

This is why, in cases that are not presented as governed only by international law, a wise precaution is to refer, case by case, to the relevant applicable (domestic) law with regard to both the requirements to be met for “restitution”, “return” or “repatriation” to occur, and the actual meaning of these terms for the property concerned.

## "Repatriation" and Conventions on "Restitution" or "Return"

While internal repatriation cases may benefit *inter alia* from national legislation, international repatriation cases may benefit, at least to some extent, from international conventions that are designed basically for the "return" or "restitution" of "cultural property".

For instance, cultural property under the 1970 Convention is defined by the Convention itself. This is for the sake of clarity and uniform interpretation and application of the text among the States Parties to it.<sup>18</sup>

Between two States that are party to the 1970 Convention, for instance Denmark and Sweden, would a request for "repatriation" of "cultural material" be subject to the Convention?

- In practical terms, the first question to ask is whether the material at stake falls within the definition of cultural property provided by the Convention.
- If so, then a second question arises: whether the Parties' understanding of "repatriation" meets with the "remedy" that the Convention allows for, i.e. what the requesting State can request of the other. This basically includes the return of inventoried stolen cultural property through diplomatic channels,<sup>19</sup> or other legal actions if admitted by the law of the requested State.<sup>20</sup> If, on the contrary, the Parties have a different understanding of "repatriation", then other means need to be explored.
- Last but not least, a third question has to be asked, namely, whether the repatriation case at stake presents, as "parties", entities which are communities acting as such, or rather a state/government entity. The latter is usually the ordinary requirement under most international conventions, including the 1970 Convention.<sup>21</sup> Obviously, if the relevant law so allows, a state/government entity may, if it wishes, act also in the interests of a community.

As a final legal *caveat*, it seems useful to stress that generalizations are used and, regrettably, often abused. If not all then most "restitution", "return" or "repatriation" cases are different, and are specific:

- in fact (stakeholders and materials concerned, timeframe, etc.); and culturally (communities and significance of the material concerned etc.); and
- in law (what rules are relevant and should apply, the customary or State-enacted nature of the rules, their interpretation etc.).



Bearing in mind this caveat and avoiding generalizations may contribute to preventing misunderstandings and ensuring that the sensitive issues at stake are considered and dealt with in a way and with the accuracy and sensitiveness that they deserve.

## Intergovernmental negotiations within the UNESCO committee

An *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* has been established within UNESCO. As its Statute clarifies, this Committee is not to be confused with a “Tribunal”, which settles disputes through a binding judgment. The Committee operates as a framework for, and facilitator of, intergovernmental negotiations on restitution requests concerning cultural property.<sup>22</sup>

The cultural property at stake is defined as property having a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.<sup>23</sup> ○

## Notes

- 1 Prof. Dr. G. Carducci, Former Chief, International Standards Section, UNESCO Paris. This brief presentation is a personal view and not necessarily that of the Organization. (For any comment: gcarducci@noos.fr)
- 2 Unlike applicability, it is a more frequent legal technique for a foreign judge (usually in the country of import) to take into account the country of origin’s criminal law.
- 3 In case of cultural property stolen or looted.
- 4 Differently from acquisition by transfer (from the owner through contract, donation, will).
- 5 All ER 1980 1, p.1121
- 6 Leaving outside this brief note any exceptional operation of forum’s public policy or overriding rules.
- 7 Attention should be drawn to the protection granted to good faith purchasers who buy “ordinary” movable objects from a non-owner in the Civil Law tradition. In private comparative law, see for example, art.2279 of the French *Code civil*, art.1153 of the Italian *Codice civile*. For an in-depth analysis of these and other similar provisions as they are applied to cultural property, in domestic and international cases, see Carducci 1997:397-441, Prott & O’Keefe 1989: 396, Siehr 1981:273.
- 8 For such an analysis, see Prott 1997, Carducci 1997. UNIDROIT has recently published a substantial Explanatory Report of the Convention in *Uniform Law Review – Revue de droit uniforme*, 2001, 477-565.
- 9 As long as the stolen object fits the definition of cultural property provided by Art.2.
- 10 See Art.5.3. (3) “The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests: (a) the physical Preservation of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional

or ritual use of the object by a tribal or indigenous community, or establishers that the object is of significant cultural importance for the requesting State".

11 As within the framework of Art.7, b, ii) of the 1970 UNESCO Convention.

12 Owners of stolen cultural property.

13 Art.3, 2.

14 See Carducci 2005.

15 Generally, see the 2003 UNESCO *Convention on the Safeguarding of Intangible Heritage*. Also Carducci 2006.

16 See also Brownlie 2003: 445.

17 See also Prott & O'Keefe 1989: 832.

18 Article 1

For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- f) objects of ethnological interest;
- g) property of artistic interest, such as:
  - pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - original works of statuary art and sculpture in any material;
  - original engravings, prints and lithographs;
  - original artistic assemblages and montages in any material;
- h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- i) postage, revenue and similar stamps, singly or in collections;
- j) archives, including sound, photographic and cinematographic archives;
- k) articles of furniture more than one hundred years old and old musical instruments.

19 See Article 7, b) ii. The whole Article 7 reads:

The States Parties to this Convention undertake:

- a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
- b)
  - to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
  - at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests

for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

20 Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

- a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
- b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;
- d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

21 See articles 7 and 13, with a potential opening under art.13 c).

22 Under Article 4 of the Statutes, "the Committee shall be responsible for:

1. seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin when they are undertaken according to the conditions defined in Article 9. In this connection, the Committee may also submit proposals with a view to mediation or conciliation to the Member States concerned, it being understood that mediation implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution, while under conciliation, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement, provided that any additional, necessary funding shall come from extrabudgetary resources. For the exercise of the mediation and conciliation functions, the Committee may establish appropriate rules of procedure. The outcome of the mediation and conciliation process is not binding on the Member States concerned, so that if it does not lead to the settlement of a problem, it shall remain before the Committee, like any other unresolved question which has been submitted to it;
2. promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin;
3. encouraging the necessary research and studies for the establishment of coherent programmes for the constitution of representative collections in countries whose cultural heritage has been dispersed;
4. fostering a public information campaign on the real nature, scale and scope of the problem of the restitution or return of cultural property to its countries of origin;
5. guiding the planning and implementation of UNESCO's programme of activities with regard to the restitution or return of cultural property to its countries of origin;
6. encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;
7. promoting exchanges of cultural property in accordance with the Recommendation on the International Exchange of Cultural Property;
8. reporting on its activities to the General Conference of UNESCO at each of its ordinary sessions".

23 See Art.3, Par.2, of the Statutes.

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# CONSIDERING REPATRIATION LEGISLATION AS AN OPTION

The National Museum of The American Indian Act (NMAIA) &  
The Native American Graves Protection & Repatriation Act (NAGPRA)

C. Timothy McKeown

## Introduction

The United States was the first nation to establish comprehensive national legislation requiring museums and Federal agencies to repatriate cultural items to indigenous communities. Certain aspects of these legislative efforts are reflective of the unique American historical and legal experience, such as Constitutional boundaries between Federal, state, and tribal jurisdiction. Other aspects of these legislative efforts – such as the system of subject parties, procedures, purview, parties with standing, relationships and exceptions – are more generally applicable and may prove useful to nations considering domestic processes for the repatriation of cultural property to indigenous communities.

## Legislative history

Efforts to enact Federal repatriation legislation in the United States began in 1986 with the discovery by Cheyenne religious leader William Tallbull that the Smithsonian Institution's National Museum of Natural History held the remains of 18,500 Native American individuals (Spotted Elk 1989). The Cheyenne approached Senator John Melcher, who introduced the Native American Cultural Preservation Act to resolve the controversy over the disposition of human skeletal remains and artifacts of a sacred nature (U.S. Senate 1986). Melcher's bill, while not enacted, was the first of 26 bills considered by the U.S. Senate or House of Representatives between 1986-1990 that contained repatriation or grave protection provisions (McKeown & Hutt 2003: 155).

Senator Daniel Inouye began exploring the possibility of establishing a national memorial in Washington DC where the Smithsonian human remains could be interred. Inouye was approached by the board of the Museum of the American Indian, a private museum in New York City, who suggested that the Smithsonian



*Northern Cheyenne tribal member and cultural leader William Tallbull accepting tape duplicates of Cheyenne wax cylinder recordings and other materials from Senator John Melcher of Montana on behalf of the Federal Cylinder Project and the American Folklife Center during a ceremony at the Library of Congress on September 29, 1986. Photo by: Reid Baker. Source: Folklife Center News, Summer-Fall 1996, 18 (3&4)*

Institution should acquire the financially troubled museum's collections and establish a new museum in Washington (U.S. Senate 1989: 2). In 1987, Inouye introduced a bill to establish the National Museum of the American Indian, as well as to require the Smithsonian to determine the geographical and tribal origin of all skeletal remains of Indians and Alaska Natives in its control and inter those remains that could not be associated with a specific Indian tribe or group of Alaska Natives or that were not acquired from a specific archaeological or burial site in a national memorial (U.S. Senate 1987). The idea of interring human remains on the capitol mall was opposed by many Indian people (U.S. Senate 1988b: 71), while the Smithsonian Institution considered the repatriation provisions of the bill to be inconsistent with both the Smithsonian's historic mandate for the increase and diffusion of knowledge and with the precepts of modern scientific inquiry (Adams 1988: 87-88). The inventory and interment provisions were deleted from a second version of Inouye's bill, with the disposition of unidentifiable human remains being left for consideration by Congress at a later date (U.S. Senate 1988c).

Congressional hearings regarding repatriation served as a catalyst to stimulating discussions between the museum, archaeological and tribal communities. In December 1988, a group of museum and tribal representatives, along with Congressional staff, met in Phoenix, Arizona to initiate a dialogue between museums and Indian tribes on the identification, use, care and ownership of Native American materials in museum collections.

Tribal representatives remained adamant that repatriation provisions must be included in any legislation authorizing the establishment of the new Indian museum. Faced with the prospect of having tribes oppose the bill, the Smithsonian finally agreed to include the repatriation provisions (Barringer 1989, Swisher 1989: A1). When the National Museum of the American Indian Act (NMAIA) became law in November 1989, repatriation provisions were included (U.S. Public Law 1989). While the Act was primarily devoted to establishing a new museum dedicated to the history and art of cultures indigenous to the Americas, it also directed the Secretary of the Smithsonian Institution to inventory and identify the origin of human remains and associated funerary objects in the Smithsonian's possession or control and expeditiously return them upon the request of lineal descendants or culturally affiliated Indian tribes and Native Hawaiian organizations. Senator John McCain made it clear that he intended to enact similar legislation to expand repatriation requirements to all Federal agencies and museums (McCain 1989: S.12397).

In January 1990, the panel of museum and tribal representatives that had been meeting in Phoenix issued its final report (Panel for a National Dialogue on Museum/Native American Relations 1990). The majority of panelists found that the wishes of culturally affiliated Native American groups should be followed regarding the disposition of human remains or other materials. For human remains for which a culturally affiliated Native American group could not be identified, the majority of panelists believed that a process should be developed for their disposition with the permission of Native Nations. A minority of panelists felt that scientific and educational values might predominate where cultural affiliation with a present-day Native American group did not exist. The majority of the panel thought that Federal legislation was needed to implement the panel's recommendations.

Encouraged by the panel's final report, the U.S. Congress continued work on several bills to extend repatriation provisions to all Federal agencies and institutions that receive Federal funds. In July 1990, Representative Morris Udall introduced the Native American Graves Protection and Repatriation Act (NAGPRA) (U.S. House of Representatives 1989). Udall's legislative effort was passed without any opposition in both the House of Representatives and the Senate. Following receipt of letters of support from the National Congress of American Indians, the Society for American Archaeology, the American Association of Museums and all other major tribal, archeology, museum and religious organizations, Pres-

ident George H.W. Bush signed NAGPRA into law on November 16, 1990 (U.S. Public Law 1990).

The final legislation reconciled four major areas of Federal law. As civil rights legislation, Congress acknowledged that, over the nation's history, Native American human remains and funerary objects had suffered from disparate treatment as compared with the human remains and funerary objects of other groups (Bennett 1990: 47; U.S. House of Representatives 1990: 13). Congress also recognized that the loss of sacred objects by Indian tribes and Native Hawaiian organizations to unscrupulous collectors had negatively impacted on Native American religious practices (Inouye 1990: S17174). As Indian law, Congress founded its efforts on an explicit Constitutional recognition of tribal sovereignty and the government-to-government relationship between the United States and Indian tribes (U.S. Code 2007: 25 U.S.C. 3010). As property law, the Congress wanted to clarify the unique status of the dead as well as highlight the failure of American law to adequately recognize traditional concepts of communal property in use by some Indian tribes (U.S. Code 2007: 25 U.S.C. 3001 (13)). Lastly, as administrative law, Congress would direct the Department of the Interior to implement Congress' mandate, including promulgating regulations to ensure due process, awarding grants and assessing civil penalties (U.S. Code 2007: 25 U.S.C. 3001 (14); 3002 (b) and (d)(3); 3003 (d)(3); 3006 (a), (b), (f), (g), and (i); 3007; 3008 (a) and (b)).

In drafting the NMAIA and NAGPRA, the U.S. Congress gave careful consideration to six fundamental questions relevant to domestic processes for the repatriation of cultural property: (1) who must comply with the statutory requirements? (2) what procedures are required to ensure fair consideration of repatriation claims? (3) what kind of objects are covered? (4) who has standing to make a repatriation claim? (5) what kind of relationships are required to claim a cultural item? and (6) do any exceptions to repatriation apply?

## **Who must comply?**

The NMAIA established repatriation requirements for the Smithsonian Institution, a trust instrumentality established by the U.S. Congress. The Smithsonian Institution consists of 19 separate museums, although the repatriation provisions of the NMAIA primarily impact on three, the National Museum of the American Indian, the National Museum of Natural History and the National Museum of American History.

NAGPRA established similar repatriation requirements for all other Federal agencies, defined as any department, agency or instrumentality of the United States. This definition includes all components of the executive, legislative and judicial branches of the United States government that either manage land or hold collections of Native American cultural items. By 2007, 289 separate Federal



agency components, including individual parks, forests and other management areas had complied with NAGPRA's repatriation provisions (National Park Service 2007a: 3).

NAGPRA also extended repatriation requirements to all "museums", defined as any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, Native American cultural items and receives Federal funds. By 2007, 774 museums had complied with NAGPRA's repatriation provisions (National Park Service 2007a: 3).

Parties that are not covered by either the NMAIA or NAGPRA repatriation provisions include private citizens and institutions that have not received Federal funds. Several states have enacted separate repatriation legislation that applies to institutions that receive state funds.

## **What activities are required?**

The NMAIA and NAGPRA bring together the Smithsonian Institution, other Federal agencies and museums that receive Federal funds with lineal descendants, Indian tribes and Native Hawaiian organizations to resolve the complex issues surrounding custody of Native American cultural items.

The two statutes outline two sets of activities to ensure the proper disposition or repatriation of these objects. The first set of activities occurs in NAGPRA, and provides a mechanism for Federal land managers to consult with Indian tribes and Native Hawaiian organizations and come to a determination regarding the appropriate disposition of Native American cultural items that are or might be discovered, removed or excavated on Federal or tribal lands. The second set of activities occurs in both the NMAIA and NAGPRA, and provides a mechanism for Smithsonian or other Federal agency or museum officials to consult with and, upon request, repatriate Native American cultural items in their collections to lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations.

Provisions that apply to discovery, removal or excavation apply only to Federal lands and tribal lands, and not to private, municipality or state lands. Inadvertent discovery refers to the unanticipated detection of cultural items found under or on the surface of Federal or tribal lands. Any person who discovers cultural items on Federal or tribal lands must immediately stop any ongoing activity and provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal land manager. The Federal land manager then notifies the appropriate Indian tribes or Native Hawaiian organizations and begins consultation about the disposition of cultural items. The activity that resulted in the inadvertent discovery may resume thirty days after certification by the Federal land manager of receipt of the written confirmation of

notification, or sooner if a written, binding agreement is executed between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations. Discovered cultural items may only be removed or excavated after consultation with the appropriate Indian tribes and Native Hawaiian organizations, or, in the case of tribal lands, with the consent of the appropriate Indian tribe or Native Hawaiian organization. The excavation or removal of cultural items must generally comply with the requirements of the Archaeological Resources Protection Act (ARPA). By 2007, only 66 discoveries and excavations of Native American cultural items had occurred on Federal lands (National Park Service 2007b), indicating that NAGPRA has been somewhat successful in fulfilling its grave protection mandate. By contrast, this part of NAGPRA has proved the most prone to litigation, due in part to the brevity of the statutory provisions as well as the lack of any institutionalized form of alternative dispute resolution. In one of the most widely known cases, the 9<sup>th</sup> Circuit Court of Appeals ruled that 9000-year-old human remains found on Federal lands in Washington State were not "Native American" within the meaning of NAGPRA, and thus were not subject to disposition under the Act (U.S. Court of Appeals 2004). Several supporters of the original legislation, including Senators Campbell, McCain and Inouye, introduced an amendment to clarify the NAGPRA's original intent.

The NMAIA and NAGPRA require the Smithsonian Institution, other Federal agencies and museums to inform Indian tribes and Native Hawaiian organizations of cultural items in their collections. Distribution of this information is achieved through two types of documents: (1) summaries and (2) inventories. Summaries are written descriptions of collections that may contain unassociated funerary objects, sacred objects or objects of cultural patrimony. Summaries must have been completed by November 16, 1993, and amount to a simple notification to each Indian tribe and Native Hawaiian organization of the nature of the collections held by the Federal agency or museum. The summary is intended as an initial step to bring Indian tribes and Native Hawaiian organizations into consultation with a Federal agency or museum. By 2007, summary information had been distributed by 1,065 Federal agencies and museums. Inventories are item-by-item descriptions of human remains and associated funerary objects. Unlike the summaries, inventories must have been completed in consultation with Indian tribes and Native Hawaiian organizations and represent a decision by the museum or Federal agency official as to the cultural affiliation of particular human remains or associated funerary objects. Inventories must have been completed by November 16, 1995, and provided to the culturally affiliated Indian tribes and Native Hawaiian organizations, as well as to the National Park Service, by May 16, 1996. By 2007, inventories had been completed from 974 Federal agencies and museums. The collection provisions of both the NMAIA and NAGPRA include institutionalized forms of alternative dispute resolution, which may be responsi-

ble for the relatively infrequent use of litigation to resolve conflicts between Indian tribes, museums and Federal agencies.

One of the key requirements of both the NMAIA and NAGPRA is that the Smithsonian Institution, other Federal agencies and museums must consult with lineal descendants, Indian tribes and Native Hawaiian organizations prior to making decisions regarding the disposition or repatriation of Native American cultural items. Consultation is defined as a process involving open discussion and joint deliberations with respect to potential issues, changes or actions by all interested parties. Midway between the traditional standards of notification and obtaining consent, consultation requires an ongoing dialogue. Consultation regarding activities that affect tribal trust resources or property must be carried out on a government-to-government basis. Many Federal agencies have developed specific protocols regarding consultation activities, including those related to the disposition or repatriation of Native American cultural items.

The standard of proof at each of the various decision points - such as whether a particular item fits one of the statutory categories or whether a particular Indian tribe is culturally affiliated with a cultural item - is that of "reasonable belief", or sufficient evidence which, if standing alone before the introduction of evidence to the contrary, would support a particular finding. In the case of conflicting claims, the standard of proof is the "preponderance of the evidence", or an assessment that more than 50% of the evidence supports a particular proposition. Findings of cultural affiliation must be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of gaps in the record. Claimants do not have to establish cultural affiliation with "scientific certainty" (U.S. Senate 1990).

### **Who has standing to make a request?**

Both the NMAIA and NAGPRA provide certain individuals and organizations the opportunity to request Native American cultural items.

Lineal descendant is not defined in either statute. Regulations implementing NAGPRA defined lineal descendant as an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the American common law system of descentance to a known Native American individual whose remains, funerary objects or sacred objects are being requested. Reference to traditional kinship systems in the definition is designed to accommodate the different systems that individual Indian tribes and Native Hawaiian organizations use to reckon kinship.

Indian tribe is defined to mean any tribe, band, nation or other organized Indian group or community of Indians, including any Alaska Native village as defined in or established by the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Native Hawaiian organization is defined as any organization that: (1) serves and represents the interests of Native Hawaiians; (2) has as a primary and stated purpose of the provision of services to Native Hawaiians; and (3) has expertise in Native Hawaiian affairs. The statute specifically identifies the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei as being Native Hawaiian organizations.

Non-Federally recognized Indian groups do not have standing to make a direct disposition or repatriation request under the NMAIA or NAGPRA. That is because these groups, though they may comprise individuals of Native American descent, are not recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

### **What object are covered?**

The NMAIA and NAGPRA apply to four types of Native American "cultural items": (1) human remains; (2) funerary objects; (3) sacred objects; and (4) objects of cultural patrimony. A particular item may fit more than one category.

Human remains mean the physical remains of a body of a person of Native American ancestry. The term has been interpreted broadly to include bones, teeth, hair, ashes, or mummified or otherwise preserved soft tissues. The term does not include remains, or portions of remains, freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. By 2007, the Smithsonian Institution, other Federal agencies, and museums had identified the remains of nearly 177,000 individuals in their collections (National Museum of the American Indian 2007, National Museum of Natural History 2007a & 2007b, National Park Service 2007c & 2007d, Rosoff 1998). Human remains that have been repatriated under the NMAIA and NAGPRA to date include complete and partial skeletons, isolated bones, teeth, scalps, and ashes.

Funerary objects are defined as items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Items that inadvertently came into contact with human remains are not considered to be funerary objects. Funerary objects that have been repatriated under the NMAIA or NAGPRA to date include beads of various types; pottery jars, bowls and sherds; tools and implements of wood, stone, bone and metal; trade silver and other

goods; weapons of many types, including rifles and revolvers; and articles or fragments of clothing.

Sacred objects are defined as specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Traditional religious leaders are individuals recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe's or organization's cultural, ceremonial or religious practices. Sacred objects that have been repatriated under the NMAIA or NAGPRA to date include medicine bundles, prayer sticks, pipes, effigies and fetishes, basketry, rattles and a birchbark scroll.

Objects of cultural patrimony are defined as items having ongoing historical, traditional or cultural importance central to the Indian tribe or Native Hawaiian organization itself rather than property owned by an individual tribal member. These objects are of such central importance that they may not be alienated, appropriated or conveyed by any individual tribal member. Such objects must have been considered inalienable by the affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. Objects of cultural patrimony that have been repatriated under the NMAIA or NAGPRA to date include a wolf-head headdress, a clan hat, several medicine bundles and ceremonial masks of varying types.

Items fitting both the sacred object and object of cultural patrimony definitions that have been repatriated under NAGPRA to date include Zuni ahayuda (also known as War Gods), a Sun Dance wheel, ceremonial masks of several types and functions and a tortoise shell rattle.

### **What kind of relationship is required?**

An individual or organization with standing must establish one of five possible relationships with the cultural items being requested: (1) lineal descent; (2) tribal land ownership; (3) cultural affiliation; (4) other cultural relationship; or (5) aboriginal occupation. The criteria for establishing a valid relationship vary depending on whether the objects are part of Federal agency or museum collection or are excavated or discovered on Federal or tribal land. Only (1) lineal descendants and (3) culturally affiliated Indian tribes and Native Hawaiian organizations have standing to request the repatriation of objects under the NMAIA or the collection provisions of NAGPRA. All five categories of relationships are valid under the excavation or discovery provisions of NAGPRA.

An individual claiming lineal descent must document his or her ancestry from the individual whose remains, funerary objects or sacred objects are being claimed. The line of descent must be direct and without interruption according to the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent.

The landowning Indian tribe is second in priority, after the lineal descendent, in determining the custody of human remains, funerary objects and sacred objects, and first in priority for objects of cultural patrimony that are excavated or discovered on tribal lands after November 16, 1990. Tribal lands include all lands within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States. This may include some Federal, state or private lands that are within the exterior boundary of a reservation. Cultural affiliation is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. A wide variety of evidence can be introduced to document such a relationship, including geographic, kinship, biological, archeological, linguistic, folklore, oral tradition, historic evidence and other information or expert opinion. Neither the NMAIA nor NAGPRA place priority on any particular type of evidence. Determinations of cultural affiliation must be made on a case-by-case basis after considering the relevance and reliability of all of the evidence.

Indian tribes with some other cultural relationship are fourth in priority - after the lineal descendent, tribal land owner, and culturally affiliated Indian tribe - in determining the custody of human remains, funerary objects, and sacred objects, and third in priority for objects of cultural patrimony, that are excavated or discovered on Federal or tribal lands after November 16, 1990. This term is not defined in the statute or regulations, but clearly constitutes a weaker relationship than those previously listed. The aboriginal occupant of an identified territory is fifth in priority - after the lineal descendent, tribal land owner, culturally affiliated Indian tribe and Indian tribe with some other cultural relationship - in determining the custody of human remains, funerary objects and sacred objects, and fourth in priority for objects of cultural patrimony that are excavated or discovered on tribal lands after November 16, 1990. Of particular use in identifying aboriginal lands are decisions by the United States Court of Claims and the Indian Claims Commission. Other sources of information regarding aboriginal occupation should also be consulted, particularly the original treaties between the United States and various Indian tribes.

## Do any exemptions apply?

Under NAGPRA, a Federal agency or museum may retain control of Native American cultural items that would otherwise be repatriated or disposed of to a lineal descendant, Indian tribe or Native Hawaiian organization under the regulations if any of three exemptions apply: 1) there are multiple disputing claimants pending dispute resolution; 2) the Federal agency or museum has right of possession to the item; or 3) the item is part of a Federal agency or museum collection and is indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States.

A Federal agency or museum may retain control of cultural items that are discovered, excavated or part of a collection if there are multiple disputing claims and the agency cannot determine by a preponderance of the evidence which requesting party is the most appropriate recipient. While a museum or Federal agency may determine that there are multiple lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations, this exemption is only triggered in the face of two or more equally valid requests for disposition or repatriation. The disputed items may be retained until such time as the requesting parties mutually agree on the appropriate recipient or the dispute is otherwise resolved pursuant to the regulations or as ordered by a court of competent jurisdiction. There is no set time limit during which such multiple claims must be resolved, but the Federal agency or museum has an obligation to make a decision.

A Federal agency or museum may retain control of cultural items that are discovered, excavated or part of a collection if the Federal agency or museum has right of possession to the items. Right of possession means possession obtained with the voluntary consent of an individual or group that had authority of alienation. Under common law, human remains are not considered to be "property". Generally, the conveyance of land neither confers any right to the grantee over the bodies of the dead nor authorizes the grantee to remove the soil over them or to mutilate the graves. Each Indian tribe and Native Hawaiian organization has its own rules regarding individual or group control of property. Other rules apply to the right to acquire certain items.

A Federal agency or museum may also retain control of cultural items that are part of a collection if the items are indispensable to the completion of a specific study, the outcome of which is of major benefit to the United States. The statute did not clarify what type of study might meet the major benefit standard. However, the context makes it clear that such a study would necessarily be of sufficient importance to overcome the rights of an individual to claim a parent's body and that such a determination would necessarily be made by the United States, most likely by the Secretary of the Interior.



## Conclusions

Taken together, the system of subject parties, procedures, purview, parties with standing, relationships and exceptions outlined by the NMAIA and NAGPRA provide a workable compromise for resolving the complex and potentially contentious issues surrounding the disposition of Native American cultural items that are excavated or discovered on Federal or tribal lands or held in Federal or museum collections. Returning control of these human remains and funerary objects to lineal descendants, Indian tribes and Native Hawaiian organizations remedies years of unequal treatment. Acknowledging the communal property systems traditionally used by some Indian tribes not only returns those objects of cultural patrimony to their rightful owners but reinforces the complex social webs within each tribe. Neither idea is very new; both reflect the guarantee of equal protection under the law imagined by America's founding fathers and codified in the Constitution of the United States. "We shouldn't have to have a law to make people do what is morally right," Ben Nighthorse Campbell lamented. "But unfortunately we have to in some cases." (Weinraub 1991: B1)

In an extension of remarks introduced the day NAGPRA passed the House of Representatives and was sent on its way to President George Bush for signature, Representative Morris Udall hailed passage of the bill.

"For decades, the skeletal remains of American Indians were removed from their burial sites, studied, catalogued, and relegated to the bins of museums and science. This legislation is about respecting the rights of the dead, the right to an undisturbed resting-place. It is a good bill, and long overdue. What we are saying to American Indians today ... is simply that your ancestors and their burial grounds are sacred, and will remain so.

In the larger scope of history, this is a very small thing. In the smaller scope of conscience, it may be the biggest thing we have ever done." (Udall 1990: E3484) ○

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## NOTES FOR REMARKS

**Thomas V. Hill**

In this presentation, I will attempt to identify what I believe are some of the questions, both ethical and political, that Museum trustees must consider when faced with the issue of repatriation of First Nations material culture. Museums today, particularly in Canada, are often viewed as being in the service of society. This is not a new phenomenon, but notions about “the arts and humanities” from purely curatorial and research perspectives have often blurred these social realities. It is important to note that museums play a very significant role in long-term community, regional or global arenas. As museums serve society, they maintain their essential presence to a greater or lesser degree in these arenas, depending on the “make up” of their Board of Trustees. A museum in the service of society increases its intrinsic value and has less danger of becoming a non-distinct entity, perhaps invisible and, eventually, unnecessary. The dilemma here, for a Board of Trustees, is finding the balance because once you consciously become involved in the politics of the day, it can easily usurp the mission of the museum.

When our Museum, the Woodland Cultural Centre, was created in the 1970s, the geo-political realities were probably less volatile than they are today. It was the community that spoke out on a number of issues, specifically regarding the power which was held by the majority of Canadian museums. In the hierarchically constructed world of museums, the dominant culture rules. It had the authority to interpret, to speak and, of course, to exclude.

During this era, a controversy erupted between two Iroquoian political organizations and two well-established Ontario museums - the National Museum of Man in Ottawa and the Royal Ontario Museum (ROM) in Toronto. In November 1976, the Union of Ontario Indians made a citizen’s arrest of Dr. Walter Kenyon, the ROM archaeologist responsible for an archaeological dig in Grimsby, Ontario. The Union accused Dr. Kenyon of violating the Ontario Cemeteries Act. In 1977, a group of Mohawks from Akwesasne also demanded the return and reburial of remains from the National Museum of Man from a site near Williamsburg. Both incidents captured the attention of the National Press (Doxtator 1983).

Another issue was the lack of communication between the Royal Ontario Museum and the community when a new exhibit was being planned. In the 1970s, it was quite common to have burial remains on exhibit no matter how offensive this might be to the First Nations community. No consideration was given to the Iroquoian community and how they felt about the violation of their spiritual and religious well-being. This also held true for Iroquoian Medicine Masks and Wampum belts. During the mid 20<sup>th</sup> century, the average Euro-Canadian encountering these masks saw a colourful and exotic display that impressed but did not involve. There is no doubt that the aesthetic concepts involved in this work were too foreign and far removed from their own; in addition, the Euro-Canadian did not consider the Indian to be his intellectual equal. After they had overcome their initial revulsion toward the culture, Euro-Canadians collected the masks not only as souvenirs but also as a scientific specimen to be used in museum displays. The medicine mask is carved directly from the trunk of a living softwood tree and depicts a supernatural being common to the whole community. Once the image is completed in relief on the side of the tree, it is carefully removed and finished with pigments and animal hair. Medicine bags may be added and attached to the mask to increase its powers. The face is created for a healing ceremony, and the person who wears the mask does so to focus the attention of the viewers on the power of the supernatural forces, rather than the mask image itself. The wearer, through dance and sounds, imitates the supernatural beings that it depicts, thus integrating the mask into a functioning drama or healing ritual. Claude Lévi-Strauss was to define this principle as “metonymy”, wherein a part symbolizes the whole (Lévi-Strauss 1962).

Generally, First Nations Communities viewed museums as monuments to colonialism, with their mandate to collect and exhibit their artefacts, which were often accessioned to museum collections under dubious circumstances. In fact, for most of the 20<sup>th</sup> century, the Six Nations Community, led by the Iroquois Confederacy, had a petition against the National Museum of the American Indian in New York. The Confederacy was demanding the return of eleven Wampum belts which they considered stolen material (Fenton 1989).

It was not until 1988 that the Six Nations Confederacy at the Grand River approached my assistant, Sadie Buck, and I to assist the Clan Mothers and the Chiefs in the return of the eleven Wampum belts from the Museum of the American Indian Heye Foundation in New York City. In a formal ceremony, held on the grounds of the Onondaga Longhouse at Grand River, the eleven belts were handed to the Clan Mothers and Confederacy Chiefs by Roland W. Force, president and director of the museum. Repatriation had been initiated.

The need to restructure new ways in which First Peoples would do business with museums began 1986, fourteen years after the establishment of the Woodland Cultural Centre. It was the year that the Glenbow Museum and the Olympic Organizing Committee announced that a 1.5 million dollar blockbuster exhibi-

tion entitled, *The Spirit Sings: Artistic Traditions of Canada's First Peoples* would be the focus of its cultural program at the Winter Olympics. Organized by the Glenbow Museum, the exhibition mounted over 500 historical artefacts of Canada's First Peoples, selected from national and international ethnographic collections. Scholarly and dramatically produced, it was an exhibition "waiting to be done" to quote Duncan Cameron, Director of the Glenbow Museum (*The Spirit Sings* 1987). However, early on in the exhibit's planning process, criticism was directed at the Olympic Organizing Committee and the Glenbow Museum regarding its failure to involve First Peoples; it was not until spring 1986 when the Lubicon Cree of Northern Alberta effectively implemented an international boycott that the exhibit became embroiled in the controversy that was to become the impetus for bringing First Peoples and museums together.

The Assembly of First Nations (AFN) rallied behind the Lubicon's strategy, which was initially involved in an unsettled land claim with the federal and provincial governments. Designed to embarrass the Canadian Government at an international event, the Lubicon Cree and its supporters argued that it was hypocritical to mount a Canadian exhibition which celebrates traditional cultures when governments were still unjustly dealing with First Peoples.

Also caught in this whirlwind of controversy were the funders, particularly the Shell Oil Company. The Lubicon Cree took exception to Shell Oil, which had exploration oil leases on what the Lubicon Cree claimed to be their land. Thus was the Lubicon's initiative conceived. Its strategy was to persuade European and American museums to refrain from lending the requested objects to the Glenbow Museum, which was by now well underway in organizing its Olympic showpiece.

In spite of the academic debate generated by the boycott and the controversy in the international media, the exhibition, *The Spirit Sings*, opened on schedule in 1988 and, later the same year, moved to its second venue, the Canadian Museum of Civilization in Ottawa. When the exhibition opened in Ottawa, the National Chief from the AFN, Georges Erasmus invited Dr. George MacDonald, Director of the Canadian Museum of Civilization, to co-sponsor a symposium. Following the symposium, it was agreed that the Canadian Museums Association (CMA) and the AFN would co-sponsor a national conference on the issues. *Preserving Our Heritage: A Working Conference Between Museums and First Peoples* was held at Carleton University in November 1988 bringing together 150 aboriginal and non-aboriginal representatives into an open forum to air their concerns. At the close of the three-day conference, the delegates had come to a strong consensus on the need to establish a task force and to provide a forum for ongoing discussions to develop appropriate guidelines that would facilitate future equal partnerships between museums and First Peoples. The boycott was officially over and the Task Force on Museums and First People had taken its place. To quote Georges Erasmus, President of the AFN in his opening speech to the conference, "We

could have continued with the boycott, but we needed to get beyond that. What we are embarking on now is the beginning of a different kind of relationship between two potentially strong allies.”

Our alliance began immediately with the appointments to the Chair, myself, a Seneca and Museum Director from the Woodland Cultural Centre in Brantford, and Dr. Trudy Nicks, a non-aboriginal Curator from the Royal Ontario Museum. The remaining task force members comprised an equal number of museum professionals and representatives from First Nations communities across Canada. Sponsored jointly by the AFN and the CMA, the task force operated at arm’s length as an independent body and chose members on the basis of expertise, commitment and depth of experience rather than as representing any institution, geographic location or organization.

The first meeting was convened in February 1990 in Toronto at the Royal Ontario Museum, and the Woodland Cultural Centre in Brantford. At this meeting, the initial 120 issues raised from the 1988 Ottawa Conference were analyzed and grouped under three major areas:

- increased involvement of aboriginal peoples in the interpretation of their culture and history by cultural institutions;
- improved access to museum collections by aboriginal peoples; and
- the repatriation of artefacts and human remains.

In order to ensure that consultation and research with regard to these issues would be as comprehensive as possible, the task force worked as three regional committees on a traditional model suggested by Ojibwe task force member, Nicholas Deleary. A Western Committee would include British Columbia and the Yukon, the Central Committee would include Alberta, Saskatchewan, Manitoba and the Northwest Territories, and the Eastern Committee would cover Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. Each committee was mandated to consult with organizations, museums and First Nations communities within their specific area. Meetings were held in Winnipeg (November 1990) and Regina (April 1991) in order for regional committees to report their findings.

The nation-wide consultation also included a call for submissions, for which over 4,000 invitations were distributed to aboriginal and non-aboriginal cultural, educational, political and governmental organizations. At the end of 1991, a report was written based on the consultations and submitted to the CMA and AFN for their endorsement.

On February 7, 1992 the Task Force on Museums and First People tabled its final report at a National Conference in Ottawa, which attracted well over 200 delegates from across Canada. Taking its title from the report, *Turning the Page: Forging New Partnerships Between Museums and First Peoples*, the National Confer-

ence gave unanimous support to implementation of the report (Hill & Nicks 1991).

The final report of the Task Force incorporated the results of the national consultations into a series of seven principles and 34 recommendations designed to promote and facilitate the development of partnerships between the First Peoples and the cultural institutions of Canada. The seven principles, as stated in the final report, are as follows:

1. Museums and First Peoples will work together to correct inequities that have characterized their relationships in the past; in particular, the desire and authority of First Peoples to speak for themselves should be recognized and affirmed by museums;
2. An equal partnership involves mutual appreciation of the conceptual knowledge and approaches characteristic of First Peoples, and the empirical knowledge and approaches of academically trained workers;
3. First Peoples and museums recognize mutual interests in the cultural materials and knowledge of the past, along with the contemporary existence of First Peoples;
4. First Peoples and museum must accept the philosophy of co-management and co-responsibility as the ethical basis for principles and procedures pertaining to collections related to aboriginal cultures contained in museums;
5. Appropriate representatives of First Peoples will be involved as equal partners in any museum exhibition, program or project dealing with aboriginal heritage, history or culture;
6. First Peoples and museums must recognize a commonality of interest in the research, documentation, presentation, promotion and education of various publics, including museum professionals and academics, in the richness, variety and validity of aboriginal heritage, history and culture; and
7. First Peoples must be fully involved in the development of policies and funding programs related to aboriginal heritage, history and culture.

The 34 recommendations addressed the issues of interpretation, access, repatriation and training as well as the actions required to implement the Task Force report.

Throughout all of the recommendations, efforts were made to address the recognized needs and interests of both parties and to incorporate those needs. Neither the museums nor the First Peoples endorsed federal legislation to address issues of repatriation but chose the co-operative approach of negotiation.

There are compelling advantages to negotiated solutions as opposed to imposed solutions, whenever negotiation is possible and appropriate. Negotiation

offers parties a way to fashion mutually acceptable solutions by means of a process that we ourselves jointly control. To quote John McAvity, Executive Director, CMA, "We feel we've achieved more and far more quickly by negotiation rather than legislation."

The ultimate value of the Task Force will, of course, be determined by how widely its insights and recommendations are translated into action. The Task Force has played an important role in raising awareness of issues and opportunities for First Peoples and museums across the country.

We must now empower ourselves with our own working paradigm so that we, too, can reconstruct our museums to create a new understanding of First Nations people now and well into the 21<sup>st</sup> century. We must remove this stigma of cultural paternalism that has hindered museums since the turn of the century. This notion that we are on the brink of extinction no longer applies. Repatriation (although it means to return or restore to the country of origin) is really about collaboration and finding new partnerships in First Nation societies, which have long been denied. ○

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# THAT WAS THEN, THIS IS NOW

Canadian law and policy on First Nations material culture

Catherine E. Bell

## Introduction

The topic of repatriation of cultural items creates some discomfort as it may generate polarized perspectives and bring into focus issues of ethics, law, politics, knowledge, power, values and economics.<sup>1</sup> Questions such as: “Who owns culture? Whose property? Whose laws, practices, concepts and values should prevail?” imply that universal answers to such questions can be determined. However, these are questions of ongoing debate which cannot be answered in the abstract without reference to a particular item, people, or institution. This is especially so in Canada when we consider Aboriginal material culture owned or controlled under Canadian law by the Crown, or purchased with public funds, and in the possession of government-funded museums or other public institutions, such as universities.

The Aboriginal peoples of Canada are the Inuit, Indian and Métis peoples. Many Indian Nations self-identify as “First Nations”. This paper draws upon research conducted in collaboration with First Nations partners in British Columbia and Alberta and an interdisciplinary team of scholars in law, anthropology, archaeology and linguistics.<sup>2</sup> More detailed discussion of law reform, case studies emerging from First Nation partner communities and strategies for change within and outside of Western legal frameworks in a wider range of cultural heritage matters are contained in two volumes currently in press and from which some excerpts in this paper are drawn (Bell & Napoleon 2008; Bell & Paterson 2008).<sup>3</sup> The focus of our research has been on issues faced by our First Nation partners. However, the legal and policy environment discussed below is also applicable to other First Nation, Inuit and Métis peoples in Canada.

The historical treatment of Aboriginal peoples in Canada, increased public and political sympathy, contemporary museum ethics and evolving jurisprudence on Aboriginal constitutional rights call into question normative and legal justifications relied upon in the past to support museum and Crown title to some items claimed. Normative rationales for repatriation vary and are rarely offered

in isolation. Repatriation claims are linked to a wide range of concerns that include adherence to laws of source communities, respect for human rights and religious practices, and the belief that items sought are a fundamental means of transmitting and retaining vital cultural knowledge. The degree of societal and cultural change brought about by legislated discrimination, residential schools, economic duress and other external and internal pressures varies. However, these factors combined with the passing of knowledgeable elders has fostered a sense of urgency in some communities to recover, obtain copies or improve access to items and oral material considered vital to knowledge transfer. In this way, repatriation is inextricably linked to concerns about continuity, revival, and preservation of languages, values and practices that are considered integral to a community's cultural identity and survival. For this reason, although often given priority, repatriation efforts by First Nations in Canada extend beyond seeking the return of ceremonial items (see case studies in Bell & Napoleon 2008).

For some First Nations, repatriation is also part of a broader struggle for recognition of the injustices suffered and the restoration of human rights, including the right of political and cultural self-determination. For example, one of the best known and earliest examples of repatriation is the return of potlatch items to the U'mista Cultural Centre in Alert Bay, British Columbia (Bell, Raven & McCuaig 2008). Potlatch celebrations and practices associated with ceremonies such as the Blackfoot Sundance and Cree and Saulteaux Thirst Dance were banned under federal Indian legislation from 1884 until 1951 (An Act Further to Amend the Indian Act, 1880). Following a large potlatch held at Village Island in 1922, forty-five people were charged with offences including making speeches, dancing, arranging articles to be given away and carrying gifts to recipients. Regalia were not only seized from those charged with offences but also from individuals threatened with criminal charges if their regalia were not surrendered (Cranmer Webster 1995).

Efforts to recover this material began in the 1960s. In 1975, the Museum of Man (now the Canadian Museum of Civilization) agreed to repatriate items from the Village Island potlatch on condition that a museum be built to house them. However the Royal Ontario Museum (ROM) sought solutions that fell short of return, asserted that its claim to ownership was "as strong as anyone else's" and sought compensation for expenses such as "curatorial care, conservation, [and] insurance" (Cranmer Webster 1988: 43). It was not until 1988, after the intervention of the Minister of Indian Affairs, that items from ROM were returned. After years of negotiations, in July 2000 the National Museum of the American Indian (NMAI) agreed to repatriate another sixteen pieces. Most recently, potlatch items have also been returned on long-term loan by the University of British Columbia Museum of Anthropology (MOA) and the British Museum (Bell, Raven & McCuaig 2005). Although many affected families attest to the importance of returning these items for healing, and items not too fragile may be used by entitled

families or individuals for ceremonial purposes, this was not the primary motivation for seeking their return (Bell, Raven & McCuaig 2008). As Gloria Cranmer Webster, founder and former director of the U'mista Cultural Centre explains:

*Most demands for potlatch items are based on the argument that treasures are vital to the spiritual health of the communities. That was not the basis in our case. We did not need our masks returned so we could use them.... Our goal in having our treasures come back was to rectify a terrible injustice that is part of our history.... Our concept of ownership differs from that of other people in that while an object may leave our communities, its history and the right to own it remain with the person who inherited it (Cranmer Webster 1995: 141).*

Assertions of rights and ownership characterizing earlier Canadian repatriation disputes do not prevail now. Today most major museums in Canada and elsewhere are sympathetic to normative rationales for repatriation. Influential in this change have been the Report of the Canadian Museum's Association and Assembly of First Nations Task Force on Museums and First Peoples (simply referred to as the Task Force) (AFN/CMA 1992), a desire to maintain positive relationships with Aboriginal communities represented in collections, and inclusion of repatriation and cultural heritage matters in modern treaty and land claims processes. Policy development has also been influenced by the content of, and experience with, the Native American Graves Protection and Repatriation Act (NAGPRA 1990). This law was studied by the Task Force and has influenced some museum policy in areas such as definitions of cultural patrimony, identification of affiliated groups, disposition in situations of competing claims, and the nature of evidence necessary to prove claims. However, also aware of problems that arose in the early years of implementing NAGPRA, the Task Force "[w]hile not ruling out the possibility of legislation in the future, recommended a case-by-case collaborative approach to resolving repatriation based on moral and ethical criteria...." (AFN/CMA 1992: 5).

Against this backdrop, Canadian museums and federal and provincial governments have demonstrated increased willingness to repatriate and relinquish control over a wide range of items through specific Aboriginal repatriation policies, general de-accessioning policies, and land claim and treaty negotiations. Unlike the United States, Canada does not have a national repatriation law but some provinces have acted in this area. For example, Alberta's First Nations Sacred Ceremonial Objects Repatriation Act (2000) facilitates the return of "sacred ceremonial objects" by the Glenbow Institute and the Royal Alberta Museum to First Nations in Alberta, and in British Columbia the Museum Act (2003) has been amended to address the interplay of repatriation with treaty negotiations in that province and statutory and common law obligations of museums. The willingness of governments and museums to relinquish control through these proc-

esses reflects fundamental changes in how museums regard their relationship to Aboriginal peoples.

Yet compelling justifications to exercise caution in face of repatriation claims continue to exist. For example, museums holding government and other collections have statutory mandates that oblige them to preserve, educate and promote public access to their collections (including access by increasing numbers of off reserve Aboriginal peoples).

*[T]he broader Canadian public [also] relies upon preservation and protection of [Aboriginal material culture] to understand its national and regional history and the role of Aboriginal peoples in the formation of current economic, political, social and other institutions (Bell & Paterson 1999: 192).*

Return of items not intended for ongoing ceremonial use may also operate to the detriment of originating communities, as important associated knowledge could be lost if sufficient funds and facilities are not available for physical preservation. Consequently, a lack of financial and human resources may act as a barrier to return. Further complicating the situation are (1) differing views and priorities among First Nations regarding repatriation and (2) inclusion in many collections of items created for the purpose of sale or donation. Many First Nations also respect the role museums have played and continue to play in research, education, preservation and facilitating understanding of different cultures. Need and preparedness (financial, spiritual and otherwise) varies according to the community and item, with many items remaining in collections for diverse reasons by agreement. In such circumstances, Canadian museums have continued holding and caring collaboratively with communities affected in relation to items in transition (see *e.g.* discussion of Manitoba Museum policy in Bell et al. 2008).

It is beyond the scope of this paper to delve into museum policy development and all of the rationales for and against repatriation. Rather, the intent here is to introduce the complexity of the policy and legal environment for negotiating repatriation in Canada and raise some questions about the need and desirability of Canadian law reform.

## **Why talk about law and law reform?**

Given improved relationships between museums and other custodians of material culture and First Nations, some question the need and desirability of discussing legal rights and law reform. In Canada, repatriation is currently negotiated on a case-by-case basis in accordance with the institutional policies of the custodial institution. A benefit of the current policy is its ability to accommodate diversity in areas such as community preparedness, access requirements and restric-

tions, levels of interest in repatriation, and First Nations laws and protocols, to name a few. Some fear that considerations of law and legislative intervention will reduce this flexibility and generate either/or thinking. However, this fear assumes that law is not playing a significant role in current negotiations and that legislation must be mandatory in its application to the exclusion of other processes. Neither is true.

Although it is true that emphasis on legal rights can create adversarial relationships and discourage thinking about a wider range of solutions based on identifying mutual interests, it is equally true that, regardless of attempts to avoid assertion of legal positions, negotiations take place in the shadow of the law. Law is used to assess best and worst alternatives to negotiated agreements, liabilities and parameters for negotiation. Indeed the role of law is sometimes stated explicitly in repatriation policy. For example, the Repatriation Guidelines of MOA recognize that "First Nations are governed by their own legal traditions and policies" but at the same time note "MOA's negotiation position is guided by Canadian law and international agreements signed by Canada, and by the governing body of UBC." (Museum of Anthropology (MOA) 2007: para. 3).

Reliance on museum policy and goodwill also raises issues of power and equality of participation. Although sincere attempts are made to give equal consideration to different cultural understandings by museum and government personnel, final discretionary authority remains with the custodial institutions. The only recourse if negotiations break down is expensive litigation through the Canadian courts. Regardless of good intentions, retention of this power, absent recourse to a more inter-culturally legitimate process, perpetuates colonial relationships of dependency.

Other problems may potentially arise if repatriation negotiations are guided by museum policy alone. These include increased time and costs associated with an absence of uniform procedure from one institution to the next, insufficient funding and research support for parties to negotiations, varying levels of commitment to repatriate, conscious and unconscious bias in favour of documentary evidence, disagreement between and among First Nation claimants, differing perspectives on appropriate conservation and preservation (including the need for museum-like facilities), reliance on personal relationships with staff and within First Nation communities, and the limited scope of material some institutions are willing to repatriate. In situations where these and other problems are overcome through collaborative negotiation, further barriers may be created by laws concerning museum liability. Positions taken on standards of proof; public notification; response to competing claims; use, preservation and other conditions placed on return; and the proposal of solutions that fall short of return may all be influenced by potential liability.

Those who emphasize the benefit of policy frameworks based on moral and ethical considerations also sometimes assume that reliance on legal rights will

operate to the detriment of First Nation claimants. This is particularly so as laws limiting the time within which property claims can be brought before Canadian courts may be used to bar repatriation claims. However, Canadian law affecting ownership and control of Aboriginal cultural heritage is becoming increasingly complex and uncertain. Canadian law affecting repatriation claims is informed by various streams, including the common law of property, emerging law on Aboriginal constitutional rights, laws concerning museum obligations, limitation of actions legislation, provincial heritage conservation legislation, federal import/export and parks legislation, and issues of jurisdiction. Further, much of the legislation that exists affecting issues of ownership and control is largely dated and fails to take into consideration the unique interests of, and constitutional obligations to, Aboriginal peoples. This is not surprising as such legislation was enacted largely before Aboriginal rights were recognized in Canada's Constitution.

These and other concerns that have arisen in repatriation negotiations suggest some changes in Canadian law may be necessary, albeit not necessarily through repatriation legislation *per se*. For example, legislation addressing common law obligations of museums, and public ownership or beneficial interests, may be necessary to facilitate unconditional repatriations, particularly of a large number of items, outside of public treaty and land claim negotiation processes, as was the case when the Glenbow Alberta Institute transferred 251 cultural items without condition to the Blackfoot in Alberta (Bell, Statt & Mookakin 2008). Regardless of the approach taken, mandatory and uniform repatriation legislation is not likely to be welcome in Canada. For many Aboriginal peoples, matters of cultural heritage are considered an area of inherent jurisdiction. Given this, and the diversity of cultures, priorities and relationships with museums and other custodial institutions, to be effective, repatriation legislation - if considered - must be designed to facilitate the negotiation process and act as a safety net for those Aboriginal claimants who choose to invoke it.

In Canada, we already have several examples of what we call "opting in" legislation in the First Nations context. Elsewhere I have considered in greater detail legal arguments and the potential benefits and detriments of law reform in a range of areas implicating repatriation negotiation. (e.g. Bell & Paterson 1999; Bell 2008.) Here, I will introduce the key features of the legal environment and give examples of two areas of law reform: dispute resolution and museum liability. I conclude with a case study demonstrating the context, strengths and weaknesses of Alberta's Sacred Ceremonial Objects Repatriation Act 2000.

## **The legal environment**

Developments in Canadian Aboriginal rights law and the growing international and interdisciplinary moral primacy of human rights have expanded the bound-

aries for determining entitlement to Aboriginal material culture. At one time, legal analysis was confined to the common law of property and the impact of legislation on that law. However, the inclusion of Aboriginal rights law into the analysis suggests the journey of the item be considered within a particular cultural context. For example, under the common law, a person cannot transfer greater rights in property than she or he has. A key legal issue may be the capacity of an individual to transfer title. If the object was, and continues to be, “integral to the culture” of a claimant First Nation, the laws of that Nation may be the appropriate source to determine rights, obligations and authority to transfer. Analyzed in this way, the superior claim to ownership may lie with the claimant First Nation, rendering the museum a bailee with a legal obligation to return the property (*R. v. Van der Peet* 1996).

The requirement to consider Aboriginal and treaty rights arises from section 35(1) of Canada’s Constitution Act, 1982 which recognizes and affirms “the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.” In *Kitkatla Band v. British Columbia* (2002), at para. 78, the Supreme Court of Canada also acknowledged that “[h]eritage properties and sites” may in some cases form “a key part of the collective identity of a people” and that “some component of cultural heritage” might go to the core of identity such as to affect issues of jurisdiction. If it can be established that an aspect of cultural heritage is integral to Aboriginal identity, this supports the finding of an Aboriginal right.

There are numerous arguments that support the existence of Aboriginal rights to certain forms of cultural material. When we examine various streams of Aboriginal and treaty rights jurisprudence, the following specific arguments supporting First Nation ownership and control of cultural property emerge. They include, but are not limited to, the following arguments derived from Supreme Court rulings in *R. v. Van der Peet* (1996) and *Delgamuukw v. British Columbia* (1997):

1. Rights to cultural property may form part of a broader claim to Aboriginal title.
2. Rights may also exist if an object is an integral part of an activity, custom, practice or tradition that was historically, and continues to be, integral to the distinctive cultural identity of a First Nation. Given the disruption of Aboriginal communities and the difficulties of proof associated with oral cultures, it is not necessary to prove an unbroken chain of continuity.
3. Rights may also be sourced in pre-contact indigenous customs integral to the distinctive culture of the claimant group. Like Canadian law, First Nations laws have evolved and been affected by the existence of other legal systems. A court will take this into consideration.
4. Rights may also be sourced in the express and implied terms of treaty.



5. The treaty relationship, existence of Aboriginal rights to cultural property, and an assumption of federal and provincial jurisdiction over Aboriginal cultural property may also give rise to a fiduciary responsibility of protection and consultation.

These rights are not absolute. This is because legislation that meets certain judicial criteria may terminate Aboriginal rights, or limit how they can be exercised. In the 1990s, the Supreme Court of Canada held in *R. v. Sparrow* (1995) that Aboriginal rights continue to exist and are protected by the *Constitution Act, 1982*, so long as these rights have not been terminated by “clear and plain legislation” or “other valid acts of State” prior to 1982. There is no Canadian legislation that clearly and plainly terminates potential Aboriginal rights to material culture based on any of the above arguments. In Canada, jurisdiction to pass laws is divided between the federal and provincial governments. Provincial governments may not terminate Aboriginal rights. Provincial legislation may, however, regulate and limit the exercise of Aboriginal rights; an example might be placing ownership of archaeological property discovered on provincial or private land in the provincial Crown. Laws that interfere or potentially interfere with an Aboriginal right can be enacted and implemented so long as there is a valid legislative objective and the provincial Crown’s fiduciary obligations are met. This duty includes consulting with affected First Nations concerning potential and actual interference with potential and existing Aboriginal rights with a view to seriously addressing their concerns. Aboriginal rights and interests are also implicated by federal legislation designed to protect Canada’s cultural heritage, such as the federal Cultural Property Export and Import Act (1985), which is concerned with keeping items of national importance within Canada. It does so through export controls that delay permits and provision of repatriation grants, loans and tax incentives to institutions (mainly museums) to purchase objects being exported or currently located outside of Canada. There have been several successful partnerships between museums and First Nations to recover or prevent export of significant Aboriginal cultural material. However, viewed through the Aboriginal rights lens, there are many problems with this legislation, including the absence of a mandatory mechanism to notify First Nation communities if an item intended for export has originated from their community and lack of First Nation representation at various levels of the decision-making process. The act is also subject to dealer manipulation resulting in First Nations and Canadian institutions having to buy back material at significantly inflated prices. The lack of direct consideration of First Nation interests in the legal framework is not surprising as the legislation was enacted before Aboriginal rights were recognized in our Constitution.

Further complicating the legal environment is consideration of museums and archives law. Together with the common law of negligence and fiduciary obliga-



tion, these considerations may place legal restraints on the ability to repatriate. The legal obligations of museums are found in legislation, common law, incorporating documents and internal policies. Public museums and those holding Crown property have public mandates charging them with preservation of the material within their collections for a broader Canadian public. The public mandate of museums requires that they balance the interests of the public against those of claimant First Nations. This may affect the scope of material that can be returned and the circumstances under which it is returned, including conditions for preservation. Their legal obligations may also include the duty to exercise the care a reasonably prudent person would in dealing with her own property (Gerstenblith 2004: 293). In short, it is not clear how obligations to the broader Canadian public are to be interpreted in light of the special interests and rights of Aboriginal peoples.

### **Moving forward: issues in Canadian law reform**

There are numerous ways in which legislation can assist negotiation. I offer two examples here: dispute resolution and museum or government liability arising from the disposal of collections. Although major Canadian institutions holding First Nation material recognize the importance of addressing past inequities, treating First Nation parties to negotiation with respect, appreciating the complexities created by different cultural understandings and considering evidence based on kinship, oral tradition and other sources, the current regime nevertheless continues to perpetuate colonial relationships of dependency as final decision-making remains with external governments and legal norms. A principle for conflict resolution currently respected by many Canadian institutions is that competing claims within a community or between Aboriginal communities are best resolved within and between those communities. This both respects matters of internal governance and avoids potential liability from returning items, albeit in good faith, to the wrong entity. More difficult questions are whether litigation should be the only recourse if efforts to resolve conflict between claimants fail, given the potential for this situation to indefinitely block a repatriation claim; how to create an effective and inter-culturally legitimate process for resolving impasses in negotiations; and whether resort to such processes should be mandatory before repatriation claims can be taken to Canadian courts. As effective dispute resolution needs to be anchored in the values of those it is intended to serve, and given the diversity of First Nation cultures in Canada, issues of cultural legitimacy might best be addressed by representation of claimant communities and institutions directly affected, as well as an agreed upon neutral party (as is often the model adopted in Canadian labour disputes).

Potential liability and the desire for a clear and transparent process were addressed in Alberta's First Nations Sacred Ceremonial Objects Repatriation Act. Although enacted in aid of specific repatriation negotiations between the Blackfoot people of Alberta and the Glenbow Institute for the return of medicine bundles and other ceremonial items, it also applies to the Royal Alberta Museum and all First Nations in Alberta. Section 1(e) defines sacred ceremonial objects as objects the title to which is vested in the Crown and which are "vital to the practice of the First Nation's sacred ceremonial traditions." Although not the product of rights-based negotiation, this definition is consistent with judicial definitions of Aboriginal rights as being sourced in customs, practises and traditions integral to a distinctive Aboriginal culture. Prior to the enactment of Alberta's legislation, returning medicine bundles and other sacred ceremonial items could expose the Glenbow Institute and the government to legal liability as provincial law provided that objects in the Glenbow collection were held by the provincial Crown and Glenbow on behalf of the citizens of Alberta. Ministerial approval was difficult to obtain for a number of reasons, including the uncertain legal status of band councils and potential conflicts that could be generated by returns.

As the Glenbow Institute and the Royal Alberta Museum were making increasingly extensive loans of ceremonial items which technically 'belonged' to the province or were held in trust for the people of the province, the government felt that a consistent and transparent process to guide such decisions was required. Failure to do this could be interpreted as a breach of trust, particularly given the number of items at issue. The new legislation facilitates return by relieving the Glenbow and the Province of any legal liability arising from a repatriation undertaken in good faith pursuant to the Act. As a result, the title to 251 cultural items previously on loan to the Blackfoot has been transferred by the Glenbow to Blackfoot communities free of conditions.

This legislation is helpful but can also be criticized on several levels, including the assumption of validity of Crown ownership, its failure to include private institutions that receive provincial funding, the emphasis on sacred ceremonial property to the exclusion of other forms of cultural property, and its failure to facilitate claims by First Nations located in other provinces. Although enacted with good intentions, discretion placed in the Ministry to deny claims and retention of power by non-indigenous governments over the fate of indigenous cultural items continues to generate a power imbalance and runs contrary to the aspirations for self-determination of many First Nations. The legislation can only be fully understood as one that is based on trust and a compromise enabling items vital to the continuity of Blackfoot ceremonies to be returned home. Further, the Blackfoot people see this as only one step in a broader repatriation effort.

## Conclusion

The issue of repatriation raises many challenging questions. Museums continue to play an important role in preserving cultural heritage and educating non-indigenous and indigenous peoples about indigenous life. For this reason, First Nations in Canada seek to work collaboratively with museums and are reluctant to engage in initiatives that could undermine existing positive relationships. At the same time, the legal environment within which negotiations occur is becoming more complex, with the evolution of Aboriginal rights law and the uncertainty of museum liability in face of repatriation claims, particularly those that affect material that is not of a sacred or ceremonial nature and large-scale repatriations outside of the treaty negotiation process. Key issues in law reform are whether legislation is necessary to facilitate negotiation and, if so, how government or governments should act. Whatever answer is given to these questions, Canadian law calls for more extensive consultation with Aboriginal governments and communities of interest and their active participation from the point of inception to the implementation of laws that impact, or have a potential impact, on existing or potential Aboriginal constitutional rights. What fundamental principles should guide law reform initiatives? The Canadian Royal Commission on Aboriginal People (RCAP) offers four fundamental principles for forging new relationships between First Nations and the Crown. These are: mutual recognition, mutual respect, sharing and mutual responsibility. As RCAP's principles aim to assist the process of decolonization, and repatriation is largely concerned with this process, these principles may be helpful in shaping regulatory frameworks for repatriation. Regardless of the principles adopted, reform is meaningless without significant financial commitment from government. ○

## Notes

- 1 Portions of this article are taken from, and are elaborated in, Bell, C. "Restructuring the Relationship: Repatriation and Canadian Law Reform" in C. Bell & R. K. Paterson (eds) (2008): *Protection and Repatriation of First Nations Cultural Heritage: Laws, Policy and Reform*, Vancouver, Canada: UBC Press.
- 2 The Protection and Repatriation of First Nations Cultural Heritage Project was funded by the Social Sciences and Humanities Research Council of Canada and resulted in the publication of the two volumes mentioned in notes i and iii. Our partners are the Hul'qumi'num Treaty Group (HTG), U'mista Cultural Center and 'Namgis Nation, Ktunaxa Kinbasket Tribal Council (KKTC); the Mookakin Cultural Society (Mookakin) of the Kainai Nation (Blood Tribe); the Old Man River Cultural Centre (in discussion with the Knut-sum-atak Society) of the Piikani Nation (Peigan); the Gitanyow Hereditary Chiefs and Ganeda (Frog Clan), House of Luuxhon (Luuxhon).
- 3 References for case studies are given to more detailed versions located on our website: <http://www.law.ualberta.ca/research/aboriginalculturalheritage/casestudies.htm>. Shorter versions of the case studies will appear in Bell, C. & Napoleon, N., (2008) *First Nations' Cultural Heritage and Law: Case Studies, Voices and Perspectives*, Vancouver, Canada, UBC Press.

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# RELATIONS IN TIMES OF GLOBAL EXCHANGE

## The Challenges of Repatriation and Intangible Cultural Heritage

Inger Sjørølev

Most Western ethnographic museums were founded on a history of colonialism and imperialism, and more than one of them contains an object or two that was acquired in a dubious way. On the basis of historical facts, it is obvious that Conventions such as the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970), the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* of 1995, and the *ICOM Code of Ethics for Museums*,<sup>1</sup> with ICME statements on the legitimacy of repatriation claims, are all needed. They can and should all be used to make specific claims and open the way to the realisation of more concrete, successful cases of repatriation than have been known so far. However, in addressing the question of repatriation and cultural heritage from a broad perspective, I have chosen not to focus on specific cases or details in the legislation concerning repatriation or intellectual property rights<sup>2</sup> but rather to take a general view and invite a discussion on ethnographic museum practices that are loyal to insights brought about by the recognition of colonial history and new focuses on the relationship between objects and persons, and the tangible and intangible aspects of social life. This is already quite a mouthful. In order to simplify things a bit, I intend to focus on the 2003 *UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage* and take this new instrument as the starting point for discussing some of the broader issues. The uniting idea in my thoughts is that *relations* of different kinds and scales should be the focus in further discussions about, and dealings with, issues of cultural heritage. By relations I mean the close, intimate relations between objects and persons and the relations between concrete physical objects and the meanings attached to them, but also the much wider relations between the formerly colonized and their colonizers in the present global world.

I want to discuss issues related to indigenous and Diaspora peoples' cultural heritage. The question is whether repatriation is an appropriate term in dealing with relations between objects and people. At least from many indigenous peoples' point of view, the term for return of cultural property should rather be re-

*matriation* than *re-patriation*, as I shall elaborate further below. Furthermore, the concept of cultural heritage prevalent in international contexts rests upon ideas about such heritage being mainly *material*, an idea that does not conform with many cultural expressions of importance to indigenous and other peoples of the world. Fortunately, then, the confinement of cultural heritage to the material has been modified radically in recent years, both by way of the *UNESCO Convention on the Safeguarding of Intangible Cultural Heritage* (CSICH) and new anthropological insights into the different kinds of relationships between objects and persons (Gell 1998) and a renewed interest in the character and role of the material as such (Miller 2005; Henare 2005).

The recognition that cultural heritage is as much immaterial as material, and that people create intersubjective relations with objects in many different ways (Jackson 1998) is an obvious challenge to the exhibition practices of ethnographic museums all over the world. From another angle, ethnographic museums, particularly in the Western world, are met with the constant possibility of concrete repatriation claims. The changes in the hitherto prevalent Western concept of cultural heritage, with the new insights into object-person relationships and the ethics behind the idea of repatriation, should all lead to the recognition that, in the globalized world, dealings with cultural heritage issues must take place on many different levels at the same time. I shall come back to the question of repatriation but first I want to say a bit more about the tangible and the intangible and the relations between objects and persons.

## **The tangible and the intangible**

*The Convention on the Safeguarding of the Intangible Cultural Heritage* (CSICH) has been ratified by more than 80 countries since its adoption by UNESCO in 2003. The Convention may be regarded as a post-colonial supplement to the World Heritage Convention from 1972, which emphasized buildings, monuments and physical places as the kind of material that could come under cultural heritage protection. In the 2003 CSICH Convention, which came powerfully into force with the establishment of a Convention Committee in 2006, phenomena such as cultural performances, oral and musical traditions and handicraft skills have been put in focus. When the work on the preparation of the Convention began in 1997, a list of so-called masterpieces of intangible and oral cultural heritage of humanity was created. It included phenomena such as the Baul Songs from Bangladesh and Bengal, the Gelede performances in West Africa, the Andean cosmovision of the Kallawayaya in Bolivia and the polyphonic singing of the Aka Pygmies of the Central African rainforest, to mention just a few. A recent addition to the list is the Samba de Roda from Brazil, a dance performed by black female



workers in the tobacco companies and related to the West African religion *Candomblé*, which is cultivated by these people of the African Diaspora.

Many of the proclaimed masterpieces are indigenous peoples' cultural expressions and thus many of the intangible heritage phenomena cross borders between nation states, as indigenous peoples' traditional lands often do. But this is only one problem with the list. There has been much criticism both within and outside UNESCO of the whole idea of masterpieces and the idea that a sort of "canon" or list of objectified cultural phenomena can be created. Currently, discussions are taking place in the Convention Committee on how to regulate adoption onto the representative list of phenomena of intangible cultural heritage. In a meeting of the Committee in Japan in 2007, it was decided to incorporate the list of masterpieces into a much more encompassing representative list that is currently being developed. The Committee has also decided to create a list of intangible cultural heritage in need of urgent safeguarding, and ongoing work is aimed in that direction.

The discussions in the Committee all seem to take place on the basis of a general recognition that a more flexible and dynamic concept of culture has to be applied in identifying intangible cultural heritage, but that does not mean that it is an easy task to arrive at a consensus on solutions. In the meeting in the Cultural Commission at the 34<sup>th</sup> UNESCO General Conference in the autumn of 2007, there was for instance a long discussion on the issue of digitization of cultural heritage. Many representatives from developing countries and countries with large indigenous populations spoke out against the idea that digitization and presentations of cultural heritage on the internet could substitute access to the concrete physical objects. It ended with the firm assertion that digitization should never be a substitute for the requirements of the conventions on repatriation of cultural heritage to the countries of origin. The recognition that intangible cultural heritage merits more attention does thus not mean that physical objects can be substituted by images, photos and information. The issue is more complicated and requires more inventive solutions.<sup>3</sup>

So far, however, the work of the Committee seems to take place in a prolific and constructive atmosphere, which raises interesting but complicated questions concerning the culture concept used, and the role of nation states versus local and indigenous communities in identifying the kind of cultural heritage that needs safeguarding.<sup>4</sup>

Returning for a moment to the list of masterpieces, it is significant that most of the proclaimed cultural expressions demonstrate the fact that the tangible and the intangible are inseparable. A dance is an intangible phenomenon. You cannot hold it in your hand, but you can hold the mask that accompanies it, such as for instance the famous masks in the *Gelede* performances of Yorubaland in the West African countries of Benin and Nigeria. The Afro-Brazilian *Samba de Roda* mentioned before is a cultural expression that relies on music, dance and movement,

but also on a particular aesthetics of material garments. In a concrete sense, materiality and immateriality are always linked. Costumes of dancers are only meaningful in relation to the dances, and the dances are given shape through the costumes. You may say that the dance is nothing without the mask, but also vice versa. The big question is then, what the consequences of this are in terms of repatriation.

The enormous historical cultural transfer brought about by the people of the Black Diaspora puts an emphasis on the question of where cultures “belong”. The Samba de Roda does *not* belong in West Africa, although it would never have taken the shape it did in Brazil if it had not been for the African cultures brought there by the slaves and developed by their descendants. Today, West Africans from Nigeria and Benin are inspired and challenged by their interaction with the black Brazilian descendants of the slaves and their cultural expressions. The Black Diaspora is the best token you can find of the fact that cultures are on the move and develop in dynamic interaction between people, and thus ultimately that cultures “belong” where they are practised.

All in all, the CSICH Convention is a testimony to a recognition of conceptions of cultural heritage other than the traditional Western ones, and ultimately it should also become an acceptance of culture as fleeting, flexible and on the move, rather than static and confined within certain borders, whether these be “cultures” as separate and integrated wholes, as in the classical anthropological culture concept, or culture as confined within nation states.<sup>5</sup> All this certainly does not make the question of repatriation any easier.

From another and more theoretical anthropological point of view, the distinction between the material and the intangible is difficult to uphold when looking at relations between objects and persons. Anthropologists can refer back to the French scholar Marcel Mauss and his ideas about the spirit of the gift, which he developed on the basis of the Maori concept of *hau* and expanded into an encompassing theory of the role of objects in forming exchange relations in social life (Mauss 1966). The theory points to the fact that objects such as gifts are deeply related to persons and sometimes play a role that cannot be sharply distinguished from the role played by persons. In the establishment of relations, the distinction between person and object is not always easy to make. An important contemporary source of inspiration is the British anthropologist Alfred Gell, who in his book *Art & Agency* speaks about those “complex intentionalities” that are implied in people’s perceptions of objects of the kind that in Western contexts are called art. In his approaches to an anthropological theory of art, he states that a deeper insight into the relations between people and objects will ultimately threaten to break down our traditional distinction between things and people. Whether we agree to such a radical kind of thinking or not, at least we have to try and look at things with new eyes. My own interest in the issue of the intangible also stems from my work with students at Copenhagen University, who are in-

spired by what has been called the materialist turn in anthropology (Miller 2005; Henare et al. 2007). After many years of focusing on culture and the “software” of social life, a new interest has arisen in the material aspects of social life, the “hardware”, from landscapes to buildings, from spaces and architecture to objects of consumption, from art and religious objects to fetishes. There is a great deal of abstract theoretical thought could become new inspirations in dealing with what things mean to people on different scales, from face-to-object relations among indigenous people and locals in their close living relationships with land, nature and physical surroundings, to those broad global relations that are implied in the issue of repatriation.

## Repatriation

*Re-patriation* in the literal sense of the word, which is Fatherland, is in many senses an absurdity in today's world. Not only because the original owners of cultural objects are difficult and sometimes impossible to identify, and thus there are no fatherlands of objects any more, but also because the pattern of world geography is not made up of neat and unproblematic borders between units that are “fatherlands” to those people who might want to claim the return of cultural heritage. Indigenous peoples' lands cut across borders, and they often do not consider those nation states of which their lands have by historical coincidence become a part as being their fatherland. Neither do many minority groups. Diaspora peoples, like the West African descendants whose forefathers came to the Americas as slaves, would rarely consider the African countries their fatherland, although they may have strong attachments to parts of the cultures of these countries, and continue cultural and religious practices that derive from countries other than those they consider “theirs” presently. As suggested above, the term *re-matriation* might be more appropriate, at least to many indigenous peoples, for whom the metaphor of mother for the lands they live on is much more in line with the way they conceive of their attachment to land and nature than the metaphor of father. “Fatherland” has certain historical connotations to nationalism, and even totalitarianism, as in the case of Nazi Germany, and it is not even the way many non-indigenous people would think about their nation. This observation, based on the derivations from Latin of the word repatriation, may be considered a trifling one. The metaphor could be brushed aside as insignificant in dealing with the legal implications of the conventions that use the term repatriation. However, it could also be seen as a token of the whole hegemonic kind of thinking implied in the dealings with issues of cultural heritage. In a historical light, “fatherlands” were created when colonizers were forced to withdraw from their colonies and new states were created, often with great influence from the same powers that had dominated during colonization. The new states were often

created without consideration of the attachments to land and the ways of living of the indigenous peoples in the new states. Objects that were brought to the museums of the colonizers from people who are not confined within the borders of "fatherlands" could thus never be "repatriated" in the concrete sense of the term. In a more contemporary light, in the globalized world people travel and migrate and do not live in those places to which the objects they consider their most important cultural heritage *might* be repatriated. Objects are, in many ways, turned loose on the world. As James Clifford (Clifford 1988: 1-17) said twenty years ago: "the pure products go crazy". This was when he was questioning issues of authenticity but, today, we have to recognize that objects have, in other ways, also been turned loose on the world. It is no easy task to find out precisely where, nor to whom, they belong if such considerations are regarded in the terms implied in the idea of repatriation. However, that does not mean that ownership has lost its meaning, or that no attention should be paid to different kinds of attachment to objects, whether in use or as symbolic relics of the past. What it does mean is that negotiations about rights to use and ownership should take place on new premises that recognise the changing role of objects in different historical and current contexts.

There are, of course, attachments and affinities, which should be recognised. Ethnographic objects in Western museums are historical. They represent a history, which is often a colonial history, and they may be regarded as sacred in more than one sense. They may be sacred in a religious way to the people who created and used them, but, by entering into monumental museums, or, as in the CSICH Convention, by being adopted as significant masterpieces of humanity, they have also become secularly sacred in a different sense, namely as symbols of value and global history. There are different kinds of values and sacredness at stake in the present world, and it is not always an easy task to find out which of them should prevail. The sacredness of an object, whether in a religious sense or in a more metaphorical secular sense, derives from its context. The issue of sacredness thus points directly to the relation between the physical object and its immaterial or intangible aspects, which may include a performance, a ritual, or other kind of context of human activity.

In most indigenous cultures, the idea of separating a physical object from its meaning, its context of use and the practices that surrounds it does not make much sense. That is not to say that indigenous peoples may not be aware of and respect the museological way of "sacralizing" objects through their confinement to certain institutions, and they may also accept, even with pride, the role their own objects have come to play in museums outside indigenous lands. But, in their contexts of origin, it is impossible to separate the cultural and social handling of material objects from the object itself. Things acquire meaning in use and through their fabrication as handicrafts, and in general as being part of a whole, whether a kinship whole, a ritual whole, a personal spiritual whole, or a

practical community one. To take just one example, in the collections of the Department of Ethnography at the Danish National Museum, can be found an object which is made from otter fur and probably comes from the Ojibwa Indians of North America. It is a small bag that was carried by a young man who, in dreams, searched for his helping spirit. In the museum files it is described as a holy bag dating back to before 1859. When the spirit appeared to the young man in the shape of an animal, he collected parts of that animal in the bag, and when he needed it, he called upon the forces and powers of these small objects. The bag was thus a highly personal thing and once a vital part of a young Ojibwa man's personality, rather in the sense of what the anthropologist Alfred Gell describes as a distributed person (Gell 1998: 96-154). By this he means, in a simplified way, the extensions of a person into the objects that are a part of his immediate world and somehow considered by his surroundings as being a part of him as a person. Today the object has a historical significance in being a representation of a culture about which little was known at the time it was collected. Its meaning and significance in its context of origin can be partly explained by the written label attached to it, but it can never be exhausted by such a description. In the Ojibwa society of the time, and probably in the Ojibwa society of today as well, its meaning would be inseparable from cosmological ideas, and ideas about the powers of certain persons and the forces of certain animals.<sup>6</sup>

Objects are a part of cultural and social wholes, and the attention paid to the intangible aspects of cultural heritage has highlighted this fact and encouraged museum people and others to re-reflect on the kinds of wholes that things have been part of. This also includes the kinds of "wholes" they have more or less artificially been *made* to be a part of, such as a museum collection. Another interesting point about the little Ojibwa bag is also that, aside from the otter skin, it was made from imported materials. Glass beads, red cloth and metal were all European trade goods. The holy bag can thus also be seen as part of a historical "whole" formed by trade and exchange relations. It represents relations of different kinds, on different levels and in more than one way.

The CSICH Convention concerns concrete performances, rituals, oral traditions, skills and handicraft traditions that are sometimes easy to identify. However, the spirit of the Convention should also encourage a renewed attention to the context of objects and the inseparable relations between the physical things and their contexts in a broader perspective. It should also promote recognition of the importance of insights into the different kinds of relations between objects and people, both individually and collectively. At the same time, in a global context of analysis, cultural heritage could be regarded as that which in concrete, local contexts (local rather than national) can be identified as cultural phenomena that sustain and are sustained by continuity, and which expresses living culture but needs safeguarding of its continuous vitality through training in skills and a space for exercising it, supplemented by research in its background, tradition and

role in building identity. A definition along these lines would transcend the dichotomy between the material and immaterial and emphasise relations between people, and between people and objects.

Emphasizing relations, and taking the intangible into consideration, does not make the idea of repatriation any easier but neither does it make the idea of repatriation obsolete. It is important to emphasize that the legal instruments for repatriation are highly needed and should be used, with or in spite of the difficulties noted. In the sense of aiming for a global ethic, it is clear that it should not mean the neglect of the right to claim ownership, whether on the basis of reference to one kind of "whole" as a cultural, social or historical context, or another. But ownership can also be understood in more than one way. While many museums seem to be extremely preoccupied with the idea of ownership as the right to possess objects and keep them to themselves, the idea of ownership and possession in many of those (indigenous) cultures from which the objects originate would be a contextual one, where the object is related to a person in specific situations, or to specific events, or in other ways in more or less permanent flux. This is very different from it being confined to an institution. One way forward in establishing new equal relationships through repatriation could thus be to become more attentive to forms of ownership and recognise ideas about "ownership" represented by the people from whom the museum objects derive.

Another way of expanding our present concept of repatriation, or *re-matriation*, could be to adopt more of an indigenous way of regarding the role of objects within the global sphere. If the whole earth is regarded in a holistic perspective as one huge exchange sphere, we can begin to deal with the different kinds of exchanges that establish relationships and partnerships among people, whether former colonizers and colonized or present day migrants and Diaspora people. In classical anthropological theory, objects were understood as gifts that created relations between people. Present-day museum objects have created relations already, although sometimes in a negative sense of exploitation or extreme inequality. It could be suggested that repatriation should be regarded as an incentive to create new and more equal relationships between different kinds of partners, with recognition of and insight into the close link between material and immaterial aspects of concrete artefacts.

In any case, when the member states of UNESCO, particularly the Western ones, consider whether to ratify the CSICH Convention or not, they should take their colonial past into consideration and, if for no other reason, ratify it through solidarity with those peoples and cultures for whom the intangible matters as much as the tangible. Even when concrete repatriation cases have already been dealt with in a positive way, as in the Greenland-Denmark case of the *Utimut*, the Convention should be ratified on a basis of the recognition that it is an expression of a critical observation of the consequences of the relations created by a colonial past and of current processes and relations in the world. The Convention should

be regarded as uniting a global outlook with the consciousness of a local perspective, which will often cross national borders. It should also be ratified as an expression of the will to become an active player in the development of the global cultural world with an ethic that recognizes cultural differences and realises that confinement within national borders does not suit the world as it looks today. It should, of course, recognize the self-determination of indigenous peoples, which implies that they, and not only nation states, are partners in negotiations on repatriation.<sup>7</sup>

Denmark has not yet ratified the CSICH Convention but the Danish Ministry of Culture has instigated research into the background and concept of intangible cultural heritage.<sup>8</sup> In most writings on the Convention, it is emphasized that it should not serve to support static conditions and concepts of culture but contribute to the creation of a consciousness of values, of the inalienable, of remembrance and history, and of ancestral loyalty and respect, in order to strengthen those processes by which a consciousness of such issues is transferred from one generation to the next.

The creation of the CSICH Convention may be regarded as a kind of repair of misfortunes and tragedies brought about by colonialism. In itself, it does not transcend global inequality or the historical reality of exploitation and subjugation of a great part of the world. But it is a "repair" that must be seen as a supplement to the 1972 World Heritage Convention in a concrete sense, because this earlier convention represents a disequilibrium that privileges Western ethnocentric ideas about cultural heritage as physical objects isolated from their use.

Ethnographic museums could become new loci for the representation of the fact that we live in a globalized world, in which cultural ownership cannot be confined to nation-states or specific places. They may lend their spaces and expertise to discussions about the very concepts of ownership and property on a cultural relativist basis, and they may in their exhibitions aim to challenge sharp distinctions between the tangible and the intangible aspects of social life. This is not an easy task. It will require both inventiveness and careful thinking, and it will certainly require close cooperation between people from the different parts of the world that are represented by the objects and cultural phenomena. If all of the above is taken into consideration, it should, however, be possible to make exhibitions in ethnographic museums that do not disclose, but deal with, and are based upon insights that we may summarise under the broad label of relations. Relations meant as relations of exchange within a postcolonial global field, political relations of power and property, but also relations in a more narrow sense such as between individual persons and objects.

Ethnographic museums could thus see themselves as key sites for the establishment of a global ethic, and address themselves to a global public. They could become the site of a (new) universalistic approach to cultural heritage and aim to play a special role in educating the public about historical and contemporary re-



lations of connections and exchange. No matter what, contemporary ethnographic museums are left with the question of how to deal with issues of intangibility and new insights into the relations between objects and persons, if they want to present their objects in ways that are loyal to the meaning they have for the people of their origin. In the same vein, repatriation should be seen in the light of creating and maintaining relations rather than fixing objects in new or old contexts. That does not mean, however, that there are not some contexts that make more sense than others to specific objects, and there is no doubt that legal or ethical claims for repatriation of objects will make a great deal of sense in concrete cases other than that of Greenland and the Utimut. ○

## Notes

- 1 Repatriation of objects is an issue that should be very carefully dealt with, and unnecessarily strong judgments or declarations should be avoided. As stated in the ICOM Code of Ethics for Museums "In response to requests for the return of cultural property to the country or people of origin, museums should be prepared to initiate dialogues with an open-minded attitude based on scientific and professional principles (in preference to action at a governmental or political level). In addition, the possibility of developing bilateral or multilateral partnerships with museums in countries that have lost a significant part of their cultural or natural heritage should be explored." <http://icom.museophile.sbu.ac.uk/release.13-12-02.html>
- 2 I have dealt with the question of intellectual property rights in relation to indigenous peoples elsewhere (Sjørøsløv 2001).
- 3 An important text that deals with the protection of intangible cultural property in the context of the information age is Michael Brown's *Heritage Trouble* from 2005.
- 4 On the most recent development of the CSICH, see <http://www.unesco.org/culture/ich/>
- 5 For an extensive discussion of the intangible heritage concept, see Barbara Kirschenblatt-Gimblett's article and other texts in *Museum International* 56 (1-2), 2004
- 6 The Ojibwa objects are depicted on page 36 in the catalogue of the permanent collection of the Department of Ethnography of the National Museum in Denmark (Gulløv et al. 2007).
- 7 On indigenous peoples' self-determination as a precondition for dealing with cultural issues, see Rasmussen & Sjørøsløv, and other articles in the UNESCO *World Culture Report* 1998.
- 8 See *Immateriel kulturarv. Rapport fra Kulturministeriets Forskningsudvalg*, 2005 and Kildegård: *Rapport til Kulturministeriet om den immaterielle kulturarv*, 2006.

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# UTIMUT: REPATRIATION AND COLLABORATION BETWEEN DENMARK AND GREENLAND

Bjarne Grønnow & Einar Lund Jensen

From 1982 to 2001, around 35,000 ethnographic and archaeological artefacts, along with archival material, were repatriated from the National Museum of Denmark to the National Museum of Greenland. The process was carried out in association between the two museums, and with the result that new possibilities were created for both institutions.

This paper presents some considerations, consequences and perspectives of the joint Danish-Greenlandic repatriation process, as seen from the point of view of the researchers and curators at the National Museum of Denmark, involved in the cultural history of Greenland. First, the background to the presence of the comprehensive Greenlandic collections at the National Museum of Denmark is outlined. Secondly, the participation of the Danish museum in the process of building up a museum system in Greenland is considered. Finally, the new situation and perspectives that the repatriation of artefacts and contextual information to Greenland has created for archaeological and historical research in Greenland are presented.

## The historical background to the repatriation process

During the 18<sup>th</sup> century, Denmark established trade and mission stations along the coast of West Greenland and, eventually, early in the 20<sup>th</sup> century, all of Greenland became a Danish colony. Subsequently, Greenland and the whole Arctic became the focus of a large number of Danish scientific expeditions and research initiatives.

Since the beginning of the 19<sup>th</sup> century, artefacts and collections from Greenland have held a central position in museum collections in Denmark. Through systematic ethnographic collecting and archaeological excavation, also in other parts of the Arctic, the National Museum of Denmark established one of the world's largest collections from the Arctic. In the case of Greenland, the material represented the entire Greenlandic prehistory and history up to around 1930 and,

for more than a hundred years, the study and dissemination of public information on Greenland have been the main issue for the National Museum – as it still is. Furthermore, at the beginning of the 20<sup>th</sup> century, the administration of the cultural heritage sites and monuments of Greenland was delegated by the Danish government to the National Museum of Denmark, which took care of the antiquarian work on the basis of Danish laws and regulations governing Greenlandic affairs and, for instance, for a time (until 1980) acted as preservation authority (Berglund 1994; Andreasen et. al. 2005; Gulløv & Meldgaard 2002).

In the 1970s, the younger generation of Greenlanders in particular demanded a change in Denmark's overall policy towards Greenland. Development in Greenland, they said, should be based on an acceptance of the Greenlandic population as a people with its own history and its own unique culture, and governed by the people of Greenland. The demand for self-government initiated a public and political debate in Greenland and Denmark that finally led to negotiations on the future relationship between the two countries. The result was an agreement on Greenland Home Rule, which was established in 1979. The Home Rule took over responsibility for cultural matters, including museums.

### **Building up a museum system in Greenland**

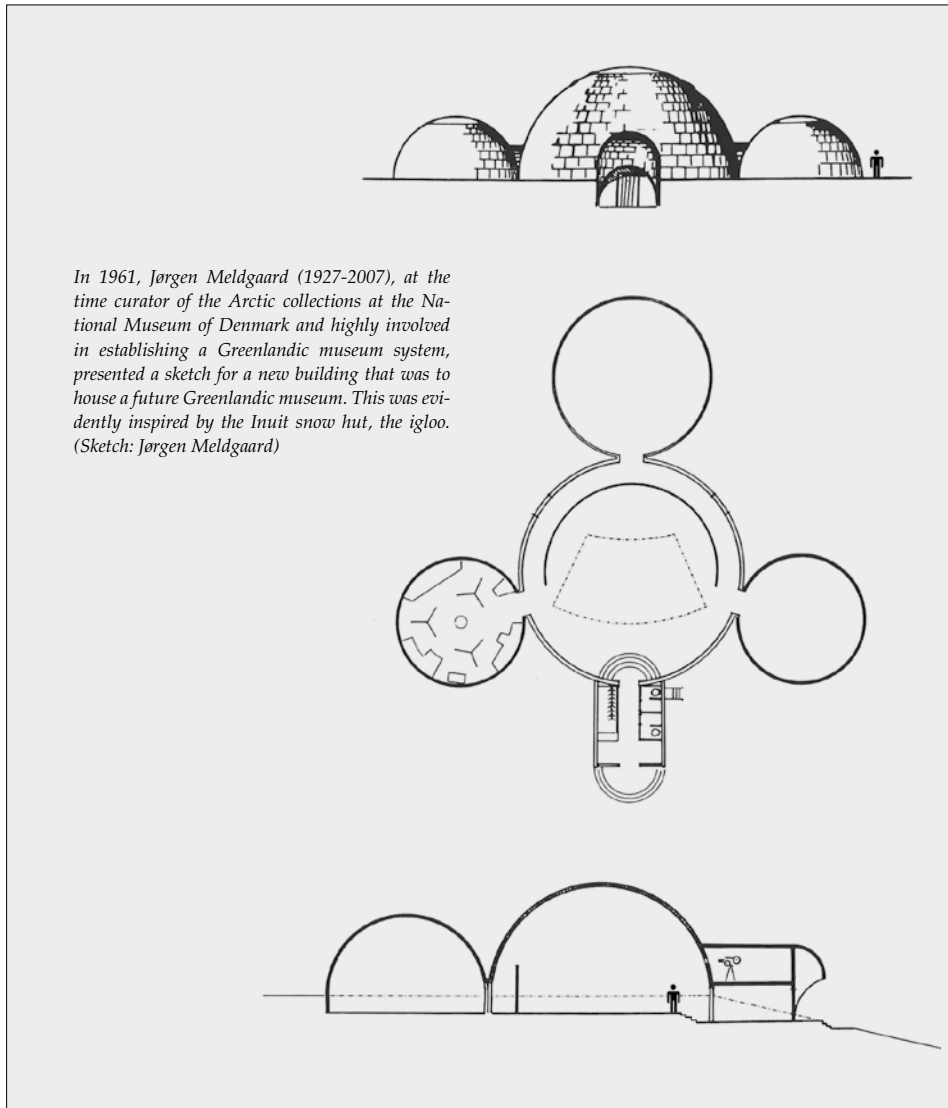
As far back as 1913, Greenlanders had intermittently expressed their wish to establish their own museums, and for the return of artefacts from the Danish collections to Greenland. In 1913, the Council of South Greenland discussed the preservation of cultural heritage in Greenland. Commenting on the suggestion that artefacts from Greenland should be handed over to the National Museum of Denmark, a prominent member of the Council, catechist Josva Kleist (1879-1938) stated:

*The Greenlanders have no other history than that found in the graves, and it is of importance to acquire knowledge about the habits of the ancestors; that the population can get the opportunity to see the weapons and tools that were used (Schultz-Lorentzen 1997: 278).*

Eventually, the Council suggested the establishment of a museum that would have a first right to archaeological finds in Greenland. The next year, the Council was asked to give an estimate of the expenses involved in establishing a museum in Nuuk but, in the end, nothing came of it. New initiatives were taken in the 1950s and, in 1956, four prominent Greenlanders argued for the establishment of a museum in an article in the Greenland newspaper *Atuagagdliutit/Grønlands-posten*:

*All peoples developing and renewing their culture have an obligation to preserve the relics of their ancestors' culture. We should do the same (Schultz-Lorentzen 1997: 280).*

Questions were raised as to why the world's largest Inuit cultural-historical collection was in the National Museum of Denmark, with nothing in Greenland? The hope was that parts of these collections would be returned to Greenland once a museum was established. But, again, no decisive steps were taken at that time.



At last, a museum was established in Nuuk in 1966, and this subsequently entered into cooperation with the National Museum in Copenhagen with regard to archaeological investigations. Artefacts and data from these investigations was to be curated by the new museum, called Kalaallit Nunaata Katersugaasivia/Grønlands Landsmuseum. In the 1970s, the Ethnographic Collections at the National Museum of Denmark, which was in close collaboration with the new museum in Greenland and under which the Arctic collections were curated, on several occasions expressed the opinion that it would be natural and reasonable to transfer parts of the collections to Greenland when conditions became satisfactory. However, two circumstances still prevented repatriation from becoming a reality. One was legislation. According to Danish law, given that Greenland was a part of Denmark, antiquarian responsibility was placed with the National Museum of Denmark. And, secondly, there was a practical problem. The new museum in Nuuk did not have the storage facilities or the staff for the proper safeguard of museum artefacts. This situation changed decisively at the end of the 1970s, however. Scientifically educated and trained staff had now been appointed at the museum in Nuuk and, in 1978, the museum moved to restored buildings with modern storage rooms and conservation facilities.

The establishment of Home Rule in Greenland in 1979 was followed by a comprehensive legislative programme, including regulations for museums and for the preservation of cultural heritage and sites. With the Museum Act, an independent Greenlandic museum system was established and antiquarian responsibility and administration was transferred to the Greenland Home Rule. This marked a radically new framework for cooperation between museums in Denmark and Greenland.

The museum in Nuuk achieved the status of National Museum of Greenland but the museum still did not have the collections that were considered necessary for the purposes of a national museum. Now the question of repatriation became more relevant than ever (Andreasen 1986; Schultz-Lorentzen 1988 & 1997; Haagen 1995). In 1982, a new step was taken to demonstrate the Danish attitude to the issue when a collection of watercolours was handed over from the National Museum to the Greenland Home Rule. The collection consists of more than 200 watercolours painted in the mid-19<sup>th</sup> century by the Greenlandic hunters, Aron of Kangeq and Jens Kreutzmann. The motifs illustrate legends and stories and the collection is of invaluable cultural-historical importance (Haagen & Rosing 1986).

## **Agreement on repatriation**

At last, in 1983, the Directors of the two national museums signed a cooperation agreement that included educating Greenland's museum staff, preservation, ex-

hibitions and, of course, repatriation, which became the main issue. The repatriation process needed to enable the Greenland National Museum to carry out research and put on exhibitions and manage the duties and responsibilities that the new regulations on museums and protection of sites and monuments in Greenland covered. A committee was set up with the overall purpose of heading and monitoring the process of registration and division of the collection, with the aim of returning cultural historical material to the National Museum of Greenland. The committee consisted of three members from each country, all of them with an academic or museum professional background rather than a political one.

Politicians were involved in the process though, as the two governments had sanctioned the museum cooperation agreement. In addition, due to the Danish Museum Act, the Minister for Culture had to approve and sign the recommendations that were drawn up by the committee. It was essential, however, that the repatriation and the cooperation, in practice, should be carried out on the basis of professional museum criteria that were discussed and defined by the committee itself (Schultz-Lorentzen 1988), such as the fact that:

- Both Greenland and Denmark would hold a representative museum collection of objects from Greenland
- Both collections would contain ample material suitable for popularization, research, study and teaching
- Collections or groups of objects naturally belonging together would remain together. In cases where this was impracticable, loans or permanent loans were to be negotiated between the two museums
- Should the Greenlanders wish the return of special finds or objects of importance for their cultural identity, such wishes should be respected
- The historical interests of Danish museums would be similarly respected

It was also decided that, as part of the overall process, all items should be registered in a database and all items that were repatriated should, if necessary, be cleaned and preserved before they were sent to Greenland. Finally, transferred items and collections were to be accompanied by available contextual information, i.e. copies of archival material from the National Museum.

As a result of the museum cooperation agreement, and recognizing that the two museums had embarked upon a very comprehensive process, the Greenland Secretariat was established and placed at the National Museum of Denmark. The overall function of the Secretariat was to carry out the tasks that were defined by the committee. The staff of the Greenland Secretariat consisted of five posts, one full-time and four part-time (Schultz-Lorentzen 1988).

## The repatriation process

Between 1984 and 2001, based on the above-mentioned criteria, around 35,000 archaeological and ethnographic items were selected from the collections of the National Museum of Denmark and transferred to the National Museum of Greenland, while around 100,000 items still remain in Denmark. The returned items and collections represent every archaeologically defined culture present in Greenland up to 1900, and thus cover the entire Greenlandic cultural history, with the exception of recent times. The items were accompanied by copies of archival sources and the Greenland Cultural Heritage Archive. The latter is a database containing archival information that has been collected, in the context of the National Museum's antiquarian duties, on settlements and other cultural / historical relics. A copy has been kept at the National Museum of Denmark and an agreement has been reached as to the mutual updating of this database.

As the collections from Greenland comprise a very large number of artefacts, the committee organized the work so that one particular region or one historic period was taken at a time. After registration of the artefacts, the committee evaluated which part of the collections should be returned to Greenland. On this basis, a recommendation on returns was formulated and this was finally approved by the Minister for Culture. Nine such recommendations were made, all of them unanimously, and all of them have been approved without any objections.

The collections and items were returned to Greenland gradually and, in this connection, exhibitions were held in Denmark and in Greenland to mark the transfer, e.g. the spectacular Gustav Holm Collection from east Greenland (Grønlandssekretariatet 1985). At the end of the whole repatriation process, in 2001, a major exhibition called Utimut, in English 'Return', was produced. At this exhibition, all regions and historic periods in Greenland were represented by specific artefacts that had been returned. The Utimut exhibition formed a presentation of the prehistory and cultural history of Greenland. The historical background, and the idea behind returning collections and items to Greenland, was introduced. In addition, the Utimut exhibition formed a leave-taking from Denmark and a reception in Greenland (Schultz-Lorentzen 1997; Pentz 2004).

With the return to Greenland of major parts of the Greenland collections from the National Museum of Denmark, a quite new situation was created. At any given time, these collections must be seen from their common origin and in the light of each other. Furthermore, in some cases repatriation - contrary to the general principle - led to division of assemblages that had originally formed an entity; for example, finds from some archaeological sites. This underlines the fact that future studies of the collections should, in many cases, be on the basis of close cooperation between the two national museums. It is apparent that the repatriation process and the new situation has formed a new and constructive plat-



form for future collaboration between the National Museum of Denmark, on the one hand, and the National Museum of Greenland and the Greenland local museums, on the other.

## **Collaboration with new perspectives**

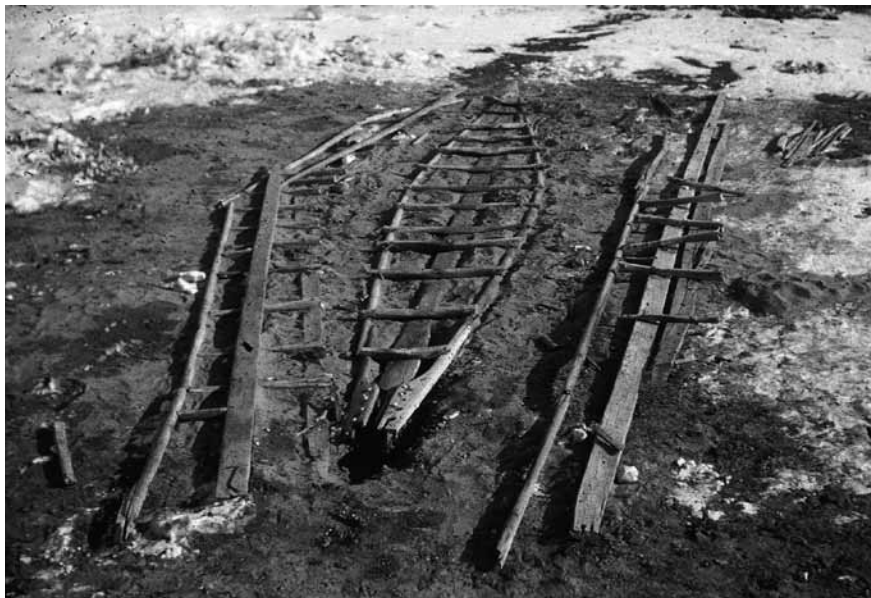
The repatriation of archaeological and ethnographic objects, including contextual archival material, was a process that lasted more than 20 years, and established a relationship of trust between the two national museums. Consequently, a breeding ground for continued collaboration in the 'post-repatriation phase' was established. Both museums wished to take advantage of the huge potential contained in each part of the divided collections and each other's competences.

In 1999, unexpected funding from the Ministry of Research in Denmark paved the way for such a new collaboration, focusing on research and education within the disciplines of archaeology and ethno-history. Thus, in 2000, SILA – the Greenland Research Centre at the National Museum of Denmark - was established on the basis of a partnership agreement between the two national museums. The funding covered the first four years of the centre's existence but, since then, funding from the Danish Research Council for the Humanities and the Danish National Museum itself has extended the centre's operations until the end of 2008.

The aim of SILA is - at the highest scientific level - to conduct archaeological and ethno-historical research in Greenland taking the divided collections as its starting point. During the first four years, SILA was headed by a Board of four members: the directors and vice-directors of the two national museums. Since 2005, however, the centre has been incorporated into a more general partnership agreement between the museums. The agreement means that researchers from Denmark and Greenland can undertake exchange visits, and that they have free access to the shared collections and archives.

SILA is headed by a director who is also a senior researcher. The staff includes a research professor, a senior researcher, three to four post-docs., around three Ph.D. students and a variable number of guest researchers from Denmark, Greenland, Canada, USA, Germany, Norway, Iceland, Sweden and other countries conducting Arctic research.

The activities have been almost equally divided between publication projects, on the one hand, which are mainly based on information from the existing collections and archives, and new, interdisciplinary research projects on the other, including fieldwork in Greenland. The inclusion of local museums has also been extremely fruitful. Typically, SILA and the Greenland National Museum conduct the research part of the project, while the local museums conduct the public outreach activities, for example, exhibitions for the local communities. For six years so far, this kind of collaboration has thrived with the local museums in Qaqortoq,



*In 1949, in Peary Land, the northernmost part of Greenland, during an expedition led by the archaeologist and polar explorer Egil Knuth, the remains of an extremely well preserved women's boat, an umiaq, from the 15<sup>th</sup> century, were found. Photo: Egil Knuth*



*The outstanding find was brought to the National Museum of Denmark but, in 2001, the umiaq was returned to Greenland where it became one of many highlights of the Ulimut exhibition. This umiaq formed the design for the logo of the Conference on Repatriation of Cultural Heritage in Nuuk, Greenland, 2007. Photo: Erik Holm*

Narsaq and Nanortalik, in connection with research projects into Inuit as well as Norse cultural history.

The establishment of SILA has resulted in a marked increase in scientific publications, including books in the series 'Meddelelser om Grønland, Man & Society' ('Monographs on Greenland'). These books and papers in international journals often mark the successful conclusion of a Ph.D., or a post-doctoral project. The new information on the complex cultural history of Greenland that has been gained through years of research has now been compiled and presented, in Danish and Greenlandic, in the book 'Grønlands Forhistorie' (Kalaallit Nunaata Itsarsuaq Qqaluttuassartaa), authored by researchers from both national museums.

As mentioned, SILA has an educational goal as well. The staff often present guest lectures at Danish and Greenlandic universities; however, the international archaeological field schools stand out as something special. They have been conducted frequently over the last six years in South Greenland and in the Nuuk area. Students from Greenland, Denmark, Canada, Germany and Sweden are learning archaeological field techniques during excavations of, for example, a Norse farm, an Inuit settlement from the early colonial period, or a historical soapstone quarry.

The national museums in Denmark and Greenland have thus gone through a long process that has led us from a phase focusing on the repatriation and management of collections, sites and monuments to an equal partnership with regard to research, education and public outreach. This common aim of creating new knowledge and public information based on the shared collections has turned out to be a remarkably sound and fruitful process leading to a common 'post-repatriation future'. As the funding of SILA will probably dry up by the end of 2008, it is now time to plan new areas of museum collaboration between Denmark and Greenland based on the past years' experiences.

## **Conclusion and perspectives**

From a Danish perspective, the case of returning museum artefacts from Denmark to Greenland – or Utimut as it is often called, after the final exhibition – must unavoidably be seen in the light of, and as a consequence of, historical and political circumstances prior to 1982: the process from Greenland being under Danish dominance to the establishing of Greenland Home Rule. The process can roughly be summarized as follows:

- As a consequence of the colonial relationship between Denmark and Greenland, a comprehensive and representative collection was established at the National Museum of Denmark and, for a time, the museum managed the antiquarian responsibility for Greenland.



*Students from the local highschool participate in archaeological excavations at Qassimiut, southern Greenland organized by SILA in cooperation with Qaqortoq Museum. Photo: Bjarne Grønnow, SILA*

- Based on professional criteria, the National Museum of Denmark took part in the building of a museum system in Greenland and items and collections were transferred to Greenland. Repatriation is recognized on both sides as being part of the decolonisation process.
- The Danish-Greenlandic cooperation on returning museum collections and archival material has facilitated research into Greenland's prehistory and cultural history, with new options and perspectives for the national museums of both countries.

In the Utimut case, some basic and favourable conditions obviously had an influence on the positive progress and outcome. The Danish-Greenlandic political discussions and negotiations leading to the establishment of Greenland Home Rule in 1979 created a positive political climate and a desire and a will to act in agreement with the new political and historical situation. In terms of the museums, this was reflected in a general agreement at government level, i.e. between the ministers of culture from the two countries, expressing the mutual desire and will to embark on joint efforts to strengthen the museum system in Greenland. The task of implementing the agreement was delegated to the respective national museums whose staff members had already been considering the building of a Greenland museum system for years, including the return of collections from

Denmark to Greenland. Normally, the opposition or reluctance to repatriation is found at the institution where the item or collection in question is placed. But at the opening of the Greenland Museum in Nuuk in 1966, the representative from the National Museum of Denmark, Jørgen Meldgaard, was already approaching the issue by saying:

*The National Museum of Denmark hopes to be able to contribute to the collections of the Greenland Museum later on. (Schultz-Lorentzen 1997: 282)*

The substantial size of the collection facilitated a division into representative collections for both sides. Besides, as most of the Greenland museum staff that took part in the process were either of Danish origin or had had their education in Denmark, it seems obvious that they shared a common set of values with their colleagues from the National Museum of Denmark in relation to questions of museum policy in general.

But it seems clear that the basic reason for a successful process must be found in the mutual understanding of the needs of a Greenlandic museum in a new historical and political context, as well as the willingness of politicians and museum professionals to act in accordance with this. In this way, for both sides, the repatriation of museum items seems to have been a natural and inevitable consequence of the overall Home Rule process.

Every repatriation case is unique and has its own context in terms of political and historical conditions. Nevertheless, it is our impression that the Danish-Greenlandic repatriation project outlines a model that, with appropriate modifications, could be used as an inspiration for repatriation projects in other parts of the world. The project also stresses another fundamental point, however, and that is the attitude towards repatriation. Instead of looking upon the Greenlandic wishes as a problem or a threat to its collections, the National Museum of Denmark took up the challenge and dialogue, and cooperation was established. For the National Museum of Denmark, the result of repatriation was not merely the return of items and collections to Greenland; it also paved the way to cooperation with the entire Greenlandic museum system, including the local museums in Greenland. ○

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# REPATRIATION AS KNOWLEDGE SHARING — RETURNING THE SÁMI CULTURAL HERITAGE

Eeva-Kristiina Harlin

## The Sámi peoples

The Sámi<sup>1</sup> live in the northern parts of Norway, Sweden and Finland, as well as on the Russian Kola peninsula. The land they inhabit is traditionally called Sápmi. Their population size is uncertain due to the fact that the Sámi are registered as Swedish, Norwegian and Finnish citizens; however, it is estimated that there are altogether ca. 68,000 Sámi: ca. 6,000 live in Finland, ca. 20,000 in Sweden, ca. 40,000 in Norway and ca. 2,000 in Russia.<sup>2</sup>

The Sámi are the only indigenous people living in the European Union, and even today they speak nine different languages, of which six have their own written form. In this paper, I will focus on the repatriation situation in the Nordic countries, leaving out the Russian Sámi. Due to present national borderlines, the cultural heritage of the Nordic Sámi population is today affected by three different legal systems and methods of cultural heritage management.<sup>3</sup> Finland, Norway and Sweden each have their own Sámi Parliament, which together form the Sámi Parliamentary Assemblage.<sup>4</sup>

## Sámi Parliaments and The Administration of Cultural Heritage in Sápmi

The Finnish Sámi Parliament is the oldest of the three Nordic Sámi parliaments. It was established, albeit with a different name, back in 1973. In Finland, the Sámi Parliament manages matters relating to Sámi culture and language. The Sámi Parliament has had a right to cultural self-government since 1996 although it still has little effect with regard to cultural heritage.<sup>5</sup> All cultural heritage issues are still handled by the National Board of Antiquities, which admits the Sámi Parliament no governing management over Sámi cultural heritage.

In 1976, the Museum Committee of the Nordic Sámi Council<sup>6</sup> decided that there should be a Sámi museum in each Nordic country. The aim was for these museums to have overall responsibility for scientific and professional developments in the Sámi museum field (Edbom 2005: 18; Mulk 2002: 14). The first Sámi

museum was established in Finland when a Sámi museum opened as a privately-owned outdoor museum in 1959. The present museum – Siida – was opened in 1998 and simultaneously received the position of special museum with the main responsibility of presenting the Sámi culture in Finland. The museum is supported economically by the state.<sup>7</sup>

The Swedish Sámi Parliament was established quite late in 1993. It has the national mission of dealing with issues such as the preservation and formulation of cultural matters affecting the Sámi people in Sweden. The Swedish Sámi Parliament is not yet a self-governing body. All cultural heritage issues are handled by the National Heritage Board with the help of regional governments and regional museums, and the Sámi Parliament has no governing control over cultural heritage (Edbom 2005: 14).<sup>8</sup> In 1983, a foundation was established in Sweden for the Mountain and Sámi Museum. Ájtte Mountain and Sámi Museum was opened in 1989 as the main national museum of the Sámi culture and mountain area, as well as being an information center for mountain tourism (Edbom 2005: 17; Mulk 2002: 14).

The Norwegian Sámi Parliament was established in 1989. It has the broad task of dealing with issues that affect the Sámi people, such as maintaining and developing the Sámi language, culture and society in Norway. The Sámi Parliament can define its own sphere of authority and the parliament can put questions to the public authorities and private institutions. The parliament does not, however, have a clear position in Norway's Constitution.<sup>9</sup> The highest authority for cultural heritage in Norway is the Directorate for Cultural Heritage. However, according to the law, the Sámi Parliament manages all cultural heritage situated in the Sámi area that is more than 100 years old but younger than the Reformation. Cultural heritage that is older than the Reformation is managed by the regional municipal governments since it can be difficult to define ethnicity at older sites. The first Sámi museum in Norway was established in Karasjok in 1976 and, so far, 13 Sámi museums have been established. The Department of the Environment of the Norwegian Sámi Parliament has run all the Sámi museums since 1996 (Edbom 2005: 18, 23; Schanche 2002b: 32).<sup>10</sup>

Today, none of the Nordic Sámi populations have total authority to manage cultural heritage situated outside the present-day Sámi area.

## **Background to the collections**

The tradition of documenting, collecting and studying Sápmi, the Sámi people and their culture is a long one. This activity has mostly been conducted from an external point of view, for example, by priests, teachers or scholars representing other than the Sámi themselves. The vast majority of the older cultural objects or



collections of objects are located in museums and institutions outside the traditional Sámi core area (Jomppanen 2002: 35).

Museum collections consist mostly of utensils from times of self-sufficiency such as clothes, house ware and tools. The substance of the collections always reflects the scientific conception as well as the sociological theory and ideology of the era of the collection (Edbom 2005: 51). Most of the objects, especially the objects that have been collected in recent decades, were bought from the Sámi but, for instance, the religious drums, in addition to the human remains, were taken from the people against their will. This may also include objects collected during the early era of collecting (Schanche 2002a: 100; 2002b: 30; Westman 2002: 55-57). The existence of human remains in old anatomical collections represents a traumatic issue for the Sámi people, not least because of the race-prejudiced burden of anthropology (Iregren 2002: 90, Schanche 2002a: 105-9) (see also Nilsson Stutz, this volume). In accordance with Western scientific concepts, research into human remains is not considered ethically problematic. This may be related to the Protestant concept of the soul. However, in other religions, it has been requested that the dead be left in peace for some reason or another. Of course, the research history related to the anatomical collections and the brutal ways in which human remains were collected has affected the collections, making them value-loaded and their existence traumatic to indigenous peoples (Schanche 2002c: 30).

## **Recalling ancestral voices: repatriation of sámi cultural heritage**

Since 2006, the three Sámi museums: Siida, Ájtte and Várjjat in Finland, Sweden and Norway respectively, have been collaborating on a project called Recalling Ancestral Voices - Repatriation of Sámi Cultural Heritage.<sup>11</sup>

The project is gathering information about collections of Sámi objects located in museums and institutions in Finland, Sweden and Norway. The project aims to gain a mutual understanding and respect between Sámi museums and non-Sámi museums administering the Sámi collections. Material culture is important to the Sámi culture and, even nowadays, ethnicity is strongly expressed through material objects, especially clothes. The traditional costume is worn on many occasions and you can tell where a person comes from, as well as his or her marital status, by their appearance. Nowadays it is also quite popular, especially among young people, to state their ethnicity by wearing parts of the traditional clothing in daily life.

The number of objects in Swedish museums and institutions was already established in 2004 in a project carried out by Ájtte Museum (Edbom 2005), so our project began by sending a questionnaire to museums and institutions in Finland and Norway. The principal information we wanted to obtain from



*The project logo specifically depicts the wheel-like belt ring of a Sámi woman's outfit. As can be inferred from its name, the belt ring is attached to the wearer's belt and in addition to a change purse, a knife, needle box, scissors, etc., can be hung from it. The logo's degenerated animal motif, with its oriental influences, has been used by the Sámi in the north of Sweden since the Late Middle Ages. The same motif has been used in belt rings in the Sámi region across Finland, Sweden and Norway during the last century. This logo was chosen to emphasise the everyday nature of the Sámi culture and the role of women in a masculine culture as well as the early international nature created by trading routes. Hannu Tikkanen from Tikkanen Workshop in Inari was responsible for creating the graphic design of the project's logo.*

our questionnaire related to issues such as: how large are the collections? What kinds of objects are included in the collections? What is the history of the collections? And what is the usage of these collections: are they on display? Are they actively used in research?<sup>12</sup>

Based on the answers received, project staff<sup>13</sup> visited as many of the museums as possible to survey their collections. According to the questionnaire and project survey, it can be estimated that there are ca. 70,000 Sámi objects in Finnish, Swedish and Norwegian museums and scientific institutions. Based on the survey Ájtte conducted in 2004, we know that there are at least 2,300 objects in European continental museums.

The information collected during the survey will be fed into a database and published as a web browser of Sámi objects on the Internet on the Sámi national day of February 6, 2008. This will facilitate the possibility of the Sámi getting to know their material cultural heritage that is located elsewhere. In addition, the museums administering the collections will obtain updated information concerning their collections.

The 'Recalling Ancestral Voices - Repatriation of Sámi Cultural Heritage' project has, for the most part, been received positively by the museums although some problems have arisen. Not every museum answered the questionnaire. Some of them did not have the resources or expertise to answer, some of them did not know what Sámi objects looked like. A number of museums did not want to answer. As was expected, museum catalogues usually provide insufficient information. Often the information consists of only the identification number and the name of the object. Sometimes the name of the object is incorrect and often the catalogues lack information on place of origin.

## Repatriation in project countries

While Denmark has repatriated approx. 35,000 objects to Greenland, repatriation has rarely been conducted internally within Scandinavian countries. Some repatriation has, however, been undertaken from Sweden to countries such as Guatemala (Mulk 2002: 17).<sup>14</sup> There is no law covering the repatriation of cultural heritage to indigenous peoples and only a few requests have so far been made to the museums and institutions. The question of the ownership of Sámi objects has arisen among the Sámi in recent decades (Adlercreutz 2002: 71; Mulk 2002: 20). Symbolic homecomings in the form of object depositions and loans have been conducted but they do not compensate for actual repatriation. The question of ownership of objects is not only ethical and political but also economical (Jomppanen 2002: 35). Loaning objects and insuring them, as well as traveling to the archives to see the objects, is expensive.

The published examples of repatriation relating to Sámi cultural heritage as presented below are mostly cases related to Sámi human remains. Over the last two years, claims for the repatriation of human remains have become concrete especially in Sweden and Norway, since the human remains from the Finnish anatomical collections have already been repatriated.

### Repatriation in Finland

In 1992, an archaeological survey was completed at the old Sámi burial island of Lake Inari, Finland. The survey report was published and it revealed that the University of Helsinki held old anatomical collections gathered during the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and that these collections included Sámi human remains from Inari, Utsjoki and Muonio. A discussion emerged among the Sámi with regard to returning the bones for reburial. The anatomical collections had been forgotten by the scientific society and were “rediscovered” by the university. In 1995, the university returned 95 skulls, which were reburied on the old cemetery island. However, it soon became clear that the anatomical collections needed to be surveyed in a correct manner. A bone committee consisting of archaeological, forensic, medical, osteological, paleontological and museological experts was appointed by the University of Helsinki and the work began to analyse the rest of the Sámi human remains. The president of the Finnish Sámi Parliament, Pekka Aikio, was consulted during the work and, in 2001, the Sámi human remains were returned to Inari and stored at the Siida Sámi Museum (Söderholm 2002: 3, 6-7). The Sámi museum and the Sámi Parliament administer the collections, though without the right to rebury them.

## Repatriation in Sweden

In the 1950s, a Sámi grave was excavated by Ernst Manker in Atoklinten, Tärnaby, Sweden. The human remains were taken to the Nordic Museum in Stockholm for the purposes of osteological analysis. The local people were not happy with this plan so Manker gave a written promise to return the bones once the analysis had been completed. He never kept that promise. In 1973, the bone remnants were moved from the Ethnographic Museum to the Historical Museum. In 1990, the South Sámi organisation Vadtejen Saemiej Sijte made inquiries about having the bone remnants returned for reburial. In 2000, the Historical Museum decided to return the bones, mainly as a result of the promise Manker had made. Before the repatriation took place, a new archaeological examination was undertaken at the burial site. In this connection, a seminar on the reburial was arranged by Vadtejen Saemiej Sijte in 2001. Finally, in 2002, the recently excavated material, as well as the bone remnants, were reburied in an exact reconstruction, and a memorial address held in the South Sámi language (Edbom 2005: 27-28).

Lately, the Swedish Sámi Parliament has been claiming repatriation and reburial of the human remains of Sámi people plundered from graveyards by Swedish institutions. At the same time, the Swedish Sámi Parliament is requesting an official apology from the state and from the Church.<sup>15</sup> The process is ongoing and working groups consisting of representatives from the Sámi Parliament, the Sámi museums and the museums that administer collections of Sámi human remains have been established for the purpose of negotiations.

## Repatriation in Norway

In 1906, a sacred stone - Gárgovárri - was taken from Kautokeino and brought to Oslo. In 1996, the Kautokeino Assembly began efforts for its repatriation and discovered that the stone was located at the Folk Museum in Oslo. The Sámi department at the museum took a positive attitude towards repatriation and, in 1999, the stone was returned to its original site (Schanche 2002b: 29).

The most notorious case in Norway is probably the case concerning the two Sámi men, Mons Somby and Aslak Hetta, who were executed in 1854 after taking part in a revolt in Kautokeino. Their bodies were buried outside the Kåfjord cemetery but their heads were sent to Oslo and stored at the anatomical institution. Enquiries with regard to repatriation had already commenced in the 1970s but the university was not willing to give back the skulls. After the Sámi Parliament and the media began to put pressure on it, a decision was made to return the skulls. In 1996, the cranium of Mons Somby was repatriated but the skull of Hetta could not be found, since it had been sent to Copenhagen in exchange for two

Greenlandic skulls. Once it had been recovered from Copenhagen, both skulls could finally be reburied in 1997 at the Kåfjord cemetery (Schanche 2002b: 29).

In Norway, the Sámi Parliament has since 1998 had the right to decide who can use or study the collections of Sámi human remains. The collections are preserved separately but are still physically situated at the anatomical collections in Oslo (Schanche 2002a: 116).<sup>16</sup> Recently, the return of part of the collections has been requested for reburial. These are the human remains from the Neiden Skolt Sámi orthodox burial ground and an official decision to repatriate has been made by the Oslo Anatomical Institute.

### **The results of the project**

At the beginning of October 2007, the Recalling Ancestral Voices project arranged a seminar on the subject of repatriation in Inari at the Siida Sámi Museum. A wide variety of speakers came from Alaska, Finland, Greenland, Denmark, Norway and Sweden and they represented Sámi and non-Sámi researchers, Sámi politicians, Sámi and non-Sámi museum professionals and local Sámi handicraftsmen. The seminar offered not only the possibility of presenting the project's results but also of providing information about the collections to the public in the core Sámi area. During the seminar, the importance to researchers and Sámi craftsmen of gaining admission to the museum collections was emphasised, since real cultural elements such as clothing have been revived by studying old collections. The seminar also opened up a discussion about repatriation of the Sámi material and offered guidelines for future administration and responsibility of Sámi cultural heritage. The peak of the three-day seminar was when representatives of the Oslo Folk Museum and Stockholm's Nordic Museum announced that these museums were ready to discuss repatriating part of their collections to the Sámi museums. The Folk Museum and the Nordic Museum administer the largest collections of Sámi objects located in non-Sámi museums.<sup>17</sup>

It may be that the term repatriation in the name of this project is to some extent misleading, since the project is advocating the repatriation of information rather than of physical objects. However, information is knowledge and knowledge is power. Information about the objects and their location will help when the issue of physical repatriation arises. In recent decades, the Sámi themselves have become active within cultural heritage matters and several cultural landscape projects have been completed by the Sámi institutions themselves (for example in Finland, Jefremoff 2001; Aikio 2005). The Recalling Ancestral Voices project and its results will hopefully promote discussions around repatriation and facilitate a mutual understanding between the Sámi and national institutes in order to obtain a better administration of Sámi cultural heritage in Scandinavia. As a project led by Sámi museums, this can provide the tools for practical

repatriations of objects or cultural heritage, while negotiating repatriation is more or less a political matter and should be dealt with by the Sámi parliaments.

Sámi society and the Sámi museums have the will and the knowledge needed to manage their own cultural heritage. However, the Sámi museums first have to obtain more working resources and adequate storage facilities. This could be achieved if there was a will on the part of the nation states. Hopefully, through this project, some national museums will realise that the Sámi museums are actually the right context for the Sámi objects, especially if those national museums do not have the resources or knowledge to administer the Sámi collections. The right to administer one's own heritage is a right to one's own past. It is important to present the past in a way that will help to administer and protect cultural objects and sites so that it will be easier to strengthen and help arbitrate culture for future generations. ○

## Notes

- 1 There is no established transcription for the long a of the Sámi language in English. The sound can be transcribed either as *á* or *aa*. Here I use the form *á*, as in the word Sámi.
- 2 The definition of who is Sámi varies from country to country. In Finland, a Sámi is a person who speaks one of the Sámi languages as mother tongue, or a person whose mother, father or one grandparent speaks one of the Sámi languages as mother tongue and who feels him or herself to be a Sámi.
- 3 [http://www.samer.se/servlet/GetDoc?meta\\_id=1111](http://www.samer.se/servlet/GetDoc?meta_id=1111) 7.2.2007
- 4 <http://www.samediggi.fi/vanha/suomi/su11.htm> 7.2.2007
- 5 [http://www.samer.se/servlet/GetDoc?meta\\_id=1111](http://www.samer.se/servlet/GetDoc?meta_id=1111) 7.2.2007
- 6 The Nordic Sámi Council is a non-governmental organisation that aims to promote Sámi rights and interests.
- 7 [http://www.siida.fi/english/siida/en\\_saamelaismuseum.html](http://www.siida.fi/english/siida/en_saamelaismuseum.html) 7.6.2007
- 8 [http://www.samer.se/servlet/GetDoc?meta\\_id=1108](http://www.samer.se/servlet/GetDoc?meta_id=1108) 7.2.2007
- 9 [http://www.samer.se/servlet/GetDoc?meta\\_id=1111](http://www.samer.se/servlet/GetDoc?meta_id=1111) 7.2.2007
- 10 <http://www.samediggi.no/Artikkel.asp?AId=12&back=1&Mid1=14&Mid2=114> 7.2.2007
- 11 The project is part of Interreg III A Sápmi program, which is funded by the European Union. On a national level, the project's sponsors include the State Provincial Office of Lapland, the North Calotte Council and the Swedish National Council for Cultural Affairs, the Council of Cultural Affairs of the Swedish Sámi Parliament, the Arts Council Norway, Norwegian Sámi Parliament and the Norwegian Archive, Library and Museum Authority.
- 12 <http://www.siida.fi/heritage>
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- 17 The seminar was financed by the Nordic Culture Fund, the Norwegian Sámi Parliament and the Swedish Sámi Parliament.

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# THE JOURNEY HOME: A CASE STUDY IN PROACTIVE REPATRIATION

Susan Rowley and Kristin Hausler

## Introduction

*It has never been about what you don't have.  
It's about what you do have and what you can share.*  
Vivian Campbell, Musqueam

Initiated in 2005, the Journey Home is a proactive repatriation project based at the University of British Columbia's Laboratory of Archaeology (LOA).<sup>1</sup> The purpose of this project is to develop a method for proactive repatriation and to carry out a critical self-examination of this process. This is being achieved through research into the human remains housed at the LOA, discussions with all relevant and willing First Nations communities, the provision of a venue where difficult issues can be discussed, the creation of protocols and policy recommendations regarding the repatriation, and care and handling of human remains in museum contexts, and facilitating the repatriation process. The Journey Home is based on the premise that new relationships between museums and indigenous peoples demand a re-examination and redressing of past injustices.

There are many repatriation initiatives around the world. The Journey Home Project examines the repatriation of ancestral remains within the context of British Columbia. The ancestral remains and burial goods currently housed at the Laboratory of Archaeology at the University of British Columbia located within the traditional territory of the Musqueam Indian Band<sup>2</sup> are used as a case study. Scattered throughout Canada, housed in museums and universities, are the remains of thousands of First Nations<sup>3</sup> people. While contemporary communities feel a direct sense of loss in relation to these ancestors, many have neither the research capacity nor the funding to locate their remains. Many communities are also unaware of how to initiate repatriation requests. Universities and museums, in contrast, have faced uncertainty as to the proper course of action and, in some cases, a belief shared with some researchers that Science will be damaged through

a potential loss of knowledge if these remains are returned. This argument has been used most notably in the case of Kennewick Man (see Nilsson Stutz and Watkins, this volume).

The research conducted as part of this project provides evidence that, while presenting some very real challenges, the repatriation of ancestral remains and cultural heritage is an opportunity for institutions to renegotiate relationships with originating communities and to support new museum practices focusing on respect, return of authority and self-representation.

Numerous parties have an interest in repatriation. In this paper, the interests of four groups will be mentioned: descendant communities, museums, researchers and the general public. Descendant communities are those whose ancestors' remains are housed in institutions. In this paper, the descendant communities discussed are the First Nations of British Columbia.

Throughout the world, human remains are stored in museums, university departments, laboratories, medical schools and other research institutions. These institutions are used to having absolute authority over the use and disposition of the collections they house. However, in countries with a colonial past, the human remains in institutions generally belong to the indigenous populations and were mostly removed under situations of duress. They are rarely related to the staff that curates them; a staff that is frequently unaware of culturally appropriate methods for the care and handling of human remains.

Biological anthropologists, archaeologists and medical researchers view these collections as valuable for research purposes. They are often conflicted by the repatriation debate. They have frequently had the ability to undertake any testing they felt necessary, whenever they wanted, with vetting of their research questions performed by their academic peers. However, they are well aware of the past abuses of research, particularly in regards to issues of race, skeletal anatomy and cranial capacity. These researchers pose important and thought provoking questions about the use of human remains for research purposes. Within the North American framework, the court case surrounding Kennewick Man (Thomas 2001) has forced researchers to examine long held tenets on their rights to knowledge and their relationships with and obligations to descendant communities.

The general public plays a role in this discussion, as, in most cases, it is their tax dollars that support the institutions with collections. Also, where institutions maintain a public face, the public is the target audience for exhibits, university courses, public programs, etc. Their attitudes towards repatriation are hard to gauge. Over the past four years, a series of public commentary books on repatriation have been maintained by one of the authors at the Museum of Anthropology at the University of British Columbia (MOA). These journals pose the question: what do you think about repatriation? Preliminary analysis indicates

85% of respondents favour the return of cultural heritage and ancestral remains to First Nations communities.

Not all of these parties have an equal interest nor do they equal rights when it comes to collections of human remains. International conventions, ethics statements of Canadian national organizations and provincial legislation cede primary interest in these collections to descendant populations. These rights have recently been strengthened by the passage of the UN Declaration on the Rights of Indigenous Peoples in September of 2007. Article 12 states: "Indigenous peoples have the right to ... the repatriation of their human remains" and "States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with the indigenous peoples concerned." (United Nations 2007)

Canada has no national repatriation legislation. Instead three documents regarding repatriation set ethical and moral guidelines for the repatriation of ancestors. The *Ethical Guidelines of the Canadian Archaeological Association* (1996), in conjunction with provincial and territorial permitting requirements, guide archaeologists' actions during and post excavations. These have led to fewer ancestral remains entering museum and laboratory collections. Generally, any ancestral remains encountered are analyzed using techniques selected in negotiation with local First Nations' communities and then reburied.

The vast majority of ancestral remains residing in Canadian institutions were, however, excavated prior to these guidelines. The document guiding the ethics of repatriating these remains is entitled *Turning the Page: Forging New Relationships between Aboriginal Peoples<sup>4</sup> and Museums* (Hill & Nicks 1992). In the 1980s, the Lubicon Cree led a highly controversial national and international campaign to boycott "The Spirit Sings", a museum exhibit organized for the Calgary Winter Olympics in 1988. This protest forced museums reluctantly to view themselves as political actors and to engage in a self-critical examination of their practice (see, for example, Harrison 1988; Trigger 1988). The Assembly of First Nations (AFN, a national political body representing Canada's Status and Treaty First Nations) and the Canadian Museums Association (CMA, a national organization to promote Canadian museums) established a task force to examine the relationship between museums and indigenous peoples. *Turning the Page: The Task Force Report on Museums and First Peoples* identified repatriation of human remains as one of the outstanding issues requiring resolution. The AFN and the CMA chose not to recommend legislation, such as the Native American Graves Protection and Repatriation Act (NAGPRA) enacted by the USA in 1990, but rather called on museums to take an ethical and moral view towards repatriation. The writers of the task force considered NAGPRA a legalistic approach potentially interfering with rather than fostering relations between museums and First Peoples (Hill & Nicks 1992). Fifteen years later, *Turning the Page* still provides the framework

within which most museums structure their relationships with Canada's First Peoples – a testimony to those who worked on it.

In 1996, Canada published the results of a multi-year Royal Commission on Aboriginal Peoples. This report contains the following statement providing a moral imperative for repatriation:

*Protection of historical and sacred sites, recovery of human remains so that proper burial can be arranged, repatriation of artifacts that are the private property or sacred inheritance of particular families and communities — these are essential to the spiritual health of nations and communities (Canada 1996: Vol.3 Chapter 6.1).*

While moral and ethical statements provide behavioral guidelines for those motivated to change, they do not carry the weight of law. Nor do they necessarily lead to the release of funds to enable museums to follow and meet the guidelines or for First Peoples to engage with museums. In *Turning the Page* the authors recommended special funds be allocated for museums to create inventories and to publicize these to the appropriate aboriginal communities. The writers also appealed for granting agencies to improve funding towards First Peoples' involvement in museums. However, these initiatives have received minimal funding. In contrast, during the years since the enactment of NAGPRA in the USA, over twenty-five million US dollars have been released for museums to complete collection inventories and for Native American and Hawaiian groups to re-connect with their cultural heritage and ancestors scattered in diverse geographic locations (see McKeown, this volume). Therefore, while the *Turning the Page* report has had considerable impact on attitudes in Canada, there is still much work to do to achieve their recommendations for repatriation.

## **The journey home project**

Over 90% of the ancestral remains housed at the LOA are from British Columbia and so we have focused our preliminary research on this province. Within the contested landscape of Canadian land claims and treaty negotiations, British Columbia presents the most complexity and diversity. There are over 30 aboriginal languages and 197 recognized First Nations Bands. While a handful of treaties were signed in the 19th century, they cover less than 0.1% of the land base and do not include Canada's third largest city, Vancouver. There is one settled contemporary land claim – the Nisga'a claim (2000). Multiple treaty tables exist and have been on-going for 15 years with no finalized agreements. In terms of repatriation, only the Royal British Columbia Museum, the provincial museum, and the Canadian Museum of Civilization, the federal museum, are part of these negotiations. Finally, there are First Nations communities who have chosen not to participate

in the current treaty process. In fact, the map of BC can be viewed as a tangled ball of yarn with overlapping claims and competing interests. This very complexity makes it an ideal place to inform us about repatriation and to examine some of the fears expressed by museums over repatriation which, in some cases, have led to a paralysis of action. Questions such as: how do we know we are returning these ancestors to their descendants? Who are the proper authorities? And: what if we make a mistake?

Repatriation of long-held collections in Canada is almost always a one-way street with First Peoples approaching museums for the repatriation of their ancestors and cultural heritage. Many communities lack the resources, knowledge and capacity to undertake this work, while regarding it as a culturally and spiritually important task. We chose to explore repatriation from an engaged perspective through a proactive process. Communities were invited to participate, to discuss the issues of ancestral remains and to proceed towards repatriation at their own pace, with the research team assisting with the intricacies of the foreign and arcane world of university policies and regulations. We were well aware that not all communities would necessarily be ready to deal with the return of their ancestors and so we built into the project an examination of the appropriate care and handling protocols to complement the LOA's existing protocols for collections management. We were motivated by a sense of the imbalance of power that exists within the current framework where communities are placed in the position of supplicants when seeking access to information about their own heritage and, in particular, the repatriation of their ancestors.

Providentially, at the same time as the Journey Home commenced, a First Nations Advisory Group was convened by LOA to discuss moving the ancestors to accommodate a planned expansion of the Museum of Anthropology. LOA wanted to know where to relocate the ancestors and how to handle them during the move. This committee had members from the Musqueam Indian Band, Sto:lo Nation, Yale First Nation and Bonaparte Indian Band. One of the Advisory Group's recommendations was that Musqueam protocols be adopted by LOA, given our location within Musqueam traditional territory. The committee also recognized, as did the LOA, that each community might have additional requirements to ensure the respectful treatment of their ancestors. This meeting also provided an opportunity to introduce the Journey Home. Leona Sparrow, from Musqueam pointed out:

*You created this problem – you can't just get rid of the ancestors because you want to - you can't put a timeline on repatriation. Some communities will be ready but others may not be ready for years, if ever.*

The first task in this project was to determine the geographic homes of the ancestors based on LOA records. Problems arose almost immediately when we real-

ized the full extent to which the collections, in common with most similar institutions, are undocumented. LOA has only existed for just over 50 years; however, Charles Borden, the first archaeologist living and working in BC, founded it. Hence, for years, anyone who discovered human bones would box them up and send them to LOA. Unfortunately, this practice continues to this day. Ancestors entered LOA: through archaeological excavations; via the Royal Canadian Mounted Police, construction crews, ranchers, beach combers, looters, gardeners, kids; and in brown cardboard boxes through the mail with no return address. Most arrived from the 1950s through to the early 1970s. As a result of the way collections entered the LOA, we are unable to provide simple answers to communities' most frequently asked questions: how many ancestors are there? And where exactly are they from?

Where adequate data existed, the find sites were plotted on traditional territory maps available online through community websites or contained in treaty statements of intent. Based on this work, letters were sent to 125 BC First Nations (including bands, tribal councils and treaty groups) that could have ancestors at the LOA, informing them about the project and inviting them to participate. We were advised to send these first letters to Chiefs and Councils, as the political leaders. While we used readily available maps for our preliminary analysis, we invited groups to submit their own maps, which would be treated as confidential documents.

Letters went out in late November of 2005; by March 2007 contact had been established with 28 groups representing over 75 First Nations. Four repatriations to 11 First Nations have been completed while discussions with others continue.

## Sharing knowledge

*We're taught to be generous with who we are and what we know, and there is responsibility involved with that. In order to call on our ancestors, we need to be grateful and continue to hold burnings where we send them food. That way, they will be with us and give us strength (Hopokeltun (Shane Pointe), Musqueam).*

Communities have been very generous in sharing knowledge and in trying to teach us how to demonstrate respect for the ancestors. It is clear that there is a need to develop new protocols and policies. Institutions employ best practices based on common museum standards. As Miriam Clavir has pointed out, these may not answer the needs of the communities (Clavir 2002). Rather, protocols and policies that integrate and give balanced weight to the concerns of communities and museum professionals and are developed collaboratively are required. While LOA had existing policies and protocols prior to this research, some have been developed further and work proceeds on developing integrated policies<sup>5</sup>

for research, loans, meetings, and care and handling. The following paragraphs present a synopsis of LOA's procedures.

Research on collections of archaeological materials or on ancestral remains may only proceed once the community has been informed. Should a researcher wish to undertake destructive testing, a Band Council Resolution authorizing this work must be sent to LOA. The purpose for this is to ensure that communities are informed about research being undertaken and can be involved in the research process. Likewise, loans of archaeological collections for research are subject to community notification and approval.

Hosting of First Nations communities involves its own protocols and both sharing of food and demonstrating respect are important components of these events. Communities send highly respected members to work with us. LOA demonstrates respect for these people by ensuring its most senior people, LOA's director and the Head of the Anthropology department, visit for part of any meeting and attend the transfer ceremonies. Among BC First Nations, important work takes place after the sharing of food. To ignore this aspect would entail a significant breach of protocol.

The care and handling protocols we have developed can be divided into two components: respect for the ancestors, and personal health and safety. As Shane Pointe's statement indicates, respect for the ancestors is critical to community health. On a day-to-day basis this means that no ancestors are to be confined in plastic bags, that they are to be moved facing forwards with cedar boughs surrounding them, and that they are not to be handled by menstruating women because of the latter's power. It also requires working with a local spiritual advisor to carry out spiritual cleansings, to hold burnings (where the ancestors are fed) and to clear pathways when major moves occur so that the ancestors can see the path and understand the reason for the move.

Health and safety has to do with our health and has been offered by communities to keep LOA staff safe from spiritual harm. Staff are advised to knock before entering the room where the ancestors reside and to talk to them. This alerts their spirits to your presence. In this way, the spirits will not bump into you accidentally, thus avoiding a possible illness. Staff members also wear a small amount of red ochre, signaling that they are clean and mean the ancestors no harm. Once the work is complete, staff should wash their hands and face with cold water. Anyone who feels heavy at the end of the day should brush herself/himself with cedar boughs. Finally, as spirits wander most in the evening the staff are requested, for their safety, not to work in their immediate proximity late in the day. These protocols are deeply rooted in Musqueam teachings and modes of behaviour.

There is no doubt that mistakes will happen and there will be confusion when dealing with issues surrounding repatriation. E-mail has become the dominant mode of communication and yet it is a miserable means of communication as the



subtleties and nuances of even telephone communication are lost. Sometimes emotions on both ends become tense or frayed and feelings hurt. However, sharing knowledge has begun to transform some of the relationships LOA has with communities. At the start, several communities were shocked to learn that we have ancestors from their traditional territories and expressed anger over our holding of their relatives. One community believed they had already repatriated all their ancestors because they had been in contact with all the major museums in Canada. If we had not gone to them, they would never have come to us. They are now expanding their program to include archaeological repositories, universities, medical schools and private collections. This knowledge sharing helps to build relationships and establish trust. This extends to openness about the circumstances of ancestors arriving at the LOA, no matter how uncomfortable this may make us feel (trade in human remains, etc.). The more we share, the more comes back to us and the more people trust our sometimes less than satisfactory answers to many of their questions.

Another important lesson from conducting repatriation is flexibility, as we attempt to respect the different sensibilities of the communities. All communities must follow the *LOA Repatriation Guidelines* and *Steps to Repatriation* as these fulfill university requirements. However, we are flexible on all components of the transfer ceremony. There are also no time restrictions placed on repatriations. While LOA has had repatriation guidelines since the 1990s, these are currently under review with the goal of making them more user-friendly for communities and to avoid some of the problems identified by communities during this project.

## **Community participation**

Most groups have no ceremony for reburials and the communities have much work to do to consult with elders and knowledge holders about the ways things will be accomplished. In addition, repatriation entails enormous spiritual, emotional and financial costs for communities. These partially explain the response rate from our initial letters. Communities must feel they are ready before commencing a repatriation request.

The financial costs of repatriation can be large and communities have no sources of funds for this work. The ancestors must be treated in a respectful way. For most groups in British Columbia, this includes gifts to those who carry out the spiritual work and feeding those who attend the reburial. At a recent reburial ceremony, the spiritual work lasted for four days preceding the event, a fire had to be kept burning for the entire night before, over three hundred people were fed, gifts were distributed to helpers and elders, and stakes were put up for the gambling game traditionally played after a funeral.



The movement and reburial of ancestors must be carried out with the assistance of spiritual people. Otherwise, there can be dangers to the community from the spirits of the ancestors. Once moved, they will be restless as they get used to being at home. Community members must be aware of this and take appropriate measures to ensure their health.

Repatriation ceremonies are emotionally charged events. Each one is different but they are all stressful for community members who are dealing with multiple strong emotions. They experience: grief for their ancestors; guilt over not having brought them home sooner; anger over being in the position to have to bring them home; and colonial pain from years of oppression and active destruction of their culture.

These costs lead to the question: why do some communities choose to engage and, in many cases, seek out their ancestors when there are clear stressors? From the onset of colonial times, ancestral remains have been treated as scientific specimens and been given into the control of non-aboriginal groups. It is clear that the return of the ancestors is one step in returning authority and control. Additionally, repatriation is a community event. The work involved entails reconnecting with the past, re-affirming identity and renewing cultural values. Also, past injustices are redressed and, in this way, repatriation can be viewed as being rooted in concepts of social justice. But, at its most fundamental level, for communities the repatriation of ancestral remains is about community health and well-being. Communities say that when the ancestors are away from their homeland the community cannot be whole – there will always be something missing, something wrong. While no one views repatriation as a panacea they do see it as an important component of a healthy future.

## Conclusions

Most institutions have concerns over returning ancestors to the right people. Over and over again, we have heard that ancestors must not be fought over. Despite the political realities of the current treaty process in British Columbia that often pits neighbouring communities and relatives against each other, people strive to work together to bring their ancestors home and to do this in a way that provides links for future relationships. This extends to their generosity in working with LOA despite our holding their relatives for many years.

Working with communities on repatriation builds trust relationships between researchers at institutions with ancestral remains and communities. As relationships develop, these groups are working together on research projects and some communities are beginning to ask: what can scientific tests tell us about our ancestors and how they lived? For example, one community permitted a physical anthropologist to take samples from the ancestral remains for destructive testing

in C14 dating, isotope analysis and DNA studies before the reburial ceremony took place. In this way, the interests of both groups are being accommodated. This represents a fundamental shift away from the inequalities of the past, where control and authority were in the hands of the scientific community.

A first step on the road to a new relationship with communities is for institutions to create inventories and to proactively contact communities to discuss repatriation. Not only is this transfer of knowledge essential, as it helps to mitigate the unsettling uncertainty First Nations feel about the location of their ancestors' remains, but pro-action also starts to redress the imbalance in the relationships between aboriginal peoples and museums. Repatriation is not a cure-all and it is never easy; however, it is an essential step on the path to defining new relationships based on trust and knowledge sharing. ○

## Acknowledgments

We would like to take this opportunity to acknowledge all First Nations community members who have worked, and are currently working, with us on the Journey Home. We would like to recognize their generosity and understanding in sharing knowledge with us and their patience in dealing with the inevitable bureaucracy, paperwork, e-mails, telephone calls and misunderstandings. We say thank you to them.

This project would not have been possible without the support and assistance of all members and staff at the Laboratory of Archaeology at the University of British Columbia. Finally, we would like to acknowledge the financial support of the University of British Columbia's Hampton Fund. We thank them for purposely funding risky projects.

## Notes

- 1 The Museum of Anthropology at the University of British Columbia is a world-renowned institution – there are no First Nations ancestral remains at the museum. The Laboratory of Archaeology, a sister institution, partially situated within the same building, does house ancestral remains.
- 2 The members of the Musqueam Indian Band have lived in the area of the lower Fraser River in British Columbia for thousands of years. Their website is [www.musqueam.bc.ca](http://www.musqueam.bc.ca).
- 3 The term First Nations refers to the indigenous peoples of Canada who were previously called Indians. It excludes the Inuit and the Metis peoples. In this paper, the term Indian is only used when it appears in the official name of a group. One example of this is the Musqueam Indian Band.
- 4 First Peoples refers to all three indigenous groups of Canada: the First Nations, the Inuit and the Metis.
- 5 For current LOA Policies and Procedures see: [www.anth.ubc.ca/Policies\\_and\\_Procedures.9795.0.html](http://www.anth.ubc.ca/Policies_and_Procedures.9795.0.html)

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