## Cultural Rights and Repatriation.

Towards the end of the 20th century, there was a rise in the repatriation of objects to their original cultural community. Cultural groups wanted their cultural property returned to them, especially the objects that were taken without permission during periods of colonialism and placed on display in large national museums such as the British Museum in London, and the Louvre Museum in Paris. These objects were usually displayed without context or cultural history. One major issue with repatriation is what exactly is cultural rights and its importance in cultural claims over objects? Can heritage help authenticate claims in order for property to be returned? The concept of repatriation raises questions that need to be considered; such as what is the definition and act of repatriation, are there any current foundations, such as an international repatriation charter that could allow a future for repatriation, and has the rise of repatriation coincided with the development in cultural rights? Are there any loopholes in repatriation causing issues to claiming cultural property, and what makes an object open to cultural claims? Looking at the history of the rise of cultural rights, importance of heritage, and repatriation legality issues, combined with two case studies of object repatriation, it will be possible to see the relation between cultural rights and repatriation.

The looting of objects is not a modern concept, it has happened since ancient times with the Romans stealing Greek sculptures and placing them on display in their homes. Human history has seen many cultural objects moved around for many reasons. During war, occupation of another culture enabled one way for artefacts to be taken without permission; they were symbols of triumph and domination over another culture. In colonialism, artefacts were taken as symbols of domination over a inferior culture. Other objects however, could be acquired from another culture through gifts and tokens of peace. Overall, cultural objects were taken illegally and without permission, and were displayed out of the objects' cultural context. When an artefact is taken, it usually is for the benefit of the appropriating culture, and becomes a symbol of oppression and humiliation for the artefact's original owners (Peters, 2012, 143). For centuries there has been discussion on whether artefacts should be returned to their rightful owners; but issues arose as to how an artefact was obtained, either legally or pilfered during times of war, and if an object was taken many centuries ago, has that act of stealing become important to human history i.e. the Gigas Code, the oldest manuscript created in Prague but looted by

Swedish soldiers in 1648; there is debate over whether the looting has become an important historical fact for that artefact. However, in the early 19th century it was commonly agreed that the taking of artefacts during times of conflict was prohibited in international law, the first codification of this law being the 1863 Leiber Code, used by the Union Army during the American Civil War (Peters, 2012,144). After the First World War, there were agreements between the victors that specific cultural artefacts and items were to be returned; throughout the early 20th century it was agreed between waring nations that there were to be formal, recognised obligations that any objects taken during conflict or occupation, and deemed culturally significant, were to be returned to country of origin. This interest in preserving cultural property heightened during and after the Second World War; the Nuremberg Trials saw the return of many appropriated cultural property taken by the Nazi's during the Second World War. The Nuremberg Trials saw the official condemnation of illegal confiscation, of the damage and destruction of cultural property that had occurred during World War Two by the Nazi's, and thus was the first example of cultural property law being recognised and enforced on an international scale (Peters, 2012, 145).

The rise in the protection of cultural artefacts has coincided with the idea of cultural difference and rights. Cultural right is the sense of a 'right to cultural difference', which is seen on an equal level to religious liberty and racial equality. However, there is still a belief that national social solidarity is important for a functioning and effective democratic government, and that cultural diversity and uniqueness hinders on this. In modern democratic nations there is a need for social trust and civic virtue, and for solidarity between ethnic groups residing in a nation though social norms. This causes problems as different ethnic cultural groups wish to express their culture, wanting representation and have an unique identity separate from the national identity (Ford, 2012, 151). If cultural diversity is to work within a nation, then multiculturalism must be embraced, as well as a need for cultural tolerance; there are questions as to whether this idea of multiculturalism and diversity would work within modern democratic Western nations who focus on national assimilation.

Uniqueness of a cultural group can help them make claims on cultural objects that are not currently within their possession (Ford, 2012, 154). The rise in cultural rights and identity has led to the need for communities to have tangible evidence of their culture in order to make claims on artefacts that are deemed important to their identity (Rowlands, 2002,

105). Cultural communities wish to pass on their heritage and cultural practises onto future generations, ensuring any cultural traditions are continued into the future. History has shown how culture can be moved and taken from people, and there is a desire to preserve and reclaim taken history which is mostly represented through objects and artefacts (Rowlands, 2002, 107). Rowland identifies a major issue of cultural claims on objects: how is it possible to distinguish between an object's unique cultural heritage, and an object that has multiple cultural and historical heritages. It is easy for an object to acquire a quagmire of cultural heritages and historical significance to many cultural communities:

"Objectified notions of culture and right to possess a culture would appear therefore to be an ethical precondition of a politics of recognition and to collude in justifying acts of cultural destruction, if it means that this allows one the right to assert a unique identity." (Rowlands, 2002, 108).

Heritage is needed to establish cultural right and connection as it allows for communities to claim cultural property rights on an object, or in some cases, bodily remains. Heritage is also needed to salvage the authentic self of a cultural group, to exist within and without a national social standard. Early heritage was displayed in grand museums such as the British Museum, the Louvre, and Metropolitan Museum, where universal culture was linked to the history of a nation. This has led to questions of who has the authority to represent other cultures, and whether these large ethnographic museums should be allowed to have that right when many of their objects within their collections have been acquired through colonialism and exploitation of other cultures. In recent years there has been a significant increase in museums stressing their incorporation of indigenous groups into the conservation and displaying of certain cultural artefacts; however it can't be ignored that hundreds of years of colonial interaction and dominance has influenced the workings of western museums. This is where heritage of an artefact is important when cultural communities make claims on artefacts as belonging to their culture. "Heritage is reconstituted as cultural property as long as it helps legitimise claims in the public sphere dominated by the colonial or postcolonial state." (Rowland, 2002, 110). However, heritage can bring with it memories and connotations of violence and oppression, especially in regards to colonialist supplanting and removing an indigenous culture from an area i.e. British removal of Aboriginal communities onto reservations. Objects that hold these heritages may reawaken a sense of loss, of grievances, of heartache, and memories of destruction of a culture and its traditions. Heritage can cause for events to be forgotten, to

be wiped from national memory, and by making cultural claims, the dark parts of history are remember (Rowland, 2002, 111).

Cultural recognition and rights have risen since the 1990s, with the end of the Cold War inspiring a new take on political rights, especially in regards to the cultural differences between minority groups who were previously ignored. Cultural rights raise recognition, but what is actually being recognised, and what claims can be made and ratified? Cultural rights can be viewed through two themes. One is through self-awareness and the knowledge of belonging to a particular cultural group and wanting to preserve it. The second theme is that by possessing a culture, an ambiguity is created through the legal definition of culture as property (Rowlands, 2002, 107). Where once a cultural group had to have their identities defined universally, there has been a shift to see cultural rights, claims and heritage as more fluid, and that a connection of heritage to an object only exists if there is a current living relationship to the past; there must be a history, or cultural story, to belong with the object, to tie it to a cultural group and its traditions. Heritage of an object may include one single narrative, but multiple stories can also be told (Rowland, 2002, 108).

The repatriation of cultural objects to their community can have positive implications; it can help a community comprehend its past, and to come to terms with any post-colonial trauma and help a community move forward. It is not surprising that Indigenous communities have lost part of their identity when colonisation has occurred and their traditions and heritage, including objects, have been forcibly taken from them. The repatriation of objects, and the recognition of cultural rights, property and intellect have helped reconstruct and revive indigenous communities (Simpson, 2009, 123). Cultural heritage is important for Indigenous communities to define themselves, and to reconnect with their past traditions; by returning objects to communities, they are given a chance to relearn their past, relearn past traditions and rituals allowing for a stronger sense of identity. For example, the Blackfoot community of Southern Alberta Canada lost their traditions due to colonialism and Christian missionaries who arrived in the late nineteenth century: they lost their healing rituals that involved medicine bundles and lost the knowledge in traditional Blackfoot ceremonial ways. The transmission of knowledge was lost and this effected their identity. The medicine bundles were given ethnographic meaning and were collected by western museums as artefacts of curiosity. Taking these objects out of their culture led to a decrease in traditional knowledge, and had adverse

affects on the ceremonial life of the Blackfoot community. However, with the repatriation of the sacred medicine bundles, the Blackfoot community has endeavoured to relearn these traditions and become reacquainted with their heritage and cultural knowledge (Simpson, 2009, 126). Repatriation can also mean the returning of ancestral remains to a community.

Museums have a large collection of objects that educate visitors about human history, they have the capacity to educate people on various aspects of culture, both their own and others; when museums repatriate objects that have had a cultural claim made upon them, museums take on a new role of cultural renewal and preservation- helping cultures continue to flourish and exist by returning objects that are connected to their heritage and their past. However, modern collections have usually been formed during the colonial period of occupation when the collecting of Indigenous objects was deemed as preserving the evidence of Indigenous cultures that were believed to be facing extinction (Simpson, 2009, 128). With the rise in cultural rights and property claims, there has been a need for museums to repatriate objects, where certain cultural items are returned to their culture of origin. Repatriation can also come about due to descendants of previous owners coming forward and claiming inheritance rights on objects. Repatriation can be a long process, that can be filled with much deliberation and communication between the museum or institution, and the Indigenous community. Discussion of the appropriate method of repatriation between the two groups may involve the means of transportation, the correct packaging of the object or burial remains, and any prayers or rituals that should be carried out before the journey back to its home (Simpson, 2009, 127).

Repatriation does come with legality issues of repatriation. In 2007, the United Nations created a new declaration that defined the property rights and repatriation claims of Indigenous cultural groups. The UN Declaration on the Rights of Indigenous Peoples was set up to redress the idea of what constituted as Indigenous peoples' cultural property. It addressed both questions of human remains and ceremonial objects; whether Indigenous groups had the right to claim for repatriation on human bodily remains, and if they could affirm their for right and control of any cultural ceremonial objects. There was also an allowance for intellectual property, which was defined as an artefact; these artefacts could be seen as non-material property such as artwork, technologies, rituals, and literature.

In regards to non-material cultural remains, UNDRIP allows the Indigenous communities to have a:

"...right to practise and revitalise their cultural traditions and customs and requires restitution if the taking of cultural property happened without the indigenous peoples' free, prior, and informed consent or in violation of their laws, traditions and customs." (Kuprecht, 2014, 75).

The rights to repatriation for Indigenous cultures is further defined by the UN declaration on Indigenous rights; there are three main Indigenous rights in regards to cultural property-the right to self-determination, the right for minorities to their own culture, religion, and language; and the right for Indigenous people to take part in their cultural life unhindered. The right for self-determination is an international policy stating that self-determination is all about promoting friendly relations between and within nations, but allow for difference of identity. The UN believes that the right to self-determination is important for Indigenous communities in helping to shape and protect their identity and culture. Making a cultural claim upon an artefact, object, or bodily remains is an act of this right to self-determination; determining what is significant and important to a cultural group and maintaining those cultural property rights (Kuprecht, 2014, 80).

The second article is on individual members of a society that belong to a minority cultural group. As the UNDRIP Article 27 CCPR states:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." (Kuprecht, 2014, 82).

This article protects Indigenous groups' cultural rights to practise their unique traditions and ceremonies; it essentially protects culture from being discriminated against major cultural groups.

The third section of the article defines the rights of taking part within a cultural life. It aims to protect the right of indigenous individuals to take part in their community group, and to enjoy the freedom of practising their traditions and rituals; it is recognised that participating Jillian Tuckwood s4262939

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within one's culture helps create identity and promotes awareness of diversity within a nation's collective society. Another article of the UNDRIP declaration states that indigenous people have the right to control, protect and develop their cultural heritage which includes intellectual cultural property such as rituals, traditions and beliefs. The article stresses the importance for communities to access their cultural heritage at any time and without any restrictions. One concern with the UNDRIP on defining cultural rights and property is that there is no official statement of definition on the guidelines to cultural property repatriation of objects to their culture of origin; just a general discussion on the right for cultural groups to manage and determine their cultural heritage (Kuprecht, 2009, 84). Could this create a future problem for the repatriation of objects?

Two areas that need to considered when discussing the guidelines of repatriation of cultural property is the Intrastate level, and the Cross-State Level. An Intrastate view of repatriation is that the rights for indigenous people is dependent on the state in which a indigenous group exists; this is possible because the state has a better understanding of the cultural situation and can formulate the best way to respect indigenous rights and any cultural property requests. Each state can enact their own form of practise and law on managing indigenous cultural rights and any repatriation that may take place. However, these state-enacted repatriation guidelines are not recognised on an international level. Cross-state level acts upon an international, inter-state stage. Once an indigenous artefact leaves its cultural homeland, it becomes an international matter between three groups- the indigenous group, the possessing state and hosting state. As there are multiple groups involved in the movement of an artefact, international law is used to regulate the management of the artefact and the relationship between the groups involved. As each state creates their own regulations and laws for repatriation that is unique to each state indigenous group, there is a need for a international wide set up of guidelines for cross state repatriation (Keprucht, 2009, 88).

The catch to this structure of intra-state and international law on repatriation is that new laws that affect the past (such as returning objects that had been taken without permission) cannot be enacted if at the expense of citizens. There is also a loophole that allows owners of cultural property that has been acquired in 'good faith' to resist repatriation after a certain amount of time has passed. This lack of structured ownership and repatriation practises means only a compelling reason for the return of cultural property to be repatriated back to cultural owners will be considered and acted upon

(Keprucht, 2009, 90). It is also expected that in return for a cultural object, there is to be some compensation for this loss of knowledge for the host institution i.e. educational access, future loan agreements. There is a need for an international customary law to be enacted that affects all states and nations in regards to repatriation rights and processes. A proper, legally binding convention would help classify which material should be repatriated, who is eligible for the process of repatriation, and the set up of a committee that decides whether repatriation will occur or not.

This lack of international, global repatriation legislation is evident through the actions of the Soviet Union after World War II. The Soviet Union in 1943 decided to retain confiscated artwork as compensation for damages occurred to Soviet territory by the Nazi-Germany forces. Russia still holds many artefacts that have not been documented, and its unknown whether these artefacts came into Russian museum collections legally or illegally. 1998 saw the implementation of the 'Federal Law on Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation'; it stated that all cultural property removed to Russia during and at the conclusion of WWII was considered legal property of USSR, despite agreement with Germany in 1999 on returning german cultural materials stated in the "Treaty on Good-Neighbourliness Partnership and Cooperation, Article 16". (Peters, 2012, 147)

The Elgin Marbles are currently held within the British Museum. There is much international debate on whether the marbles should be repatriated back to Greece where they were taken by British Lord Elgin in the early 19th century. Since the marbles have been placed in the British Museum, Londoners have adopted them passionately, as they are a major feature of the British Museum collection. There is cultural significance for the Greeks over the Elgin Marbles, as they reflect ancient Athenian culture and prestige; the marbles reflect Greek ideologies of freedom, democracy, culture and imperial power, of Athenian power and pride (Zeman, 2012, 6). Lord Elgin's argument for taking the marbles was to preserve them, and to improve the arts for Great Britain; based on these arguments the British Government bought them despite questions on legality. Once the Greeks achieved independence in 1828, they began to seek the return of the marbles back to Greece. No official claim of cultural property was made until 1928, and further requests were constantly rebuffed and denied. The marbles were used as bargaining chips and bribery for British-Greek politics, however the British Government never followed through with their bargaining deals and proposals of returning the marbles. This political cat-andmouse situation continued throughout the 20th century, until the 1980s where the Greeks started to argue their cultural property claim from an archaeological standpoint; they argued that the marbles had been taken from the Parthenon without permission as a form of illegal looting (Zeman, 2012, 29).

UNESCO were presented with the case by the Greeks who claimed that Lord Elgin's actions were illegal, and put the marbles at risk of destruction by the hacking and sawing of the marbles when forcibly removing them, for housing them in unsatisfactory conditions before being placed into a museum with oil lamps that affected the surface of the marbles through air pollution and smoke, and being subjected to damaging washing and cleaning (Zeman, 2012, 32). The British Parliamentary Under-Secretary of the State for Foreign and Commonwealth Affairs argued that the marbles were a tribute to the British Museum's aim for conserving and presenting human history. It was also argued that the marbles were attained legally with consent of the Ottoman government, whose law and authority extended to Athens, which was part of the Ottoman Empire. With Athens under Ottoman rule and authority, the permission that Elgin gained was legally sound. Another nail in Greece's claim to cultural property and the repatriation is that Great Britain's statute of limitations is six years; Greece waited for over hundred years to make their first cultural claims, and no longer have a chance to sue the British Government for illegal stealing and looting the Elgin Marbles (Zeman, 2012, 34). And it's now against British law to return any part of the collection without an official Act of Parliament.

In terms of cultural rights over property, the British argue that the current inhabitants of Athens are not the cultural descendants and ancestors of the original Periklean Athenians, who created the Parthenon and followed cultural traditions. But the Greek government claim that as their ancient culture created democracy, the Parthenon marbles are connected to Greek cultural heritage and therefore are Greek cultural property. The debate between the British and Greek Governments continues today, one side claiming legality of original collecting and that the marbles have multiple world heritage, and whilst the other claiming right to cultural property and demanding for their repatriation. This debate between the two nations reflect the problems of repatriation and the structured process of guidelines that are needed to be implemented in order for repatriation to occur in the future.

Although repatriation has evolved greatly over the past decades since the end of the Second World War, there is a still a long way to go in forming an efficient and accurate process of cultural claims over property and the actual return of objects to cultural communities, especially Indigenous communities. Cultural rights have risen since the end of World War Two, with minority groups establishing themselves socially and politically, and with these cultural rights, recognition of heritage and uniqueness have led to more cultural artefacts to be returned to their original owners. Cultural heritage is important in establishing and determining which claims are accurate and verifiable. If there is no clear, precise and well founded argument for heritage claims, then repatriation cannot occur; the Elgin Marbles are an example of the disagreements over heritage of the marbles and the repatriation process is yet to be instigated. In order for repatriation to occur more frequently and successfully in future years, there is a need for an authoritative, official international and global affecting legislation that no nation or state can avoid.

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