International Repatriation in the Eurocentric World Order

Turned in on

May 6, 2019

by

Daniel G. Leonard

for the class

ANTH 499 Ethics and NAGPRA

at

University of Illinois at Urbana-Champaign

taught by

Dr. Laura L. Shackelford and Dr. Jenny L. Davis

> *States shall provide redress through effective mechanisms, which may include restitution,*
> *developed in conjunction with indigenous peoples, with respect to their cultural, intellectual,*
> *religious and spiritual property taken without their free, prior and informed consent or in*
> *violation of their laws, traditions and customs.*
>
> – *U.N. Declaration on the Rights of Indigenous Peoples* (2007, Article 11, Section 2)

1 Introduction

On December 13th, 2007, the United Nations ratified the Declaration on the Rights of Indigenous Peoples (UNDRIP) after twenty-five years spent languishing in committees. The Declaration asserted the rights of indigenous peoples to self-determination and ceremonial expression, and notably delineated the rights to ownership of cultural and spiritual property. The Declaration is nonbinding on member states, and as such countries are free to follow or ignore its provisions as they so desire; however, for many civil rights activists it signifies a watershed moment in indigenous rights (Weissner, 2012). The U.N. itself describes it as a "important standard for the treatment of indigenous peoples and . . . a significant tool towards eliminating human rights violations" (Permanent Forum on Indigenous Issues, n.d., p. 2). Notable are the identities of the four states who voted against the Declaration: Australia, Canada, New Zealand, and the United States, all settler-colonial countries with large indigenous populations. The U.S. delegation in particular cited qualms with the protections of self-determination and land rights, which it found incompatible with its own national situation (United States Mission to the United Nations, 2007).

For peoples throughout the world, there exist cultural artifacts and human remains that were taken from their original locations to museums and state institutions without the knowledge or input of their owners. While many settler-colonial states have taken efforts to repatriate artifacts domestically, the issue of artifacts taken by outside states remains fraught with conflict and debate over the merits of repatriation. Further complicating the issue is the different processes of repatriation necessitated by two different types of claimants: those who exist subnationally within states versus states themselves. Indigenous peoples of the Americas exist within settler-colonial states and are far outnumbered in the political structure of such states. Conversely, there exist postcolonial states which are primarily inhabited and politically controlled by the indigenous peoples of the region. Both groups have "cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent," yet their methods of repatriation must necessarily differ. This paper investigates how each group performs repatriation and how former colonial powers respond to requests for cultural property.

2   Trapped Within States: Diplomacy from Subnational Indigenous Groups

For indigenous groups in settler-colonial states, connection to international diplomacy is restricted through the formalities of state structures. The existence of indigenous people is recognized by the international community only as individuals residing within U.N. member states, rather than as nations deserving of recognition as collective bodies (Schulte-Tenckhoff, 2012). Carroll (2012) notes that the wording of UNDRIP specifies indigenous peoples' rights to self-determination only through the construction of their own institutions, yet refuses to afford those same institutions any recognition within international relations. This conceptual understanding of indigenous communities as subnational, or as Chief Justice Marshall spelled out in the roots of federal Indian law "that of a ward to his guardian" ("Cherokee Nation v. State of Georgia," 1831, p. 2) leaves indigenous nations unable to negotiate for repatriation with states to whom they are not "dependent."

2.1   NAGPRA Abroad

NAGPRA, as U.S. domestic legislation, has no legal effect on museums abroad. European museums are free to hold, trade, and conduct destructive analysis on human remains and ceremonial objects that would be illegal within the U.S. However, this does not mean the effects of NAGPRA are not felt abroad.

Owing to its imperial history, most human remains in British museums come from overseas. A 2003 state survey of over one hundred museums found nearly half possessed human remains from overseas, 41% of which came from the Americas during the period 1500-1947 CE. This was estimated to number approximately 1,800 individuals from that time period alone (Weeks & Bott, 2003).

In 2004, following a scandal involving unauthorized possession of children's organs (see Burton & Wells, 2002), the U.K. Parliament passed the Human Tissue Act, which created a regulatory authority for the study of human tissues. Notably for repatriation of Native remains, the "miscellaneous" section of the Act permits the boards of state museums to de-accession "any human remains which they reasonably believe to be remains of a person who died less than one thousand years before the day on which this section comes into force if it appears to them to be appropriate to do so for any reason, whether or not relating to their other functions" ("Human Tissue Act," 2004). The Department for Culture, Media and Sport followed the Human Tissue Act with a report outlining nonbinding guidance on de-accessioning and repatriating remains from overseas upon request. Specifically, the guidance instructs museums to "do no harm" and to practice "respect for diverse religious, spiritual and cultural beliefs and attitudes to remains" (Department for Culture, Media and Sport, 2005, p. 14). Giesen (2009) further provides guidance to U.K. museums in negotiating claims from abroad. Notable is the instruction to provide claimants with itemized inventories of human remains and associated funerary objects, a requirement of NAGPRA found nowhere in U.K. law yet provided to claimants in a spirit of goodwill.

3   States as Claimants of National Heritage

For colonial empires, the collection of artifacts from conquered peoples became a cornerstone of imperial identity. Most states existing today were at some point colonized by a European power, yet few operated as settler-colonial operations for the physical residence of European people. Those states in which the indigenous population remain the vast majority of the country and manage the affairs of the state present a different to international repatriation when compared to the struggles of subnational indigenous groups.

Unlike colonization of the Americas, European conquest of Africa has left the population of native Africans nearly intact with little exception. As such, it is a model for the process of indigenous heritage management in the context of postcolonial nation-building. Shyllon (2009) places the establishment of African national museums in the context of colonial resource extraction, pointing out that for many colonial administrators, the removal of artifacts and cultural items was justified on the basis that the colonies had no museums of their own. In many African nations, therefore, had their origins in an early twentieth-century desire to preserve some remainder of the nation's cultural objects.

3.1   The Creation of "National Heritage"

The idea of national heritage is best understood in its relation to the concept of common human heritage, both of which influence the practice of museum collection and operation. As Turner (2009) argues, the Enlightenment idea of cultural artifacts as the common heritage of mankind was the impetus for the founding of such museums as the British Museum and the Louvre. In recent centuries, the idea of cultural artifacts as showing how human societies differ has led to the idea of national heritage, where individual nations seek to create national museums showcasing their own individual history and culture. Both views of heritage and the human condition are equally valid, but they present differences inherent to the museum systems in contemporary states. While colonizer states are host to such "common human heritage" museums, the one-way transmission of cultural artifacts (Kuprecht, 2014) leaves formerly-colonized states unable to present the same view, leaving only "national heritage" depictions.

States in this creation of heritage have inherent political goals. The ruling classes are imbued with ideologies that in some cases run counter to the aims of repatriation. In East Africa, the colonial government utilized divide-and-rule tactics to mask anti-British sentiment with intertribal grievances. As the colonial era came to an end, the colonial administrators trained a new class of indigenous bourgeoisie to ensure Western exploitation of the country (Mutahi, 1979). In Kenya, the Agĩkũyũ[1] people are perceived as having received the largest benefit from British rule, as they play an outside influence in politics, the media, and industry. Most importantly, under Kenya's first president, the Mũgĩkũyũ Jomo Kenyatta, the ethnic group settled lands formerly claimed by the country's other ethnic groups before colonial-era forced resettlement. This ethnic divide has spilled into the sphere of academia and anthropology. Archaeology outside that of early human evolution has failed to see the light of day in the country, with most archaeologists being Europeans following in the footsteps of the Leakeys (Koff, 1997). Schmidt (1995) has argued that this white-dominated focus on paleoanthropology is an ideological choice by the government: the ruling elite is threatened by the land claims of the country's ethnic groups.

> Archaeology, if allowed to flourish at a regional level, can easily be identified with an attempt to valorize the history . . . of one ethnic group at the perceived expense of others. The state's deep investment in the white intellectuals' pursuit of ancient human ancestors has been an ideal way to neutralize regional histories . . . it focuses on a 'population' devoid of ethnicity – indeed, devoid of humanness.
>
> (Schmidt, 1995, pp. 128–129)

Thus the practice of repatriation to postcolonial nations

3.2   Repatriation as Diplomacy

The development project, as defined by McMichael (2004), was the nation-state-centric model of development pursued through the Bretton Woods system from the 1940s to the 1970s. Decolonization was in full swing, and newly-formed countries were eager to improve their lives outside the bounds of colonial government. The endpoint for a nation in this era was considered to be the achievement of Western-style luxury and affluence. Newly-formed states designed themselves around development, making large public expenditures to build infrastructure and state-building projects. The states that took this route adopted Western capitalism, and enormous loans were distributed to countries across the global South, many in food and most in hard currency. Industries spawned from Western investment and began exporting cheap products en masse to the West. Even nations rich in national resources were importing grains on a large scale from the United States. These imports came at a price – large loans from Bretton Woods institutions and Western states would need to be paid back, but many countries found themselves in debt traps, getting new loans to pay off the interest on previous ones (McMichael, 2004).

The maintenance of private property and land ownership remained intact through decolonization nearly everywhere except Cuba, thus failing to address the deepest effects of colonization on former colonies. Thus it is clear that the development project of the mid-twentieth century was designed from the outset to ensure continuous Western profit rather than global equity (Frank, 1966). Much ink has been spilled over analyses

---

[1]The Agĩkũyũ (s. Mũgĩkũyũ) and their language, Gĩgĩkũyũ, are often Romanized "Kikuyu"

of the extractive and coercive nature of Western finance-capital in these early years of postcolonial state formation, yet the movement of cultural objects and museum artifacts can be seen within the same framework.

When confiscated artifacts become national heritage, they also become bartering chips in the international dealings of states. The Royal Museum for Central Africa in Belgium boasts nearly half a million African cultural objects and geological samples, while even the largest museums within Africa average collections one hundredth that size (Shyllon, 2009). This dichotomy mirrors the division in accumulated capital between the two global spheres, allowing each to reinforce one another. As noted in a brief Ethiopian editorial entitled "Let's have our treasure back, please" in a 1999 issue of *The Economist*, African goods plundered as treasure do occasionally return to their countries of origin, but with a second purpose: "odd treasures have been returned – usually the less valuable ones – as gestures, whenever the British needed to court Ethiopia" (The Economist, 1999, p. 66). The British then demonstrate a view of cultural objects simultaneously as heritage of mankind – in keeping them in their museums – and also as trade goods – in using them as state gifts expecting Ethiopian reciprocation.

The return of cultural objects in this manner should not be considered repatriation – in fact, it runs counter to the aims and morality of repatriation. In reducing cultural patrimony to state gifts or trade goods, Western nations serve to commodify culture itself. Paul Bator made this connection explicit in describing nationalist views of art possession: "The Elgin marbles are part of England's national patrimony. All such works of art are part of the national capital: They generate income (by attracting tourists, etc.) and they can produce social and psychological benefits for a country and its inhabitants" (Bator, 1982, p. 303). Thus the neocolonial project has absorbed the repatriation effort within itself as a manifestation of capital accumulation, lessening its political expediency and reducing the goal of restitution for invaluable wrongs into a simple exchange of goods and services.

4 Discussion

Paradoxically, it appears that indigenous groups within settler-colonial states – lacking in international recognition and political power – have an easier path to repatriation than do indigenous-controlled postcolonial states. The British Museum, known for its closely-guarded holdings and refusal to relinquish even the most controversial of objects, has via the Department for Culture, Media and Sport a framework for returning pre-1947 human remains when requested by NAGPRA-covered groups. Conversely, the return of confiscated artifacts to African states is performed within the framework of trade, where colonial powers expect some form of reimbursement for their relinquishment.

As the peoples of the Global South represent a reservoir of both labor and consumers unlike the indigenous peoples of settler-colonial states, it is possible that Western powers' view of Global South artifacts as resources is politically expedient for further exploitation. The neocolonial project has simultaneously far more to gain from Africans and far more to lose from their potential departure from the global economic order than it does from the few remaining Native Americans, who are already directly within the Western settler-colonial project. As such, the power of Global South artifacts manifests most in their power to maintain compliance in the global system of trade.

References

Bator, P. M. (1982). An essay on the international trade in art. *Stanford Law Review*, *34*(2), 275–384. doi:10.2307/1228349

Burton, J. L., & Wells, M. (2002). The Alder Hey affair. *Archives of Disease in Childhood*, *86*(1). doi:10.1136/adc.86.1.4

Carroll, C. (2012). Articulating indigenous statehood: Cherokee state formation and implications for the UN Declaration on the Rights of Indigenous Peoples. In E. Pulitano (Ed.), *Indigenous rights in the age of the UN declaration* (Chap. 5, pp. 143–171). Cambridge University Press.

Cherokee Nation v. State of Georgia. (1831, March 5). 30 U.S. 1.

Department for Culture, Media and Sport. (2005). *Guidance for the care of human remains in museums*. HM Government.

Frank, A. G. (1966). The development of underdevelopment. *Monthly Review*, *18*(4), 17–31. doi:10.14452/MR-018-04-1966-08_3

Giesen, M. J. (2009). Native American human remains in UK collections: Implications of NAGPRA to consultation, repatriation, and policy development. In *Proceedings of the ninth annual conference of the British Association for Biological Anthropology and Osteoarchaeology, Department of Archaeology, University of Reading* (Vol. 1918, pp. 123–130). Oxford: Archaeopress.

Human Tissue Act. (2004). §47 (2). United Kingdom.

Koff, C. (1997). On two eras of African archaeology: Colonial and national. *Nebraska Anthropologist*, *14*, 47–57.

Kuprecht, K. (2014). *Indigenous peoples' cultural property claims: Repatriation and beyond.* doi:10.1007/978-3-319-01655-9

McMichael, P. (2004). *Development and social change: A global perspective* (3rd ed.). London: Sage Publications.

Mutahi, K. (1979). *Contradictions between language policy and language practice in Kenya.* University of Nairobi.

Permanent Forum on Indigenous Issues. (n.d.). *Frequently asked questions: Declaration on the rights of indigenous peoples.* United Nations.

Schmidt, P. R. (1995). Using archaeology to remake history in Africa. In T. C. Patterson & P. R. Schmidt (Eds.), *Making alternative histories: The practice of archaeology and history in non-Western settings* (pp. 119–147). School of American Research Press.

Schulte-Tenckhoff, I. (2012). Treaties, personhood, and self-determination: Understanding the language of indigenous rights. In E. Pulitano (Ed.), *Indigenous rights in the age of the UN declaration* (Chap. 2, pp. 64–86). Cambridge: Cambridge University Press.

Shyllon, F. (2009). Unraveling history: Return of African cultural objects repatriated and looted in colonial times. In J. A. R. Nafziger & A. M. Nicgorski (Eds.), *Cultural heritage issues: The legacy of conquest, colonization, and commerce* (Chap. 6, pp. 159–168). Leiden: Martinus Nijhoff Publishers.

The Economist. (1999). Let's have our treasure back, please. *The Economist*, *352*(8127), 66.

Turner, S. (2009). Cultural property as national heritage and common human heritage: The problem of reconciling common and individual interests. In L. Prott (Ed.), *Witnesses to history: Documents and writings on the return of cultural objects* (pp. 110–115). Paris: UNESCO Publishing.

U.N. declaration on the rights of indigenous peoples. (2007, December 13)(No. A/61/295). United Nations General Assembly.

United States Mission to the United Nations. (2007, October 13). *Explanation of vote by Robert Hagen, U.S. Advisor, on the Declaration on the Rights of Indigenous Peoples, to the UN General Assembly* (No. 204(07)). Office of Press and Public Diplomacy, Department of State.

Weeks, J., & Bott, V. (2003). *Scoping survey of historic human remains in English museums undertaken on behalf of the Ministerial Working Group on Human Remains.* Department for Culture, Media and Sport, HM Government.

Weissner, S. (2012). Indigenous self-determination, culture, and land: A reassessment in light of the 2007 UN Declaration on the Rights of Indigenous Peoples. In E. Pulitano (Ed.), *Indigenous rights in the age of the UN declaration* (Chap. 1, pp. 31–63). Cambridge: Cambridge University Press.