

# 19

## A CRITIQUE OF MUSEUM RESTITUTION AND REPATRIATION PRACTICES

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Although the concept of the return of cultural property has been around for a long time, as testified by European treaties from the mid-seventeenth century (Greenfield 2007, 391–392; Vrdoljak 2006, 22), it is still or, even, increasingly divisive. Depending on whom you talk to, restitution/repatriation of human remains and objects to source communities and legitimate owners is either becoming the acceptable norm in the museum sector worldwide, or it should very clearly be the exception. In support of the former we can cite the increasing numbers of successful returns and ongoing claims, and a shift in attitude among museum directors and curators that this is a legitimate and morally correct thing to do, and that indeed museums should be more proactive. On the other hand, some feel it should be considered on a case-by-case basis, with a general institutional presumption against return, along with robust processes that challenge claimants to prove their legitimacy and rights to ownership.

Whichever camp the reader may fall into, it is the case that most current restitution/repatriation processes still tend to be adversarial (whether in a strictly legal or processual sense). They are also long-winded, and inequitable in so far as they are stacked in favor of the holding institution rather than the claimant. While this may be acceptable to those who feel that restitution/repatriation should be the exception rather than the rule, I argue in this chapter that such adversarial processes run counter to and impede the purposes of museums. Not everyone will agree with me when I declare that the key role of museums in our globalized and fractured world is to use their collections in innovative ways to foster understanding between

communities and cultures; but I hope all would agree that museums should be the forum for a discourse over the values and meanings of objects.

Restitution/repatriation are no more than a formal and practical recognition that there are different values for something that may be held as property, and the processes around restitution/repatriation should ideally create a framework through which those different values can be expressed, acknowledged, and accommodated (Coleman 2010). Yet current adversarial processes do not, on the whole, allow for such an open and equitable discourse about objects and their values – rather, they get mired in requests for proof of legitimacy and ownership, which too often create bad feeling and tension rather than dialogue. Where institutions have developed processes that allow for a fruitful, trusting dialogue with claimant communities, which often results in an ongoing, sustainable relationship beyond the immediate results of the claim, they have done so *despite* international conventions, legal frameworks, and laws of property.

That is essentially what this chapter is about. The first part analyzes current restitution/repatriation practices and their drawbacks. The second section reviews key issues addressed by recent research on restitution and repatriation. The third and last proposes a new way forward for dialogue and decision-making around restitution/repatriation that attempts to draw all those strands together, explicitly incorporating different voices, values, and forms of knowledge. This does not depend on legal frameworks. Rather it calls on museums to acknowledge their key purpose as a locus for a discourse over the values and meanings of objects to different communities, to set aside the fetish of perpetual ownership of objects and to open up that ownership for discussion, and to be prepared to act on the consequences of such a discourse.

## Current practices

So far, I have referred to “restitution/repatriation,” but the terms are distinctly different and I should make clear what I understand those differences to be (see Whitby-Last 2010, 36–37; Skrydstrup 2010, 61–66 for more extensive definitions). While the legal concept of restitution came out of UNESCO discussions in the late 1960s concerned with the illicit trafficking of antiquities, essentially it denotes the return of an object to its owner, based on an analysis of property rights. The term “repatriation” became popular in the 1980s and 1990s in North America and Australasia connected with the return of human remains and sacred objects to indigenous communities. While the term, strictly speaking, means to restore or return to *patria*, a native land (see Kowalski 2001, 163), it is used more broadly to refer to returns of human remains and objects to a country or to sub-state groups such as indigenous communities. Whitby-Last (2010, 36) notes that it is often applied where the claim is perceived as being moral rather than legal, and this is an important distinction. Thus, many claims from indigenous groups are claims for

*repatriation*, phrased in terms of a moral obligation, rather than for *restitution*, which may be the case, for example, with Nazi looted art, which is based on an assertion of property rights. The definitions used in this chapter, therefore, are:

- Restitution: return to legitimate owner, based on property rights.
- Repatriation: return to country or sub-state group, based on ethical considerations.

Other terms are occasionally used, or proposed, such as the more general “return” (Greenfield 2007, 65; Skrydstrup 2010, 63). This essentially overlaps with the above definition of repatriation, being not a legal question but one of cultural, historical, or social judgment. Other terms include “cultural recovery” and “rematriation,” both put forward by Canadian indigenous groups (Myles 2010, 54).

Claims for restitution or repatriation generally fall into one or more of the following eight categories (rather than the very generalized three proposed by Vrdoljak 2006, 2–4). However, there is overlap, and some (notably Greek) claims for the Parthenon (or Elgin) Marbles (see Greenfield 2007, 41–96), have a mixture of many of them. Restitution/repatriation can include:

1. Objects looted or wrongfully removed during colonial occupation. Such repatriation is sometimes referred to as reparation, defined as “substantive redress” in the sense of effectively realizing justice, especially in the colonial context of the loss of indigenous cultural heritage (Lenzerini 2008, 8–13; Vrdoljak 2008, 213–20).
2. Illegal acquisition, including Holocaust art. Gerstenblith (2011, 447) points out that, from a strictly legal point of view, art stolen during the Holocaust is no different from the issue of the return of art works stolen under other circumstances. However, the particularly tragic circumstances have brought considerable international attention to this issue (Nicholas 1994; Palmer 2000).
3. Trophy art.
4. Symbols of cultural identity.
5. Belonging to community (the link between people, land, and objects, and ancestral remains).
6. Border changes.
7. Reunification of objects.
8. Claims by individuals against the state over objects.

The arguments museums and galleries have used to resist claims for restitution and repatriation also fall into standard categories, and often – as with the British Museum’s responses to Greek claims for the Parthenon Marbles – several arguments are used to reject a single claim. Legal constraints are commonly cited for example: that the objects were acquired legally by the institution, which has

legal title, and that the institution is legally prevented from being able to return the claimed objects. For example, the British Museum argues that it is unable to return collections other than duplicates, since it is legally prevented from doing so by the terms of the British Museum Act of 1963 (Greenfield 2007, 103). The Human Tissue Act of 2004 relaxed that provision for human remains less than 1000 years old, allowing the British Museum and other national museums to repatriate human remains to source communities legally. Another frequent argument is that the objects have become part of the national heritage or even the universal heritage of mankind and do not belong to any one community or nation. This was underlined in 2002 with the Declaration on the Importance and Value of Universal Museums signed by major European and North American institutions.

Problems with claimants are also used to reject requests for return. For example, the legitimacy of claimants is challenged or the fact that there are multiple claimants which means that the conflicting claims cannot be adequately addressed through return. In 1991, the repatriation of the remains of William Lanne, believed to be the last full-blooded Tasmanian Aboriginal, was resisted on the grounds that Tasmanian Aboriginals were already extinct and that this was therefore an invented tradition with no cultural continuity and no connection with the claimed human remains (Fforde 2004a, 34–40; Fforde 2004b, 123–126). The Koh-i-noor diamond, now part of the British Crown Jewels, has been formally claimed by both India and Pakistan, and informally by Iran (Greenfield 2007, 129–131).

More generally, there is a fear of setting a precedent for further returns. The British Museum, for example, argues that the return of collections such as the Parthenon Marbles would constitute a precedent for further claims that, according to its former director Sir David Wilson, would “start to dismantle” the museum and “start a process of cultural vandalism” (Wilson 1990, 116; see Vrdoljak 2006, 87–95 for an historical perspective). When NAGPRA (Native American Graves Protection and Repatriation Act) was enacted in the United States in 1990, many museums, archaeologists, and scientists protested that it would result in the emptying of museums. This has not been the case (see McManamon 2004; Gerstenblith 2011, 453).

Other arguments used to reject requests for return are the inability of the claimant to properly house and conserve the objects; that the objects are too fragile to be returned; that the collections are needed for research; and that retaining objects in major Western museums makes them accessible to a larger audience. Often cited are issues of reciprocity, compensation, and reparation: for example, Russia and Germany continue to insist on reciprocal returns of works of art looted from each other's territories during World War II, and are generally unwilling to undertake restitutions unless reciprocal returns are negotiated (Greenfield 2007, 184–201).

**Box 19.1** Mechanisms for returns

Negotiations/bilateral treaties between governments.  
 Negotiations between institutions.  
 Legal enforcement by courts or government agencies.  
 Voluntary returns by institutions or individuals.  
 Repatriation within a country.  
 Compensation or compromise agreements by museums.  
 Stolen and returned by individuals.  
 Buying back at auction or return through auction houses.  
 Private purchase by individuals.  
 Loans.  
 Exchange.  
 Sharing ceremonial access to iconic objects.  
 Visual repatriation.  
 Virtual repatriation.

The mechanisms for successful returns are surprisingly varied (see Box 19.1). Legal enforcement by courts or government agencies, or negotiations between governments, have proved to be extremely time-consuming and frequently adversarial: it often takes many years for a claim to be resolved. Some negotiations, though, have been carried out openly and in good faith. For example, the Miho Museum in Kyoto, Japan, returned a Buddhist Bodhisattva figure alleged to be stolen from the garden of a public building in Boxing, Shandong Province, China. What is unusual in this case is that the Miho Museum belongs to a non-denominational spiritual organization, Shinji Shumeikai, which believes that art plays a significant role in creating greater tolerance and peace in the world. Although the museum had purchased it from a dealer, it returned the carving to China for no payment. However, as a result of the very productive and informal process, the Miho Museum was able to keep exhibiting the carving on an extended loan (Sims 2001; Brodie 2006, 55; Greenfield 2007, 279–280).

Voluntary return by institutions and individuals is another non-adversarial process. A key institutional example is the return, as a gift, of the Haisla spirit pole, clandestinely removed to Sweden in 1929, from the National Museum of Ethnography in Stockholm to the Haisla people in British Columbia, Canada. After difficult initial negotiations, the pole was returned with no legal intervention, together with practical assistance and training for the Haisla, and the development of an ongoing dialogue and relationship (Greenfield 2007, 316–320; Bell et al. 2009, 380–381). (For other voluntary returns by institutions, see Reppas 2007, 116–118). Another process is returns by individuals. An inspiring example is the woman

whose father bought a drawing attributed to Rembrandt in good faith in the 1970s, but that had in fact been stolen by the Gestapo from the Feldmann family in Czechoslovakia in 1939. Once she discovered the circumstances it was returned to the Feldmanns' grandson as a gift (Alberge 2004; Greenfield 2007, 295–297; for other voluntary returns by individuals, see Reppas 2007, 116–118).

Some solutions to claims for return do *not* in fact involve returning the objects permanently or relinquishing ownership – but can be achieved through loans. This is not without its drawbacks however. A complex example concerns Hawaiian objects in the Bishop Museum, Honolulu, which had been removed from a cave in Hawai'i in 1905. In 2000, the museum made a formal loan of the artifacts to a Native Hawaiian organization, which reburied them in the original cave and sealed the entrance. But other claimants then opposed the loan, alleging that, by calling the transaction a “loan” instead of a “repatriation,” the museum had circumvented NAGPRA guidelines for repatriation. Following a lawsuit in 2005, a court ordered that the collection be returned to the museum, and it was retrieved from the cave in 2006. Twenty-five Native Hawaiian organizations have now formally laid claim to the collection (Pala 2008).

Another mechanism that does not involve actual return is sharing ceremonial access. In 2000, the Clackamas tribe in Oregon claimed the return of the 16-ton Willamette Meteorite from the American Museum of Natural History in New York. To the tribe, it was a sacred object representing the union of sky, earth, and water. Avoiding legal action, the museum and the tribe agreed to share the meteorite: today it continues to be on display in the museum, but the Clackamas have annual access for religious, historical, and cultural purposes (Thomas 2006, 226–235; Singer 2006, 415).

There is much discussion about new technologies creating expanded possibilities for virtual repatriation (see Brown 2007; Greenfield 2007, 437–441). For example, in response to requests to return the Lindisfarne Gospels to the northeast of England, in 1998 the British Library created a digital version that could be accessed in the northeast as well as London, and that is now available online (see British Library n.d.). Virtual repatriation does return something significant to source communities, in that it is an opportunity to reconnect to past and culture. Sometimes, though, use of new technologies can be interpreted as a cynical replacement for repatriation, denying the necessity for a real return, as with the computer simulation accompanying the display of the Parthenon Marbles at the British Museum, which has been accused of being an intervention in the repatriation debate (Gillen Wood cited in Henning 2011, 315). (On this point see Pickering in this volume.)

It is, perhaps, not surprising that, despite the plethora of international conventions, committees, and panels dealing with the return of cultural property (see the comprehensive list in Vrdoljak 2006, xx–xxviii), not a single one has been directly responsible for a successful return. There are good reasons for this. For example, the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import,

Export, and Transfer of Ownership of Cultural Property deals with both illicit trafficking and cultural return, which are often quite distinct in terms of the practicalities of return. The same two concepts were combined in the body UNESCO set up to deal with the issues, namely the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation (which met between 1979 and 1983; Greenfield 2007, 222–229). Not surprisingly, the Intergovernmental Committee was unable to resolve any actual claims for the restitution of cultural property, since its remit and role were limited to promoting cooperation and mediation (Vrdoljak 2006, 215, 234–241). UNESCO has produced resolutions, recommendations, and conventions, but beyond creating some level of dialogue, they have been branded as “largely ineffectual” (Greenfield 2007, 368). On a national level, the same criticisms can be leveled at the Spoliation Advisory Panel set up by the British government in 1989, which could mediate and make recommendations, but had no power over actual returns from institutions (Greenfield 2007, 295). A systemic problem with the 1970 UNESCO convention is that it only recognizes states. As Whitby-Last (2010, 40) points out, this means that indigenous groups cannot utilize the convention unless the state is prepared to act on their behalf.

Furthermore, the convention applies only to those objects designated as cultural property by the state and stolen from a museum or public monument. Since this clearly excludes many cultural objects that are the subject of repatriation claims by indigenous groups, the UNESCO convention is of little or no use to indigenous peoples. NAGPRA in the United States is quite different, since it is a federal law that allows Native American tribes to petition for the return of human remains and sacred items, and requires museums that receive federal support to supply information about their collections and to respond to repatriation claims.

There is also growing acknowledgment that legal processes in restitution and repatriation cases are generally complex, bureaucratic, very long-running, expensive, time-consuming for all involved, and set up an atmosphere of conflict and mutual distrust that cuts across processes of dialogue, persuasion, and mutual understanding (Morphy 2010, 160; see also Boyd 2006). The Kennewick Man case in the USA clearly highlights the difficulties in asking the court system to resolve disputes involving cultural heritage and intellectual property rights, since the argument becomes one of “winners” and “losers,” overshadowing the search for a relationship based on mutual respect and consensus (Thomas 2006, 248). Indeed, the lead attorney for the plaintiffs in that case, which lasted six years and cost up to US\$3 million, states that “little has been accomplished other than to provide an expensive example of poor decision making” (Schneider 2004, 202).

Of course, legal processes are not alone in being adversarial, and most museums put claimants – especially indigenous groups – through extensive tests and trials to prove their legitimacy, making assumptions about which groups are or are not legitimate claimants. These demands for proof are often offensive to source communities, and the criteria are almost invariably based on a genealogical model

imposed by the museum itself, which ties the notion of a legitimate claim for ownership to tight definitions of descent, kinship, and cultural continuity (Bienkowski 2007, 118–121; Bienkowski and Coleman 2013, 95–97). In the USA, for example, NAGPRA's criteria for cultural affiliation create “countless possibilities for uncertainty and disagreement,” and accept only federally recognized tribes within federal definitions of identity, explicitly marginalizing those tribes that nevertheless regard themselves as Native American but lack this federal status (Brown and Bruchac 2006, 202–203; Garrouette 2001).

Yet it should be noted that, in the list of examples of successful returns above, the cases that did not involve legal intervention (indeed, often deliberately avoiding it) were based on dialogue, respect, and a search for mutual understanding. In every case, they led to an ongoing relationship between institutions, or bonds of friendship with communities, that were reciprocal and mutually beneficial (in particular the returns of the Bodhisattva figure from the Miho Museum to China, the Haisla spirit pole from Sweden to Canada, and the case of the Willamette meteorite). Thomas (2006, 248–251) notes that the issue of the meteorite was resolved because both parties recognized the downside of a court battle, worked behind the scenes to find channels for mediating their differences, and explored alternatives in an atmosphere of mutual respect and common interest. He concludes that litigation and legislation are increasingly unattractive ways of settling conflicts over cultural patrimony. Some caution is necessary, however, because while voluntary return may now be more common, it is still the case that the threat of litigation is needed to persuade many museums to consider return in the first place.

## Recent research on restitution and repatriation

### The ethics of return and cultural equity versus the universal museum

In December 2002, 18 major European and North American museums issued the Declaration on the Importance and Value of Universal Museums (reproduced widely, for example in Greenfield 2007, 86–87). The declaration condemned the illegal traffic in archaeological, artistic, and ethnic objects, but insisted that “objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era.” It stated that such objects had by now become part of the national heritage of the nations that house them. Referring to calls for repatriation, it argued that museums serve not just one nation but the people of every nation, and thus to narrow the focus of museums through returning objects would be a disservice to all visitors.

The concept of the “universal” (or “encyclopedic”) museum, while controversial and much debated, has received considerable backing in the writings and edited collections of James Cuno. Cuno, formerly Director of the Art Institute of

Chicago and currently CEO of the J. Paul Getty Trust, was one of the original signatories of the declaration (see especially Cuno 2009; 2010; for brief synopsis, see Cuno 2006). These argue, essentially, that antiquities are the cultural property of humankind, not of the countries that lay exclusive claim to them, and that modern nation-states have, at best, a dubious connection to the ancient cultures they claim to represent, therefore antiquities need to be protected from looting, but also from “nationalist identity politics” (Cuno 2009, 1–2).

Challenges to the universal museum concept, and specifically to the declaration (which is not representative of the views of the majority of the world’s museums), fall into three groups: philosophical; responses to particular issues; and an alternative model. Philosophically, Jeanette Greenfield (2007, 87–93, 411) argues that institutions cannot be universal unless they are universally constituted or universally accountable. The possession of objects of importance to world culture does not necessarily make the holding institutions sole keepers in perpetuity, so they cannot have universal holding rights. Museum claims of universality are suspect, because they cannot be invoked unilaterally but must be determined by the international community. Representative of specific responses is William St. Clair (2006, 94–95). He argues that the collections of the “universal” museums are not in fact representative of the world’s cultures, and in any case they are not practically available to those citizens of other countries who are unable to visit them. He criticizes the constant repetition, in the declaration, of the word “universal,” which has become ritual and meaningless, and is merely an attempt to legitimate the status quo and continued ownership of objects claimed by others.

On the other hand, Besterman (2011) has proposed “cultural equity” as an alternative to the ethic embodied in the declaration. Cultural equity describes the values of the sustainable museum, reflected in the transparency and democratic accountability of its conduct. It embodies a democratic principle of universal entitlement, of citizens participating in the museum, which does not presume to a monopoly on knowledge and authority, and which is concerned with the accountable exercise of power. In recognizing that museums and their collections derive from, and are emblematic of, unsustainable imbalances of power and consumption, the values of cultural equity become a symbolic means of redress. Besterman argues that museums send out a powerful message when they recognize their accountability to peoples, hitherto denied a voice, both within and beyond the borders of the nation-state.

### Building relationships and knowledge exchange

In recent years there has been an increasing focus by museums on building relationships and ongoing engagement with source communities from whence their collections derived. Much of this focus has been on the facilitation of knowledge networks through co-sharing of information and access to objects. The mechanisms have included visual or digital means, loans, visits, handling workshops, and

training, all employed to restore and strengthen Indigenous cultural knowledge that is embodied within museum artifacts. The advantages are mutual, of course, with community-based research feeding back into curatorial knowledge and museum databases. Although the focus has not been explicitly on ownership of artifacts, source communities have commented that they regard such work as fitting the definition of “restitution” in many ways.

By far the most extensively documented – and deeply reflective – of these knowledge exchange relationships has been the repatriation of photographs to the Kainai Nation (Brown and Peers 2006). In 1925, Beatrice Blackwood of the Pitt Rivers Museum in Oxford took 33 photographs of Kainai people in southern Alberta, Canada, to illustrate racial difference and cultural change. In 2001, Pitt Rivers Museum staff took copies of these photographs back to the reserve and worked with members of the community to understand their perspectives on the images and their importance today, creating a long-term reciprocal relationship based on sharing knowledge (Figure 19.1). Not only did the process of dialogue enable Kainai meanings and interpretations to emerge around the images, but it became obvious how important these images from their past were in providing



**FIGURE 19.1** Alison Brown and Andy Black Water examining the draft manuscript of a book on the Kainai Photos Project. The collaborative nature of the project meant that interviewees checked all their quotes in context – here, the post-it notes in the manuscript mark all of Andy Black Water’s quotes.

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guidance for their present and future, in reassessing their cultural traditions and survival. Discussions prompted by the photographs contributed to the more formalized teaching of history within the community, especially how colonization affected the Kainai Nation and how its members can respond to it today. The project involved a multiplicity of voices that contributed to historical narratives, creating a fuller understanding of Kainai contributions to the history and culture of southern Alberta. For the Kainai as individuals, the photographs – or the messages within the photographs – became part of their efforts to pass on their cultural and historical traditions to future generations. Some made it clear that they would like to see community educational resources as a primary outcome of the project; as a result Pitt Rivers Museum staff handed over copies of all interviews and photographs for the community to use as it wished and to develop its own educational materials. Among the key lessons learned from this project, and other similar ones, is the need to allocate sufficient time for work of this sort. It is essential to allow for consultation and for opportunities to participate (or not) without being rushed or without fully understanding the processes involved, and for individual and community responses to emerge over time, without feeling that they are fitting into a schedule and outcomes predetermined by the museum.

### Acknowledging alternative kinds of values for objects

Heritage objects have different value to different individuals, communities, and institutions, depending on their worldviews, religions, and contexts. These varying values have been characterized in different ways: as tensions between scientific and spiritual needs, between universalist and symbolic importance, or between economic value and experiential value. While it is true that such tensions are not always in binary opposition, they can nevertheless be characterized as points along a spectrum, which can itself be characterized as a tension between utilitarian value at one end and social value at the other end.

Broadly, utilitarian value favors:

- the good of the greatest number of people
- economic productivity
- universal access to knowledge
- outputs of scientific research (“evidence”), in principle available to all
- measurable value, often in monetary terms
- preservation.

Social value favors:

- individual or community experience
- spiritual and religious meaning and experience
- connection to place, ancestry, and specific cultural practices

- sense of individual or communal identity
- subjective value that is difficult to measure or “prove”
- more openness to natural processes of decay.

Western museums are, on the whole, concerned with an object’s attributes as evidence in terms of history, science, or cultural trends, its beauty, and its physical preservation. For many Indigenous communities, objects are not inert but animated with a life force and spiritual power (which goes beyond the anthropological attribution of agency to objects), and can be the living embodiment of an ancestor. Objects have meaning, function, and importance within the community (Kreps 2011). For example, when the sacred Ahayu-da figures of the Zuni of New Mexico are taken from their shrines, put into museums, and indefinitely conserved against natural decay, the Zuni perceive them as being partly destroyed. As a consequence, harm has been done to them as a people. But when the Ahayu-da are allowed to deteriorate physically in their sacred places, until they disintegrate completely and return to the earth, their sacred meaning for the Zuni is fulfilled (Colwell-Chanthaphonh 2009, 144–152). This demonstrates how conservation “in perpetuity” is a cultural construct and part of a value system peculiar to museums, but it is not a universal value shared by all (on this point see Sully in this volume). Yet such social value is often difficult to establish and demonstrate, as it is largely experiential, immeasurable, often within a timeless present – concepts that tend to be excluded by the rational and institutionalized decision-making processes of organizations such as museums.

Colwell-Chanthaphonh (2009) has explored these different ideas of value in an attempt to propose a middle way to determine claims and rights. He considers social value (calling it the argument of proximity), utilitarian value (calling it the argument of inclusivity), and a middle ground (which he calls the argument for rooted cosmopolitanism). The argument of proximity is based on the notion that those individuals and communities most closely connected, in social or cultural ways, to an object will have the most intense emotional experiences with it and as a result have the greatest rights to it. But Colwell-Chanthaphonh (2009, 152–153) cannot see that the way people *feel* connection to objects necessarily implies that they *ought* to have more rights to them. The fact of social proximity does not make a moral imperative. The argument of inclusivity states that we should maximize the preservation of cultural heritage objects for the good of the greatest number of people, even if such preservation might conflict with the cultural beliefs of a minority. But Colwell-Chanthaphonh (2009, 154–156) sees problems with this too, since such a principle disregards the reasons why we value heritage objects, that is, for the particular experiences they evoke and for their connections to their source communities. So he suggests a middle ground where the local and global might meet. This is the argument for rooted cosmopolitanism, that we should maximize the integrity of heritage objects for the good of the greatest number of people, but not absolutely (Colwell-Chanthaphonh 2009, 156–160). Taking into account the views and values of multiple stakeholders,

museums should therefore assess the value of the heritage object for all humanity, but acknowledge particular feelings of affinity and connectedness.

Nevertheless, it is not at all clear what he is suggesting in practice, and perhaps, as Christina Kreps proposes, the aim is to redefine curation as a social practice which is “about cultivating harmonious relationships directed toward redressing historical wrongs, and showing respect for diverse worldviews and belief systems as they pertain to people’s perceptions of, and relations to, objects” (Kreps 2011, 469). At the very least, museums must acknowledge that their own institutional value systems, which have developed as a result of a particular history and have been shaped by an Enlightenment philosophy excluding much that indigenous peoples experience (Hooper-Greenhill 1992), are not self-evidently true and universal. Particularly in restitution and repatriation cases, museums need to develop decision-making mechanisms that allow alternative value systems to be expressed, acknowledged, and taken into account on an equitable footing.

### Challenging and redefining ownership and possession

Most research on ownership of cultural heritage, especially in relation to questions of repatriation, has focused on whether objects belong to humanity as a whole, or to nations, or to enclaves within nations, particularly Indigenous communities (see, for example, Merryman 1986; Watkins 2005; Cuno 2009; 2010). Carman (2005) has analyzed the shift in the meaning and value of cultural heritage when it is acquired by the state, and finds that the symbolic or social value of a community’s sense of heritage is converted into a “national heritage.” This has utilitarian value to the state, giving greater prestige and authority to the state as an institution, and leads to restrictions on access justified by the needs of preservation. Through such means the ownership of, and connection to, the object are removed from those people and communities who lay claim to it as their heritage.

While such theoretical perspectives are revealing, they rather miss the point in practical terms. Indeed, there is a suspicion that such debates are often used deliberately to cloud the essential issue. The essential issue of course is that, in all questions of restitution or repatriation that involve museum collections, it is ownership *by the museum* that should be at question. It is the individual museum that, through acquiring and accessioning an object (setting aside whether the object was legally acquired or not), owns the object and can decide whether to keep it or return it; not the nation, and not humanity. Museums are free to make their own decisions about continued ownership of their collections. They will often state that they are keeping objects and collections for the nation and for humanity as a whole (which is essentially the argument of the universal museum declaration); but this is no more than an elaborate justification for retention of their own collections, which are not and cannot be owned by nations or humanity but only by individual museums.

It is true that some museums, such as the British Museum, are legally constrained in terms of what kinds of objects they can dispose of (see Greenfield 2007,

103–110). However, even in those instances, solutions have been found as long as the will was there to find them, whether through imaginative use of loans, or through political pressure changing the legal instruments under which the British Museum and other national museums operate. An example is the 2004 Human Tissue Act enabling national museums to return human remains. It is salutary to note that the relevant section 47 of the Human Tissue Act is completely unconnected to the rest of the Act, which deals with the removal, storage, and use of human tissue less than 100 years old. Yet the political will, as well as support from national museums affected by legal constraints, was there to allow repatriation of ancestral remains, and so the section was inserted into the next available piece of government legislation, rather than cause further delay by waiting for separate dedicated legislation.

In most cases, mechanisms do exist for museums and their governing bodies to make their own decisions about retention or return. A good example of thoughtful decision-making that involved the museum, its governing body, indigenous claimants and the public was the return of the Ghost Dance Shirt by Glasgow Museums to the Lakota Sioux Indians (see Allen 2013). After an initial request for repatriation was refused in 1995, Glasgow City Council re-examined the case in 1998 and set up a working group to discuss the issues and procedures. A process of consultation with museum professionals and the public culminated in a public hearing at which the Lakota and the museum presented their views. Although the official museum position was that the museum legally owned the shirt and was under no legal obligation to return it, it acknowledged that other values may be more important than possession and that the Lakota's views should be taken seriously. As a result of these public deliberations, Glasgow councilors and the public favored return, and the shirt was repatriated to the Lakota in 1999, albeit with conditions regarding preservation and continued display (Figure 19.2). The Lakota made a replica shirt for the museum which was displayed in Glasgow with its full history and an account of the repatriation. Through this process, Glasgow Museums acknowledged that repatriation and relinquishing of possession and ownership were not incompatible with its remit of public display and education. Indeed, public interest and understanding of the shirt, its history and context were stimulated and increased, especially through direct engagement with the Lakota, and the public demonstrated its support for the repatriation.

A different challenge to ownership has been made by Coleman (2010), who analyzes the concept of “inalienable possession” which is central to many claims for repatriation by source communities on the basis that they have special kinds of “identity” relationships with certain objects, irrespective of whether or not they have legal title to them. It is this identity relationship which defines an object as “inalienable,” as opposed to something that is property, and alienable. However, Coleman argues that determining something as inalienable defines a kind of value and constitutes a demand that the culture and values of a group remain frozen in time, denying them the possibility to change. This effectively means that, at some



**FIGURE 19.2** Tom Tettleman and Richard LeBeau in front of the Ghost Dance Shirt after its return by Glasgow Museums to the Lakota Sioux, at South Dakota State Historical Society Museum, August 1999. The shirt had been worn at the Battle of Wounded Knee in 1890.

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point in the future, they might no longer acknowledge those objects as an integral part of their culture (see Akerman 2010 for an example). Because it freezes the structure of their societies, it is therefore morally unsupportable. She comes to a cautious conclusion: the relationship between person and object that is generally termed “inalienable possession” justifies a claim for consultation about, and a significant degree of control over, what happens to certain objects, without necessarily justifying their possession as property. However, her analysis also brings out an important point about the process of repatriation. The process should be thought of as a *framework* through which different kinds of value about objects can be acknowledged, expressed, and accommodated, changing the power relations between museums and indigenous groups and other claimants, so that the process and criteria formally recognize that what indigenous people and others want for their cultural artifacts matters.

## **A new way forward: museums as loci of deliberative democracy**

Where museums have responded to requests for restitution or repatriation through legal or bureaucratic processes, challenging claimants to prove their legitimacy and rights to ownership, the processes have been long-winded, costly, and have invariably created tensions between the two sides, which have not led to long-term relationships. In contrast, those museums across the world that are responding to requests for return through open dialogue and are managing to create respectful and sustainable relationships with the claimants, are doing so not as a result of international conventions, or legal processes or through asserting their strict legal rights, but despite them. They do so by working ethically, accountably, and non-adversarially, and seeing the bigger picture of what their essential role is. Moreover, the overwhelming focus of recent research around repatriation and restitution has been on ways of proactively developing relationships with source communities, particularly through their active participation and the development of museums as democratic and accountable spaces which acknowledge alternative value systems and facilitate their free and full expression.

So what does a model of museum practice look like that prioritizes the building of relationships and allows participation in, and some control over, decision-making? How can museums acknowledge alternative values, set aside bureaucratic processes that ask claimant communities to prove their legitimacy, and relinquish their *a priori* assumption of a right to ownership? It must be admitted that the track record of many museums that claim to be beacons of public participation and the sharing of authority is, in reality, poor and often exaggerated. Lynch (2011) has demonstrated that, in many museums with a reputation for public participation, the actual experience of communities can be quite different. Communities often feel marginalized from any effective participation and core

decision-making. Many museums are, in reality, reluctant to cede any real control, and instead coerce decisions or manipulate a false group consensus, which often means rubber-stamping existing plans and effectively robbing supposed participants of their active agency.

Yet I believe that the best examples of respectful practice in repatriation and restitution, cited above, already include many elements of deliberative democracy, a concept which offers a practical and tested model for museums to follow. Deliberative democracy, also known as discursive democracy, is so called because deliberation is central to its form of democratic decision-making (Fung 2006). It offers a different, more inclusive model for museums to follow, through which those interested in or affected by repatriation or restitution issues, including the museums themselves, can be involved in reasoning and persuading one another about the values or course of action to be taken. Crucially, this deliberative view contrasts with decision-making processes that are adversarial or in which power is delegated to authoritative experts (Fung 2006, 17). It can be defined as recognition of the right to equal participation between conversation partners, which is to say all whose interests are actually or potentially affected by the courses of action and decisions that may ensue from such conversations (Benhabib 2002, 37).

This process of making joint decisions has been widely tested in different arenas, for example across the neighborhoods of Chicago, where residents, police officers, teachers, and community groups meet monthly to banish crime and transform a failing city school system (Fung 2006). These are challenging environments and issues – surely more so than those we confront in museums – but all voices are heard and the process has led to surprising improvements in the city’s schools and to safer streets, making the organizations involved more fair and effective.

How might this work in cases of museum repatriation and restitution practice? Deliberative democracy comprises facilitation of a dialogue, involving all those affected in a decision (for example, claimants, multiple claimants, museum staff, researchers, government officials), based on fairness, in which all key issues have been delegated for decision to the group participating in the dialogue. It is not an easy process. The most effective deliberative democratic processes are based on several key factors: top-down legitimation, neutral facilitation, some training of the participants, and minimizing domination by or exclusion of some groups due to inequalities of power and voice. In particular it is important to take into account and minimize differences based on different communication styles and cultural norms of argument and discourse (for example, possibilities of dominating the discussion through educational differences, aggressive communication styles, claims to expertise, gender and racial differences, and privileging of analytical argument over more poetic approaches; Fung 2006, 71–72). All participants have an equal right to suggest topics of conversation, to introduce new points of view, questions, and criticism into the conversation, and to challenge the rules of the conversation in so far as these seem to exclude the voice of some and privilege that of others. The participants decide among themselves how to reach a decision. This

seems to be a model for what a museum should be: a locus for open, respectful, egalitarian dialogue and participation about the values and meanings of objects, issues of interpretation of the past, personal and group identity, and rights to ownership of culture. It is also a model for the process that should be followed, that is, a conversation to which all those affected or even interested in a repatriation or restitution issue are invited on the basis of universal respect and egalitarian reciprocity.

The possibility of radical disagreement and conflict as a result of mutually exclusive and contradictory beliefs tends to make museums shy away from creating such open opportunities for dialogue. But agreement by everyone involved is not necessarily the product of such conversations. There is a problem that people from different cultural backgrounds do not share norms and values and might be unlikely to come to agreement (and this is particularly the case in restitution cases). But participants can still reach consensus based on reasoned disagreement by striving to understand the cultural tradition and/or conceptual framework of the other participants (Dryzek 1990, 42). Even when some participants disagree with group decisions, they may be more easily reconciled to the outcomes because others have justified the bases of their positions in good faith. It is a process of understanding through familiarization with other ways of thinking, and a struggle to reach mutual understanding, if not agreement, through discussion (Valadez 2001, 91; Fung 2006, 17). Surely this is more in keeping with the purpose of museums than adversarial and expert decision-making?

There are three key hurdles which museums need to overcome in order to make this work effectively. First, museums must learn the techniques of open and honest dialogue, both internally and with all their audiences and communities. It takes serious training and practice to learn and sustain this, especially to relinquish the easy assumptions of an expert culture that prioritizes its own values above any alternatives. Second, museums must be open to ceding decision-making to a group comprising staff, claimants, interested communities, and external specialists which has been tasked with making a decision on repatriation and restitution issues. Museums must be prepared to relinquish control, and set aside the fetish of ownership by recognizing that other values may be more important than possession. They must consider how the process is helping achieve their wider aims, and must be genuinely prepared to implement any decision made using deliberative democratic processes that explicitly incorporate different voices and values. Museum hierarchies, governance procedures, and the personalities of individual directors make this step a difficult one. Third, the process is resource-intensive, slow, and messy, but it is *the process of deliberation itself* that fulfills museums' essential purposes, not necessarily the final decision and outcome. The resource implications for museums embarking on such a process are mostly time, the expenses of bringing people together, training, and facilitation. In the long run, however, these resources are being invested into building sustainable relationships, and they are measurably cheaper than protracted legal proceedings.

Is this all too idealistic and unachievable? Well, if it works in Chicago's school and police systems, then there is no reason why it cannot work in museums! In my view, the principles underpinning such an approach are already present in the way some progressive museums work. A prime example is the Museum of World Culture in Gothenburg, Sweden. It describes itself as an arena for discourse and reflection in which many and different voices are heard, where contentious topics can be thrashed out. Crucially, the museum defines itself as an intermediary between collections, knowledge, and multiple communities. The essential principles and working practices of deliberative democracy are already embedded in this museum's approach (Museum of World Culture 2012).

## Conclusion

This chapter has critiqued current practices of restitution and repatriation, arguing that most of them are protracted, expensive, adversarial, and actively alienate communities and prevent museums from carrying out their essential purpose – acting as fora for an equitable discussion over the values and meanings of objects. On the other hand, those museums which have returned objects through an open and trusting dialogue with claimant communities, eschewing legal and adversarial processes, have created goodwill and ongoing, sustainable relationships, which also benefit their own local audiences. Such examples of good practice reflect many of the principles and practices of deliberative democracy, and show a way around the problems inherent in legal and bureaucratic processes of restitution and repatriation. For museums involved in restitution issues, an open and transparent deliberative democratic process to resolve the claims would be more beneficial to their wider purposes than the bureaucratic and costly process of establishing criteria of ownership and rights, with its colonialist demands of proof and legitimacy. Such a process would be a genuine and open discourse over the value and meaning of objects and cultural identity that would be mutually enriching, building sustainable and non-adversarial relationships.

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