

THEORIZING REPATRIATION

Martin Skrydstrup

This contribution is a stab at unpacking the discursive register *restitution, return and repatriation*. Initially, I map the genealogies of these terms, suggesting that an adequate conceptualization rests on the elementary forms of reciprocity and recognition. I contend that the discursive register can both be understood within neo-Maussian exchange theory as a set of transactional orders resting on sliding scales of obligation and within postcolonial theory hinging on the concept of recognition. I further argue that repatriation claims cannot be conceived independently from the regimes of recognition they address, which both enable and silence claims. I conclude by suggesting that the intersection of reciprocity and recognition might illuminate the institution of cultural property as a phenomenon of postcolonial potlatching.

Keywords: repatriation, objects, property, recognition, postcolonial potlatching

Currently, Italy claims more than 100 Etruscan objects from Ny Carlsberg Glyptotek in Copenhagen. According to the authorities in Rome, this cache of objects has been acquired illegally. The director of the museum in Copenhagen admits that a few objects acquired in the beginning of the 1970s were insufficiently documented according to contemporary acquisition practice. However, his counter claim is that past acquisitions should not be judged by today's standards. How should European ethnologists and anthropologists theorize such claims and counter claims to material objects? What is at stake theoretically for the disciplines in thinking through predicaments such as the current dispute between Italy and Denmark?

Generally, the terms "repatriation", "restitution" and "return" (R-terms) are deployed to mean the de-acquisition of human remains and material objects held in museum collections back to their original

resting place or back to the descendants of their original custodians. The R-terms have made their way into several bodies of "soft law": UN declarations, codes of ethics, policy documents and position statements by various scholarly associations, white and green papers published by various ministries of culture around the world, collection management papers issued by museums, etc. Does this emerging body of codified norms at the institutional, national and international levels imply new rules for the traffic and circulation of material objects on a global scale? I will argue that answering this question hinges on an adequate conceptualization of the institution of cultural property¹ as a technology of recognition and material distribution governed by national doctrines on the "proper" place of things. Thus, the purpose of this article is to unpack the terms, asking: what is the most promising theoretical purchase on the R-terms? Thus, what follows is a prospectus for

a bold theoretical move: an attempt to begin to map the contours of what an anthropology of cultural property might look like in a highly interdisciplinary field. I now turn to the discursive register itself, arguing that a comprehensive understanding of the institution of cultural property needs to begin with a differentiation of the R-discourse.

Restitution

The legal concept of restitution emerged out of complex negotiations within Unesco in the late 1960s on how to grapple with the rampant illicit trafficking in antiquities. The evidence of this phenomenon was reports of pillaging, archaeological site destructions, plain theft from museums and illicit export of artefacts from South America, Africa, and Southeast Asia (Coggins 2005[1972]; Meyer 1973; Schmidt & McIntosh 1996). This occurred in conjunction with a rise in the demand for antiquities in North America, Western Europe, the Gulf States and Japan. This global commoditization of the tangible fragments of past civilizations divided the world in the pull of “market nations” and the push of “source nations”, resulting in a serious threat to the archaeological record *in situ*, as well as the safeguarding of cultural heritage in “source nations”.

In an attempt to govern this problem, Unesco adopted the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* in 1970. This legal instrument provided a mechanism for restitution in so far as it defined the export of cultural property from a state party's territory without a certificate as illicit. The Unesco Convention also stipulated that the acquisition or import of documented stolen cultural property from the territory of a state party to the convention was illicit. As of September 2008, 116 states were party to the convention.² Source nations, or “art rich nations” like Mexico, Cambodia, Egypt and Italy became parties to the convention in the early 1970s, whereas market nations ratified much more recently: France in 1997; United Kingdom in 2002; Japan in 2002; Denmark in 2003 and Switzerland in 2004. What is important about these ratification years is that the 1970 Convention cannot

be applied retroactively. This means that material imported illicitly to any state territory prior to the ratification of the convention by that particular state falls outside its jurisdiction.

The debate on restitution is essentially a debate about theft, illegality and stolen property. It revolves around two main questions. Firstly, there is the question of the vices and virtues of different legal instruments to hamper and govern the contemporary illicit trafficking in antiquities, specifically if the national laws of a source nation should have any salience in the courts of the importing market nation (Brilliant, Janeway & Szántó 2001). Secondly, there is the question of what laws, mediation or arbitration mechanisms should be applicable in transnational cultural property disputes. In the current case mentioned in the introduction, Denmark formally ratified the Unesco 1970 Convention in 2003, which is why the Italian claim does not have legal standing in Denmark, since the objects in question were purchased in the beginning of the 1970s. However, in February 2006 the Metropolitan Museum of Art decided to return one of the centrepieces of its collection to Italy, the Euphronios krater, which was acquired in 1972, even though the United States only ratified the Unesco Convention in 1983. The Met made it clear that it was not forced to return the krater, but acted as an “ethically responsible” museum to new evidence of “machinations, lies and clandestine night digging” (Solomon 2006), which had surfaced in the trial against Getty curator Marion True in Rome. Thus, this act of restitution was justified by the fact that the object had left Italy illegally and the museum director felt morally compelled to return it.

Return

The concept of return emerged partly in response to the lack of retroactivity of the Unesco 1970 Convention. A number of new sovereign nation states argued for their right to be able to display at least part of their own cultural heritage, which had been removed during colonial times. In other words, we have a confluence of emerging political sovereignties coupled with a postcolonial inheritance of loss.

In 1976, partly in response to this type of postcolonial claims, a committee of experts met under the auspices of Unesco to grapple with the problem of colonial appropriations prior to the entry into force of the 1970 Unesco Convention. Out of this work came the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* established in 1978. The mandate of the Committee supplements the legal repertoire of the Unesco 1970 Convention. The Committee accommodates requests regarding cultural property¹ which have "... a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State (1978)". This means that the *ratione temporis* of the Committee is not limited to misappropriations having occurred before 1978. The Committee is responsible for "seeking ways and means of facilitating bilateral negotiations" (1978), which implies that claims from non-state actors cannot be recognized by the Committee. The mandate of the Committee is advisory and its recommendations not legally binding. Its founding spirit is perhaps best embodied in the appeal by the Unesco Director-General at its launch:

One of the most noble incarnations of a people's genius is its cultural heritage ... the vicissitudes of history have nevertheless robbed many peoples of a priceless portion of this inheritance ... These men and women therefore ask for the return of at least the art treasures which best represent their culture, which they feel are the most vital and whose absence causes them the greatest anguish (M'Bow 1979).

When I participated as an external observer at the Committee's meeting in Paris in March 2003, Greece's case for the Parthenon Sculptures was reviewed alongside that of Turkey's for the return of the Hittite Sphinx from the archaeological site of Boguskoy. Both cases were brought before the Committee in the mid-1980s and both are still pending. Such cases are typically resolved back-stage and through bilateral diplomatic negotiations.

Contrary to the debate on restitution, which draws its register from legalities, the debate about return is essentially situated outside the law. Return is not a debate about reparation in a judicial sense, but about goodwill, ethics, and what is at times referred to as "natural justice" (Greenfield 1996). In the contemporary Danish debate revolving around the Italian claim, the nationalist right-wing party (*Dansk Folkeparti*) argues that Glyptoteket should return the Etruscan objects in question, because they are Italian. In the same vein, the party also argues that Denmark should reclaim certain objects taken by Sweden as war booty in the seventeenth century.

Repatriation

In the 1980s and 90s, the term repatriation began to emerge within national frameworks in what is at times referred to as "settler colonial nation states": Canada, United States, Australia and New Zealand. Strictly speaking, the term only has legal standing in the United States since 1989³ and 1990⁴ with the introduction of what has been called "landmark legislation". In the United States, the term designates federally mandated transfer of human remains and specific categories of objects to the contemporary descendants of the cultures from which the material was originally removed. This federal mandate is codified as the *Native American Graves Protection and Repatriation Act* (NAGPRA), which was signed into law in 1990. This law was preceded by the *National Museum of the American Indian Act* (NMAIA 1989), which was the outcome of an agreement between the Smithsonian Institution and Native American constituencies. The NMAIA Act's repatriation provisions were aimed at redressing "some of the injustices done to Indian people over the years" and held the promise that "one day their ancestors will finally be given the resting place that they so deserve" (Trope & Echo-Hawk 2001[1992]).

The moral genealogy of these two domestic legal regimes are to be found in the "one-way transfer of Indian property to non-Indian ownership" (Trope & Echo-Hawk 2001[1992]) and the failure of common law to protect native burial sites *en pair* with

Christian cemeteries. Responding to this confluence of factors, a number of bills were introduced in the U.S. Congress between 1986 and 1990 grappling with how to redress these issues. The first proposal was a type of alternative dispute resolution mechanism, which was vigorously opposed by *inter alia*, the Smithsonian Institution, the American Association of Museums, and the Society for American Archaeology. Instead, a *sui generis* judicially enforceable regime was adopted (NAGPRA), which protected Native burial sites and directly required federally funded museums to conduct exhaustive inventories and notify tribes about their holdings. If claims are made for human remains, funerary objects, sacred objects and objects of cultural patrimony that meet the statutory definition of “cultural affiliation” between the material in question and the claiming group, repatriation is mandatory.

Some consider NAGPRA to be the most important piece of cultural policy legislation in the history of the United States (Tweedie 2002). The law has been designated as “federal Indian law”, “cultural property law”, “remedial civil rights legislation”, but first and foremost as “human rights legislation” (Hutt 1998), conceived to “address the flagrant violation of the civil rights of America’s first citizens” (Trobe & Echo-Hawk 2001[1992]). In a recent evaluation of the law it was characterized by two of its leading practitioners as “in the smaller scope of conscience perhaps the biggest thing we have ever done” (McKeown & Hutt 2003).

NAGPRA has had direct implications for archaeological and museum practice in the United States. The scholarly debate on repatriation has predominantly centred on whether archaeology’s claim to human remains and artefacts as scientific evidence outweigh Native claims to repatriation based on ancestry (Garza & Powell 2001). This issue has often been perceived as one of access or control, where repatriation and reburial implies loss of access, control and consequently information, whereas retention of material means continued access and control over the embedded scientific information in the material (Baker et al. 2001). It was feared that archaeological research only had something to lose from

NAGPRA, but the number of published articles on Native American archaeology has actually increased after the adoption of NAGPRA (Killion & Molloy 1998). At the institutional and disciplinary level, the debate has focused on critiques of more conventional archaeological knowledge production (Lilley 2000a, 2000b; Spector 2001; Swidler 1997; Watkins 2000; Zimmerman 2001), new types of ethics based on shared knowledge, inclusiveness, multiple voices and pasts, stewardship, consultation and collaborative approaches to understanding the past (Wylie 2002; Zimmerman, Vitelli & Hollowell-Zimmer 2003). In the words of one influential volume on the subject, *The Future of the Past* (Bray 2001): “The archaeology of the academy needs to be replaced by an archaeology of the community. Museum studies must address the needs and concerns of the Native communities whose material pasts they have so long held in trust” (Loring 2001). In other words, today it is almost inconceivable to do archaeology and exhibit Native American culture in the United States without the participation of Native American communities. Beyond the direct practical implications at the disciplinary level of archaeology and museum studies, the debate has centred on “identity politics”, cultural survival, revitalization processes, and the political sovereignty of descent communities (Barkan & Bush 2002; Fine-Dare 2002; Johnson 1999).

To sum up, we might distinguish the three R’s in the following way: (1) *restitution* concerns the problem of contemporary illicit trafficking in antiquities between source nations and market nations and hinges on the *provenance* (i.e. the ownership history) of the object. Restitution is most often mandated by a strict legal interpretation of “cultural property”; (2) *return* concerns the problem of international claims for historically removed material objects and turns on the inalienability of the object from its original context, that is, the *provenience* (i.e. original context) of the object. Return is most often based on voluntary action and goodwill underwritten by ethical considerations of what rightfully constitutes a nation’s cultural patrimony; (3) *repatriation* concerns the problem of indigenous claims for human remains and cultural objects within the nation state.

Repatriation seems to pivot on the necessity of the object for a minority group's ceremonial practices, contemporary identity, and "cultural survival" within larger processes of national narratives and reconciliation within settler-colonial nation states. Following this initial characterization of the discursive field, I would like to shift gear and ask how we might conceptualize the R-terms as transactional orders and imbrications of the institution of cultural property.

Materiality

Few would disagree with the proposition that claims for restitution, return and repatriation have to do with the meanings of material objects. There seems to be a foundational relationship between the stance various stakeholders of the debate adopt toward the three R's and their stance toward the material record. Different notions of the same physical object as a "non-renewable resource", an "artefact", an "antiquity", or a piece of "cultural patrimony" are coupled with distinctive arguments pro or con the three R's in the debate. Why be surprised? We all know how a photograph, a belt buckle or a champagne cork can seem ordinary to some people, but extraordinary to others. Objects can take on very strange meanings intimately tied to personhood, memories, social relations and inalienability.

However, things get a little more complicated if we talk about Native American medicine bundles, Zuni *ahayu:ta* (war gods or twin gods), Iroquois wampum belts and Australian Aboriginal *tjuringas* (sacred stones), just to mention a set of widely different material objects which have been – in one way or the other – involved in cultural property claims. What they have in common is that they have all travelled as a congruent feature of imperialism, colonialism, capitalism and scientific expeditions. Contemporary repatriation efforts reverse such trajectories, which does not make the travelogues of these objects less colourful and dramatic. What biographies have such objects not accumulated? What complex stories could they tell if they could speak? They seem to be a good deal more than their substances: wood, skin, stones, pearls, paint, metal pieces, etc. They come

across more like persons than things. They almost seem imbued with a certain agency of their own.

This inference of intentionality to objects often transpires in narratives about repatriation. A case in point is the history of the potlatch collection from the Kwakwaka'wakw of British Columbia in Canada, well known from the writings of Franz Boas who referred to them as the "Kwakiutl Indians". In 1884, the federal government of Canada outlawed the potlatch, an institution of lavish feast giving, exchange and destruction of property. From the perspective of a Protestant ethic and the spirit of capitalism in Ottawa the potlatch was wasteful, immoral and a heathen practice. A large collection of potlatch paraphernalia was "confiscated" in 1921 through legal action. The federal law was dropped in 1951 and sustained attempts to repatriate the collection began in the 1960s. These efforts culminated with a compromise struck in the early 1970s, where repatriation was made conditional on the establishment of museum facilities to properly curate the collection. For that purpose the U'mista Cultural Society was incorporated in 1974. The society defines its name in the following way:

In earlier days, people were sometimes taken by raiding parties. When they returned to their homes, either through payment of ransom or by retaliatory raid, they were said to have "u'mista". The return of our treasures from distant museums is a form of u'mista (U'mista Cultural Society).

As Ira Jacknis remarks, U'mista is "a perfect Native gloss for repatriation" (Jacknis 2000). Theoretically, this example speaks to the centrality of a notion of agentive objects. This notion of embedded human agency is also present, when Edmund Ladd, a diseased member of Coyote Clan on the Zuni Pueblo, refers to the *ahayu:ta* (war gods) as "being held captive in different museums around the world" (Ladd 2001). He goes on to remark the following about their properties:

It is through the process of disintegration that these gods realize their protective powers. It is

therefore imperative that they not be removed, collected, or preserved; such acts are both dangerous and insensitive. They are dangerous because these gods are mischievous and can play havoc with nature if removed from their shrines... They are not art objects but “Spirit Beings” (Ladd 2001).

It seems that Zuni *ahayu:ta*, Iroquois wampum belts (Hill 2001) and Native American medicine bundles (Cash 2001) could be said to be neither objects nor subjects. Perhaps, materiality “play subtle tricks upon human understanding” (Taussig 2004); such “things” or perhaps rather “captives” open up a range of questions at the fore of an intensified concern with “materiality” in anthropology.

Daniel Miller has recently set the intellectual agenda for such an endeavour. In his introduction to the volume entitled *Materiality* (Miller 2005), he tacks between high altitude philosophy concerning the resolution (Hegel’s *Aufhebung*) of the antithesis between subjects and objects, and the more mundane level of ethnography where people think cars commit treason because they will not start. Or vice versa, that people kill people – guns do not. Miller delineates what I understand to be three current attempts to theorize materiality: 1) a theory of object agency, where he locates Bruno Latour’s (1999) and Alfred Gell’s (1998) influential work, but with intellectual roots back to Durkheim and Mauss; 2) a more dialectical approach, revolving around the subtle relations between objectification, alienation, power and materiality; 3) the legacy of phenomenology, which would focus on the “thing-ness” of things. The idea here is that some things (and people) are more material than others based on the immanent and sensuous properties of objects. According to Miller: “All of these (*forays*) will make claims to have finally and fully transcended the dualism of subjects and objects” (Miller 2005).

Since the material objects are most often the protagonists in cultural property disputes, I would argue that all three strands of thought could find fertile ground and rich ethnographical detail in the three R’s. My proposition here is that the R-terms speak directly to the key questions in the analysis of mate-

rial culture: How do people attribute value to objects and how do objects give value to social or international relations? What happens when things migrate across different spheres of values and framings of significance? How do discursive regimes define the reality of things; do antiquities create markets, or do markets create antiquities? How do things take on meanings as gifts, commodities or loans in different types of transactions? What makes things inalienable and what makes them alienable? How are objects owned, held in possession, cared for, and put to different usages in relation to processes of identity formation, be that personhood or nationhood? All of these questions could form part of an intellectual agenda in which: “we need to show how the things that people make, make people” (Miller 2005).

How should we show how objects make subjects? The highly influential volume *The Social Life of Things* (Appadurai 1986) opened up a new methodological agenda by following a wide range of things through different “tournaments of value”. Crucial here was the movement of things and the changing value attributions over time and space. A question that informed several of the contributions to the volume was the underlying social relations propelling different forms of exchange, circulation and trade. As a whole the volume softened the absolute dichotomy between gift and commodity exchange, which became a matter of degree. This takes me to consider the possibility of repositioning the Maussian notion of the gift with reference to Italy’s pending claim to Denmark. It appears to be a dispute about whether Denmark will recognize that the objects in question were “stolen” or not. This recognition or non-recognition bears crucial significance for the nature of the subsequent transaction. If the holding museum decides to return the Etruscan objects, because they were bought illegally, they return a commodity. If the institution decides to return within a mutual agreement of cooperation and future loans, they return a gift carried by generosity and goodwill. Moreover, Mauss teaches us that the gift establishes a human bond of reciprocity and ultimately solidarity. However, perhaps Italy does not want to receive the objects in question as gifts, but as judicial repa-

ration for a misappropriation – a grave theft against the Italian state.

Cultural property disputes revolve around the nature of the transaction and as such accentuate Mauss' fundamental questions about sliding scales of obligation and compulsion in exchange relations. It also re-opens Jacques Derrida's re-reading of Mauss and the Derridian question about the possibility of the gift (Derrida 1991). If the museum is conscious that it is "gifting" instead of being compelled by the force of law, is the object still a "gift"? Clearly, the lives of objects in cultural property disputes offer pathways to key theoretical questions centring on materiality, which could prove to be illuminating for theoretical contributions to anthropology.

Property

Of late, there has been a revival of interest in property among anthropologists (Benda-Beckmann, Benda-Beckmann & Wiber 2006; Hann 1998; Pottage & Mundy 2004; Strathern & Hirsch 2004; Verdery & Humphrey 2004b), which opens new opportunities to push much harder on the conceptualization of cultural property as property. How then have anthropologists understood the concept of property? Surveying the history of anthropology, Verdery and Humphrey argue that the property concept has been understood as: 1) things; 2) as relations of persons to things; 3) as person-person relations mediated through things; 4) as a bundle of abstract rights (Verdery & Humphrey 2004a). I have largely addressed (1) and (2) under the rubrics of materiality, objectification, inalienability and the interface between objects and personhood. The prevalent understanding of property in anthropology is figured as (3), i.e. as a sanctioned social relationship between persons with respect to tangibles and intangibles seen as having value. This would take us away from the notion of cultural property as a matter of the relations between persons and things, or subjecthood and materiality, and towards exploring cultural property as a relation between persons, here understood as intra or inter-state relations, mediated by tangible objects. One of the central questions of such an endeavour would be the links, if any, between indigenous

claims and metropolitan property regimes. In other words, how do codified cultural property regimes enable or disable the emergence and articulation of claims to the three R's in particular settings?

In this vein, Ann Tweedie has recently explored the efforts of the Makah Indians of Washington State to make claims with recourse to a law, which presumes certain concepts of communal ownership foreign to Makah forms of personal ownership (Tweedie 2002). This type of community-state relations mediated through objects does not become less complex if we transcend the ordinary jurisdictional range of the nation-state, hereby accentuating a plurality of normative loci. Key here is to understand that locales and levels are interactive. However, in tackling these issues it would seem that we have moved from a relational understanding of property to the notion of property as a "bundle of rights". Who makes these rights? What redefines them? What justificatory theories underwrite them? Inquiries about the ways in which norms are generated in different contexts has been a long-standing preoccupation of legal anthropology, as has the notion of property (Moore 2001). The "bundle of rights" understanding (4) takes us into codified entitlements, court cases and legal bodies of knowledge. Annelise Riles has recently considered legal theory-making about property as an ethnographic subject in its own right (Riles 2004). The premise here is that cultural property is the brainchild of legal theory, and hence must be understood ethnographically in the idioms of lawyers' particular methods of reasoning. Thus, the informants here are judges, lawyers, law professors, and bureaucrats. The anthropological field method consists of the standard ethnographic repertoires and techniques for gathering data about knowledge practices. Key here is what these ethnographic subjects refer to as "legal doctrine" (Riles 2004). A doctrine emerges from case rulings, where the doctrine is defined as "the artefact of the accumulation of individual cases" (Riles 2004). The ethnographic puzzle is to identify the judicial decisions, which makes visible the existing doctrine of a given property regime. Ethnographic contextualization implies relating any given ruling or case in such a property

regime to the existing doctrine. Such an endeavour resonates partly with the “chain of means and ends” Riles suggests as the object of ethnographic inquiry, or the actor-network theory of science studies deployed in Latour’s recent ethnography of the judicial body *Conseil d’Etat* in France (Latour 2004).

Applied to the pending Italian claim this approach would imply to understand the response of the holding museum as the product of a metropolitan property regime, understood as a “textual polity” (Messick 1996[1993]), which entails a number of interrelated dimensions: 1) high doctrine, i.e. the established legal doctrine; 2) intermediate level of institutions of judgment, i.e. courts where cases are adjudicated and rulings made; 3) ground level, i.e. museums and other holding repositories, which make findings, recommendations and execute transactions. The point is that when it comes to decisions regarding cultural property, institutions such as museums are embedded in a much wider assembly of bureaucratic bodies (ministries and various departments), making up a metropolitan property regime. Part of the ethnographic puzzle is to figure out how these various levels and institutions within a regime interrelate.

The task of identifying the ascendance of new forms of property as a product of complex interconnections over time within a regime reminds us of the limits of the presentist perspective of ethnography. As the celebrated Canadian political philosopher, Macpherson reminded us a few decades ago: “The meaning of property is not constant. The actual institution, and the way people see it, and hence the meaning they give to the word, all change over time” (Macpherson 1978). With regard to cultural property, the historian Jordanna Bailkin has recently shown that “it is anachronistic to describe objects as cultural property before the mid-twentieth century” (Bailkin 2004). Cultural property as a legal concept emerged with the Hague Convention in 1954, although it has roots back to debates in the Enlightenment about the proper place of the classical art of Rome (Furet 1996; Héritier 2003; Merryman 2000; Merryman & Elsen 2002; Quatremère de Quincy 1836; Savoy 2003). However, the defini-

tion of cultural property in the Hague Convention from 1954 differs significantly from the one given in the Unesco 1970 Convention (Merryman 1986). To map how significant shifts on the international plain from the Hague Convention to the Unesco Convention interrelate with different national contexts of ratification and domestic legal histories, is a larger project, but one which is also about chains of legal connections. Anna Tsing has recently provided a portfolio of methods for the study of global interconnections, which could be useful to such an ethnography of frictions and links in global legal trajectories (Tsing 2005).

I have suggested some different modes of approach, based on different conceptualizations of property: as a set of social relations and as a bundle of rights constituting legal knowledge as an ethnographic object in its own right. I have suggested elucidating the institutional architecture of what I call a “metropolitan property regime” focusing on its legal doctrines, justificatory theories, and interrelations between its different dimensions. Finally, I have stressed the historical contingency of the legal category of cultural property. Anthropologists may respond that what remains to be explored are the effects of the Western “native category” of cultural property in the world at large. How does this legal category impact upon non-Western or indigenous forms of life and sociability? How do the legal technologies of recognition inherent in the concept (Murphy 2004) silence the worlds of the claimants? Or force aboriginal peoples to perform cultural difference in ways prescribed by common law in the guise of liberal forms of recognition, but alien to them (Povinelli 2002)? Or enable indigenous agency to “heal the wounds of imperialism and colonialism”, and we might add, the conscience of the postcolonial state? This cluster of questions turns on the notion of recognition, which I will now turn to consider.

Recognition

Reflecting back on the field notes and the photographs which eventually made up the *Tristes Tropiques* (Lévi-Strauss 1973[1955]), Claude Lévi-Strauss evokes two cataclysms that dispossessed the

Indians of Central Brazil. In 1541, raiding parties of Spanish conquistadores journeyed up an unknown river, later named the Amazon, in search of food. When the Spaniards returned a century later their mission was to eliminate all the Indians. Thus, as Lévi-Strauss argues, the ethnographic observations made in the nineteenth and twentieth centuries, including his own observations and photographs of the *Bororo* people in 1935, do not reflect “archaic conditions” (Lévi-Strauss 1995). Today, writes Lévi-Strauss, a second cataclysm is depriving the indigenous people of Central Brazil, the effects of which we typically gloss under the discontents of modernity:

The Bororo, whose good health and robustness I had admired in 1935, are today being consumed by alcoholism and disease and are progressively losing their language. It is in missionary schools that Bororo youths are being taught about their myths and their ceremonies. But, for fear that they might damage the feather diadems, masterpieces of traditional art, the missionaries are keeping these objects locked up, entrusting the Indians with them only on strictly necessary occasions (Lévi-Strauss 1995).

Obviously, this example raises the question of the difference between repatriation of the intangible and the tangible. However, it also highlights a paternalistic or conditional form of repatriation: the feather diadems are so “precious and rare” (a non-renewable resource) that their custody cannot be entrusted the Indians. What type of cultural recognition is at play in the property relation between missionaries and the Bororo community with regard to the feather diadems? Instead of rushing to an answer, let us consider the other case Lévi-Strauss relates:

Far away, in Canada, a contrasting yet strikingly parallel phenomenon is taking place. The Pacific Coast Indians, whom I visited in 1974, are placing in museums – in this case of their own creation – the masks and other ritual objects that were confiscated more than half a century ago and have now been returned to them at last. These objects

are brought out and used during ceremonies the Indians are beginning to celebrate again. In this new climate they have lost a good deal of their ancient grandeur. The potlatch, formerly a solemn occasion at once political, juridical, economic, and religious, on which rested the whole social order, has been rethought by acculturated Indians imbued with the Protestant ethic and is degenerating into a periodic exchange of little gifts to consolidate harmony within the group and to maintain friendship (Lévi-Strauss 1995).

Lévi-Strauss’ observations offer an initial template for discriminating between two approaches to repatriation, which I initially shall characterize as “paternalistic” and “multi-cultural”. In the first example, we have a paternalistic approach to repatriation, in so far as the continued preservation of the object overrides its value as contemporary ceremonial object for the Bororo community. We are here in the realm of the International Council of Museums’ (ICOM) professional ethics regarding return and restitution claims: “For those in charge of cultural heritage, the *raison d’être* for their professional ethics is to ensure its conservation” (Ganslmayr et al. 1983). Thus, any questions about the property status of the object are overridden by preservationist concerns, which justify the retention – or precisely the occasional loan – of the feather diadems in the possession of the missionaries. In this case *indigeneity* seems to justify retention, since natives from the perspective of the missionaries do not have proper storage facilities for “non-renewable resources” such as feather diadems. We might ask the simple question, why is the Bororo community not in a position to exercise any property rights vis-à-vis the missionaries? The answer here does not seem to be about citizenship, but rather because the Bororo community does not have any standing as sovereign vis-à-vis the missionaries.

In the second case we have a multicultural approach, where the value of ongoing ceremonial activities, i.e. the perpetuation of cultural particularism within the nation state, seems to override any preservationist concerns the relinquishing museum

might harbour.⁵ This approach is spelled out in NAG-PRA, where “sacred objects... mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents” (NAGPRA 1990: SEC. 2; Article 3C). Contrary to the first case, indigeneity here seems to justify repatriation, which completely overrides the issue about the continued preservation of the object. Moreover, why are Native American religious leaders in a position to exercise property rights vis-à-vis holding institutions? Again, the answer here does not turn on citizenship, but rather sovereignty vis-à-vis the federal government. Thus, a native community can act as a claimant exercising property rights in *parens patriae* (Trope & Echo-Hawk 2001[1992]), or as a dependent domestic nation (First Nations in Canada), vis-à-vis any holding institution within the borders of the nation state (Williams 1990).

If we look at property relations from the vantage point of recognition, we are reminded of Charles Taylor’s influential work on the politics of cultural recognition (Taylor 1994). Taylor argued that contemporary debates about the survival of minority cultures turn on the Herderian idea that each culture has its own “measure” and “worth”. However, this is hardly the case in the current claim for Etruscan objects by the Italian nation-state, where the politics of recognition are set to work on a different terrain. Here, the recognition of the claimant is beyond dispute – a modern sovereign nation state – but the debate is about whether contemporary Italy can be recognized as having a privileged cultural affiliation with the Etruscans from the fifth century BC. It seems that in cases that turn on indigeneity, cultural recognition is based on restorative justice, whereas in international cases recognition seems underpinned by distributive justice. The overall point here is that claims only have salience within regimes of recognition.

Repatriation as a Form of Postcolonial Potlatching

We have scores of cases and elaborate debates about the “proper place” of cultural objects going back to the eighteenth century (Quatremère de Quincy

1796). However, the principal argument of this piece is that we have yet to establish a broader theoretical framework for a comprehensive understanding of the constitution of cultural property at the beginning of the twenty-first century. Departing from the three theoretical *topoi* of objects, property and recognition, I have attempted to sketch what such an anthropology might look like. Its viability would depend upon its ability to produce analytic results and in turn set the agenda for a broader transnational debate on the phenomenon.

In closing, I would like to suggest that the institution of cultural property and the potlatch as evoked throughout this article do in fact seem to share many properties. When Marcel Mauss posed the double problem of what type of “rule or legality compels the gift that has been received to be obligatorily reciprocated” and “what power resides in the object given that causes its recipient to pay it back”, he examined an overwhelming body of examples of ceremonial exchange in which the potlatch took on a special significance (Mauss 1990[1924–25]). Mauss characterized the potlatch institution as: “at the same time juridical, economic, religious, and even aesthetic and morphological, etc.,” adding “political and domestic at the same time” (Mauss 1990[1924–25]). In short, what he famously phrased as “a total social fact”. I would argue that the institution of cultural property and the transactional orders governed by it in fact share properties with the potlatch and could be investigated with reference to the same questions as Mauss outlined. As such, *restitution*, *return* and *repatriation* could be explored within a comparative framework with reference to a range of cases on sliding scales of obligation and reciprocity. Such an endeavour might lead to new answers to classic anthropological problems and show that in the current case between Italy and Denmark the parties are in fact fighting with property.

Notes

- 1 According to Unesco’s definition, the term “cultural property” denotes historical and ethnographic objects and documents including manuscripts, works of the plastic and decorative arts, palaeontological and archaeological objects and zoological, botanical and

mineralogical specimens. Legal scholars have been divided with regard to the question of whether “cultural property” can be regarded simply as a branch of property law – along the lines of real property, personal property, and intellectual property – or whether it requires its own legal regime. The argument in favour of a sui generis regime is that some objects are regarded as “inalienable” by an entire community (be that a professional body of archaeologists, museum curators, or an indigenous group) and therefore beyond any market value. Such objects are often vested with “public interest”: a form of collective responsibility to which duties rather than rights are attached (Merryman 1989). Here, the implicit assumption about cultural property is that the object itself is unique and not a fungible good for which proprietary rights might easily be exchanged for capital (Radin 1993).

- 2 <http://portal.unesco.org/la/convention.asp?KO=13039&language=E&order=alpha>.
- 3 The National Museum of the American Indian Act (NMAIA).
- 4 The Native American Graves Protection & Repatriation Act (NAGPRA).
- 5 Even though the potlatch regalia are used for ceremonial purposes, Jacknis (2000: 266–281) and Clifford (1997: 107–145) both state that the repatriation of the confiscated Potlatch collection was conditional upon the material being professionally curated in a museum facility.

References

- Appadurai, A. 1986: *The Social Life of Things. Commodities in Cultural Perspective*. Cambridge [Cambridgeshire]; New York: Cambridge University Press.
- Bailkin, J. 2004: *The Culture of Property. The Crisis of Liberalism in Modern Britain*. Chicago: University of Chicago Press.
- Baker, B., J.T. Varney, R. Wilkinson, L. Anderson & M. Liston 2001: Repatriation and the Study of Human Remains. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Barkan, E. & R. Bush 2002: *Claiming the Stones/Naming the Bones. Cultural Property and the Negotiation of National and Ethnic Identity, Issues and Debates*. Los Angeles: Getty Research Institute.
- Benda-Beckmann, F. v., K. v. Benda-Beckmann & M.G. Wiber 2006: “The Properties of Property.” In: *The Changing Properties of Property*, pp. 1–39. New York: Berghahn Books.
- Bray, T.L. 2001: American Archaeologists and Native Americans. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Brilliant, R., M. Janeway & A. Szántó 2001: *Who Owns Culture? Cultural Property and Patrimony Disputes in an Age Without Borders*. National Arts Journalism Program and Italian Academy for Advanced Studies in America. New York: National Arts Journalism Program.
- Cash, P. 2001: Medicine Bundles. An Indigenous Approach to Curation. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Clifford, J. 1997: Four Northwest Coast Museums. Travel Reflections. In: J. Clifford (ed.), *Routes. Travel and Translation in the Late Twentieth Century*. Cambridge, Mass.: Harvard University Press.
- Coggins, C. 2005: Archaeology and the Art Market. In: K. Fitz Gibbon (ed.), *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*. New Brunswick, N.J.: Rutgers University Press, The American Council for Cultural Policy.
- Derrida, J. 1991: *Donner le temps. La philosophie en effet*. Paris: Galilée.
- Fine-Dare, K.S. 2002: *Grave Injustice. The American Indian Repatriation Movement and NAGPRA*. Lincoln: University of Nebraska Press.
- Furet, F. 1996: *Patrimoine, temps, espace: patrimoine en place, patrimoine déplacé: Entretiens du patrimoine, Théâtre national de Chaillot, Paris, 22, 23 et 24 janvier 1996 / sous la présidence de François Furet*. Paris: Fayard: Editions du patrimoine, c1997.
- Ganslmayr, H., H. Landais, G. Lewis, P. Makambila, P.N. Perrot, J.W. Pré & J. Vistel 1983: *Guidelines for the Use of the “Standard Form Concerning Requests for Return or Restitution” Established by The Intergovernmental Committee, Vol I & II*. UNESCO.
- Garza, C. & S. Powell 2001: Ethics and the Past. Reburial and Repatriation in American Archaeology. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Greenfield, J. 1996: *The Return of Cultural Treasures*. 2nd ed. Cambridge: Cambridge University Press.
- Hann, C.M. 1998: *Property Relations. Renewing the Anthropological Tradition*. New York: Cambridge University Press.
- Héritier, A. 2003: *Genèse de la notion juridique de patrimoine culturel, 1750–1816*. Paris: L’Harmattan.
- Hill, R.W. 2001: Regenerating Identity. Repatriation and the Indian Frame of Mind. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Hutt, S. 1998: Native American Cultural Property Law – Human Rights Legislation. *Arizona Attorney* 34, 18–21.
- Jacknis, I. 2000: Repatriation as Social Drama. The Kwakiutl Indians of British Columbia, 1922–1980. In: D.A. Mihesuah (ed.), *Repatriation Reader. Who Owns American Indian Remains?* Lincoln: University of Nebraska Press.
- Johnson, T.R. 1999: *Contemporary Native American Political*

- Issues, Contemporary Native American Communities*. Vol. 2. Walnut Creek, CA: AltaMira Press.
- Killion, T.W. & P. Molloy 1998: Repatriation's Silver Lining. Paper read at the 63rd Annual Meeting of the Society for American Archaeology, Seattle.
- Ladd, E.J. 2001: A Zuni Perspective on Repatriation. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Latour, B. 2004: Scientific Objects and Legal Objectivity. In: A. Pottage & M. Mundy (eds.), *Law, Anthropology, and the Constitution of the Social. Making Persons and Things*. New York: Cambridge University Press.
- Lévi-Strauss, C. 1973[1955]: *Tristes Tropiques*. New York: Penguin Books.
- Lévi-Strauss, C. 1995: *Saudades Do Brasil*. Washington University of Washington Press.
- Lilley, I. 2000a: Native Title and the Transformation of Archaeology in the Postcolonial World. In: I. Lilley (ed.), *Native Title and the Transformation of Archaeology in the Postcolonial World*. Sydney: University of Sydney.
- Lilley, I. 2000b: Professional Attitudes to Indigenous Interests in the Native Title Era. Settler Societies Compared. In: I. Lilley (ed.), *Native Title and the Transformation of Archaeology in the Postcolonial World*. Sydney: University of Sydney.
- Loring, S. 2001: Repatriation and Community Anthropology. The Smithsonian Institution's Arctic Studies Center. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- M'Bow, A. 1979: A Plea for the Return of an Irreplaceable Cultural Heritage to Those who Created It. *Museum* 31, 58.
- Macpherson, C.B. 1978: The Meaning of Property. In: C.B. Macpherson (ed.), *Property, Mainstream and Critical Positions*. Toronto: University of Toronto Press.
- Mauss, M. 1990[1924–25]: *The Gift. The Form and Reason for Exchange in Archaic Societies*. New York: W.W. Norton.
- McKeown, T. & S. Hutt 2003: In the Smaller Scope of Conscience. The Native American Graves Protection and Repatriation Act Twelve Years After. *UCLA Journal of Environmental Law and Policy* 21, 153–212.
- Merryman, J.H. 1986: Two Ways of Thinking about Cultural Property. *American Journal of International Law* 80, 831–853.
- Merryman, J.H. 1989: The Public Interest in Cultural Property. *California Law Review* 77, 339.
- Merryman, J.H. 2000: *Thinking about the Elgin Marbles. Critical Essays on Cultural Property, Art, and Law*. The Hague: Kluwer Law International.
- Merryman, J.H. & A.E. Elsen 2002: *Law, Ethics, and the Visual Arts*. 4th ed. The Hague: Kluwer Law International.
- Messenger, P.M. 1999: *The Ethics of Collecting Cultural Property. Whose Culture?* 2nd ed. Albuquerque: University of New Mexico Press.
- Messick, B.M. 1996[1993]: The Calligraphic State. Textual Domination and History in a Muslim Society. *Comparative Studies on Muslim Societies* 16. Berkeley: University of California Press.
- Meyer, K.E. 1973: *The Plundered Past*. 1st ed. New York: Atheneum.
- Miller, D. 2005: Materiality. An Introduction. In: D. Miller (ed.), *Materiality*. Durham: Duke University Press.
- Moore, S.F. 2001: Certainties Undone. Fifty Turbulent Years of Legal Anthropology, 1949–1999. *The Journal of the Royal Anthropological Institute* 7, 95–116.
- Murphy, T. 2004: Legal Fabrications and the Case of "Cultural Property". In: A. Pottage & M. Mundy (eds.), *Law, Anthropology, and the Constitution of the Social. Making Persons and Things*. Cambridge: Cambridge University Press.
- NAGPRA 1990: www.nps.gov/nagpra/MANDATES/INDEX.HTM.
- Pottage, A. & M. Mundy 2004: *Law, Anthropology, and the Constitution of the Social. Making Persons and Things, Cambridge Studies in Law and Society*. Cambridge: Cambridge University Press.
- Povinelli, E.A. 2002: *The Cunning of Recognition. Indigenous Alterities and the Making of Australian Multiculturalism, Politics, History, and Culture*. Durham: Duke University Press.
- Quatremère de Quincy, M.A.-C. 1755–1849: 1796. *Lettres sur le préjudice qu'occasionneroient aux arts et à la science, le déplacement des monumens de l'art de l'Italie, Le démembrement de ses écoles, et la spoliation de ses collections, galeries, musées*. Paris: Desenne.
- Quatremère de Quincy, M.A.-C. 1836: *Lettres sur l'enlèvement des ouvrages de l'art antique à Athenes et à Rome*.
- Radin, M.J. 1993: *Reinterpreting Property*. Chicago: University of Chicago Press.
- Riles, A. 2004: Property as Legal Knowledge. Means and Ends. *Journal of the Royal Anthropological Institute* 10, 775–795.
- Savoy, B. 2003: *Patrimoine annexée. Les biens culturels saisis par la France en Allemagne autour de 1800*. Paris: Maison des sciences de l'homme.
- Schmidt, P.R. & R.J. McIntosh 1996: *Plundering Africa's past*. Bloomington: Indiana University Press.
- Solomon, D. 2006: Stolen Art? Questions for Philippe De Montebello. *The New York Times Magazine* 30.
- Spector, J. 2001: Reflections on Inyan Ceyaka Atonwan (Village at the Rapids) – A Nineteenth Century Wahpeton Dakota Summer Planting Village. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Strathern, M. & E. Hirsch 2004: *Transactions and Creations. Property Debates and the Stimulus of Melanesia*. New York: Berghahn Books.
- Swidler, N. 1997: *Native Americans and Archaeologists*.

- Stepping Stones to Common Ground*. Walnut Creek, CA: AltaMira Press.
- Taussig, M.T. 2004: *My Cocaine Museum*. Chicago: University of Chicago Press.
- Taylor, C. 1994: The Politics of Recognition. In: A. Gutmann (ed.), *Multiculturalism*. Princeton, New Jersey: Princeton University Press.
- Trope, J.F. & W.R. Echo-Hawk 2001[1992]: The Native American Graves Protection and Repatriation Act: Background and Legislative History. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Tsing, A.L. 2005: *Friction. An Ethnography of Global Connection*. Princeton, N.J.: Princeton University Press.
- Tweedie, A.M. 2002: *Drawing Back Culture. The Makah Struggle for Repatriation*. Seattle: University of Washington Press.
- U'mista Cultural Society. Retrieved 27 February, 2006, www.umista.org.
- UNESCO 1978: *Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*.
- Verdery, K. & C. Humphrey 2004: Introduction. In: K. Verdery & C. Humphrey (eds.), *Property in Question. Value Transformation in the Global Economy*. Oxford: Berg.
- Verdery, K. & C. Humphrey 2004: *Property in Question. Value Transformation in the Global Economy*. English ed. Oxford: Berg.
- Watkins, J. 2000: *Indigenous Archaeology. American Indian Values and Scientific Practice*. Walnut Creek, CA: AltaMira Press.
- Williams, R.A. 1990: *The American Indian in Western Legal Thought. The Discourses of Conquest*. New York: Oxford University Press.
- Wylie, A. 2002: Towards an Ethic of Stewardship. Presentation made in *Franz Boas Seminar*. Columbia University, New York.
- Zimmerman, L.J. 2001: Usurping Native American Voice. In: T.L. Bray (ed.), *The Future of the Past. Archaeologists, Native Americans, and Repatriation*. New York: Garland.
- Zimmerman, L.J., K.D. Vitelli & J. Hollowell-Zimmer 2003: *Ethical Issues in Archaeology*. Walnut Creek, CA: Altamira Press.
- Martin Skrydstrup holds a Ph.D. in anthropology from Columbia University and is currently a post.doc. at the Dept. of Anthropology, University of Copenhagen. He is a board member of the International Committee of Museums of Ethnography (ICME), a special reference colleague to ICOM's Ethics Committee and a consultant to WIPO's Creative Heritage Project. He has previously published on intellectual property rights (2006) and repatriation (2008). His field research on repatriation is supported by grants from the National Science Foundation (US), the Wenner-Gren Foundation for Anthropological Research (US) and the Danish Research Academy.
(martin.skrydstrup@anthro.ku.dk)