

Repatriation beyond property

Resolving the tension between universalism and cultural specificity

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Abstract

With more and more pressure mounting on museums to repatriate stolen and looted artefacts to source communities, a clear ethical framework is still missing. In a world where existing legal frameworks seem able to provide little guidance when it comes to ethical dilemmas surrounding restitution issues, the need for alternative frameworks becomes all the more pressing. Furthermore, the repatriation debate within philosophy is held hostage by a stalemate between two opposite positions concerning cultural property, cultural internationalism and cultural nationalism. In this thesis I will explore when the repatriation of stolen and looted art and artefacts is morally justified. First, the practice of repatriation is illuminated and I reveal the universal museum as an institution in line with cultural internationalism. Both cultural internationalism and cultural nationalism will be applied to a cases involving ancient looted art, Nazi looted art and the litmus test of repatriation claims: colonial looted art. In the last chapter I propose an alternative framework that deploys arguments from the cultural internationalist framework in favour of repatriation and combine them with Bernard Boxill's harm argument from the debate about reparations for slavery.

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Chapter 1: Introduction

“If it doesn’t belong to you then you must return it,” the author of the Dutch government advisory body’s report, Lilian Gonçalves-Ho Kang You, had said when proposing a new independent committee to examine claims.¹ In reality however, not every case is this straightforward. Museums are home to millions of artworks and cultural artefacts, but not all the artworks and antiquities have made their way to these institutions in a morally permissible way, some are acquired questionably or simply criminally. However, returning the stolen and looted objects comes with problems of its own. Repatriation means returning material heritage or human remains from museums, universities, or other institutions to their culture, nation, or owner of origin.² The return of art or cultural heritage, to their country of origin or former owners (or their heirs) often involves stolen or looted art. The disputed cultural property items are physical artefacts of a group or society that were taken from another group usually in an act of looting, often in the context of colonialism or war. War and the subsequent looting of defeated cultures or nations has been common practice since ancient times.³ The stele of King Naram-Sin of Akkad, which is now displayed in the Louvre Museum in Paris, is one of the earliest works of art known to have been looted in war. The stele commemorating Naram-Sin's victory in a battle against the Lullubi people in 2250 BCE was taken as war plunder about a thousand years later by the Elamites who relocated it to their capital in Susa, Iran. There, it was uncovered in 1898 by French archaeologists.⁴ This example also highlights the nuanced problems when it comes to returning stolen or looted art and artefacts. If an object was clearly stolen or otherwise unjustly acquired from an identifiable group or if the individuals from whom artefacts were unjustly acquired are still alive, the answer to this question seems straightforward and

¹ Daniel Boffey, "Dutch Museums Vow to Return Art Looted by Colonialists," last modified October 8, 2020, accessed June 4, 2021, <http://www.theguardian.com/world/2020/oct/08/dutch-museums-vow-to-return-art-looted-by-colonialists>.

² Erich Hatala Matthes, "The Ethics of Cultural Heritage," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2018 ed. Metaphysics Research Lab, Stanford University, 2018). <https://plato.stanford.edu/archives/fall2018/entries/ethics-cultural-heritage/>.

³ Yue Zhang, "Customary International Law and the Rule Against Taking Cultural Property as Spoils of War," *Chinese Journal of International Law* 17, no. 4 (2018), 943-989, 944.

⁴ Erin L. Thompson, "The Stele of various Victories: Thoughts on the Ethics of Digitizing Cultural," (forthcoming) accessed May 6, 2021, 1-31, 1-2, https://static1.squarespace.com/static/517aa1e5e4b014019cb48b1a/t/5d791e3360accf5ebc20a35a/1568218676474/Thompson_The+Stele+of+Various+Victories_Forthcoming.pdf

uncontroversial.⁵ From a moral perspective, on the basis of standard norms of reparative justice, the looted artefacts should be returned, as would apply to any other stolen item. However, there is a substantial literature spanning philosophy, law, and anthropology that explores the moral complications of the repatriation proposal.⁶ This has resulted in two distinct stances and roughly three kinds of objections to repatriation.

First, there are metaphysical challenges. Cultural groups remain seldom completely the same over time, which poses problems for determining to whom objects should be repatriated.⁷ The Akkadian Empire was the first ancient empire of Mesopotamia, centred in the city of Akkad and its surrounding region in the third millennium BCE, located on the borders of the countries currently known as Iraq, Iran, Syria and Turkey.⁸ This prompts the question: if the stele of King Naram-Sin of Akkad should be returned to the heirs of the Akkadian culture, whom are we talking about?

Second, there are epistemic challenges. In the present day, the knowledge we possess about the conditions under which the objects were acquired is very limited. Because of this, the justice of their acquisition can remain unclear, potentially undermining the moral legitimacy of claims for repatriation.⁹ When something is stolen or looted it seems evidently that the object should be returned, but did the French actually steal the stele of King Naram-Sin of Akkad? It was taken out of Mesopotamia by the Elamite King Shutruk-Nakhunte in the 12th century BC and taken to Susa, Iran. In 1898, Jacques de Morgan, a French archaeologist, excavated the stele and it was moved to the Louvre in Paris where it remains today.¹⁰

Finally, even if these first two challenges can be met, there are objections that question whether museums have an obligation to repatriate at all, especially given countervailing considerations concerning their institutional mission. This could be considered the moral challenge. In the Louvre the piece can be viewed by the almost ten million people that visit the museum every year and they can look after the

⁵ Erich Hatala Matthes, "Repatriation and the Radical Redistribution of Art," *Ergo, an Open Access Journal of Philosophy* 4, no. 32 (Dec, 2017a) 931-953, 936, doi:10.3998/ergo.12405314.0004.032.; Matthes, "The Ethics."

⁶ Matthes, "Repatriation," 932.

⁷ Matthes, "The Ethics."

⁸ Matthes, "The Ethics."

⁹ Matthes, "The Ethics."

¹⁰ Maria Inês Teixeira, "Pasts returned: archaeological heritage repatriation policy in Turkey and the plans for a future nation," PhD diss. (2015), 9.

preservation, something other less affluent nations may not be able to.¹¹ Thus, claims for repatriation can become controversial in cases where 1) the context and conditions of acquisition are unclear, or morally ambiguous 2) the claimants or source community underwent cultural changes, or are not clearly the legitimate descendants of the original owners or victims, or 3) when there are other considerations that could override legitimate claims to possession, such as the conceived aims of museums.¹² Many debates concerning ownership of antiquities, such as the case of the Elgin Marbles, are rooted in more profound issues. The debates go beyond just the ownership of the artefacts and include issues of identity, cultural value, accessibility to the public, educational value, and the preservation of the artefacts. Although these challenges highlight the controversial nature of repatriation, the central hurdle to overcome in the scope of this thesis is the tension between cultural nationalism and cultural internationalism and avoiding the charge of essentialism.

A tension arises between universalism and cultural specificity, between nationalism and internationalism. The repatriation debate is split between cultural internationalists and cultural nationalists.¹³ The cultural internationalists¹⁴, conceive of cultural heritage as universally valuable, grounding consequent rights or permissions for all concerning its use and ownership. The cultural nationalists, on the other hand, argue for culturally specific rights and restrictions that recognize the special claims of particular cultural groups. The cultural internationalist tend to argue in favour of retention in museums, the cultural nationalists tend to argue in favour of repatriation, citing special interests source communities can have.

Discussion of repatriation in general, and in the philosophical literature in particular, is typically framed in the context of two related issues: cultural property and reparations for historical injustices.¹⁵ I will address those two frameworks, and the objections that they generate while relying upon concepts from the debate about reparations for slavery and concepts derived from postcolonialism. In most parts of

¹¹ Kwame Anthony Appiah, "Whose culture is it, anyway?," In his *Cosmopolitanism* (New York: W. W. Norton & Company, 2006) 115-135, 117.

¹² Matthes, "Repatriation," 932.

¹³ John Henry Merryman, "Two Ways of Thinking about Cultural Property," *The American Journal of International Law* 80, no. 4 (1986), 831-853, 846, doi:10.2307/2202065.

¹⁴ For the sake of clarity I will refer to this position as cultural internationalism. Some authors, such as Kwame Anthony Appiah and James Cuno refer to the same position with the terms cosmopolitanism or universalism respectively.

¹⁵ Matthes, "The Ethics."

the world repatriation is not legally regulated, and there is no legally binding document that regulates it on an international level. The Native American Graves Protection and Repatriation Act (NAGPRA) from 1990 regulates the transfer of ownership of certain cultural items to federally recognized Native American Tribes in the United States, but in most countries repatriation is based on the goodwill of the museum or institution that curates the stolen or looted artefacts.¹⁶ An ethical framework which could guide repatriation is currently non-existent.

In a world where existing legal frameworks seem able to provide little guidance when it comes to ethical dilemmas surrounding restitution issues, the need for alternative frameworks becomes all the more pressing.¹⁷ In this thesis I will explore when the repatriation of stolen and looted art and artefacts is morally justified. The central question in this thesis will be: When are claims for repatriation of pieces from museum collections morally justified?

I will answer this question using concepts derived from heritage ethics, the reparations for slavery debate and postcolonialism, and cases containing ethical dilemmas involving looted art and artefacts with three different backgrounds: ancient looted art, Nazi looted art and colonial looted art. Cases involving ancient looted art and Nazi looted art will serve to show the extremes of repatriation requests, while colonial looted art will function as a litmus test for a moral framework, because even though it is unclear who are the rightful heirs, it does not seem intuitive to assume no one is harmed in the present by these historical injustices. In order to come to a full understanding of the practice of repatriation I will look at works by legal scholars and ethicist and combine them with insights from anthropology and history. The question however, remains fundamentally about justice and in the end the goal of this thesis is a moral exploration of repatriation, based on the morally intuitive appeal of normative arguments. First, I will outline the theoretical framework and both sides in the current debate about repatriation, then I will apply both theories to different cases, in order to finally be able to propose a new framework for repatriation cases and to see in which cases it is morally necessary that stolen or looted art is returned. In order to provide refined and applicable insights to the practice of repatriation, this thesis aims to:

¹⁶ Liv Nilsson Stutz “Archaeology, Identity, and the Right to Culture: Anthropological perspectives on repatriation,” *Current Swedish Archaeology*, 15-16: 157-172, 163.

¹⁷ Evelien Campfens, *Fair and just Solutions* (The Hague: Eleven International Publishing, 2018), xiii.

1. Evaluate the moral weight of preferences that are frustrated and satisfied by the practice of repatriation.
2. Overcome the charge of essentialism in claims for the repatriation of looted cultural heritage.
3. To give recommendations on how museums can act morally justified when it comes to requests for repatriation.

In order to satisfy these goals in this thesis, we will first look at the practice of repatriation and reveal the universal museum as an institution in line with cultural internationalism. After we explored the philosophical foundations of cultural internationalism and elucidated the cultural nationalist position, focussing on the charge of essentialism, both positions will be applied to a cases involving ancient looted art, Nazi looted art and colonial looted art. In the last chapter I propose an alternative framework that deploys arguments from the cultural internationalist framework in favour of repatriation and combine them with Bernard Boxill's harm argument from the debate about reparations for slavery. Afterwards I will distil the criteria that need to be met in order for the claim for repatriation to be morally justified and give recommendations on how museums can act morally justified when it comes to requests for repatriation.

Chapter 2: Cultural internationalism and cultural nationalism

Repatriation and the museum

Repatriation has become a very important issue for museums today, with perhaps the most famous cases being the request for the repatriation of the Parthenon marble to Athens, already mentioned in the introduction, and those in which indigenous people have requested the return of their ancestors' remains and sacred objects.¹⁸ Some requests, such as the repatriation of human remains from Native Americans in the United States, are subject to legislation compelling museums to repatriate.¹⁹ But in most other cases, the responsibility for making a decision rests with a museum's governing body. When confronted with requests for the repatriation of objects, museums need to reflect on the changing and conflicting ideas about what is considered appropriate to collect and retain, and what should be returned to the heirs of the original owners. Museums understand themselves as stewards and curators of history and serve the public.²⁰

Repatriation, the process of returning artefacts and human remains to the culture or country of origin, has come to the forefront of museum ethics, especially as museums consider their duty to future generations of museum visitors and the global community. Individuals, social groups, or representatives wishing to repatriate an artefact typically submit a request to a museum collection.²¹ It is the duty of the museum to assess whether there is a compelling case for returning the artefact, but this assessment process is usually an ethical judgment rather than a legal requirement. Through repatriation, the museum relinquishes control of an artefact in its collection and the artefact's long-term fate, thus waiving its original promise of perpetual preservation.²² This is one of the reasons why the international museum community remains divided on whether repatriation is the best course of action for disputed objects.²³

¹⁸ Neil G.W. Curtis, "Universal museums, museum objects and repatriation: The tangled stories of things," *Museum Management and Curatorship* 21, no. 2 (2006): 117-127, 117-8, DOI: 10.1080/09647770600402102

¹⁹ Curtis, "Universal museums," 118.

²⁰ Ashleigh M.L. Breske, "Politics of Repatriation: Formalizing Indigenous Cultural Property Rights," PhD diss., 2018, 102.

²¹ Caitlin S. Wunderlich, "Museum Sector Policy Deficit: Repatriation from United States Museums," *The Museum Scholar* 1, no. 1 (2017), https://themuseum scholar.atavist.com/vol1no1wunderlich#_edn11.

²² Wunderlich, "Museum".

²³ Wunderlich, "Museum".

The museum

The institution that faces scrutiny over the last decennia and is also the main actor in repatriation cases, alongside the claimants, is the museum. The International Council of Museums (ICOM) defines the museum in their statutes as ‘a non-profit, permanent institution in the service of society and its development, open to the public, which acquired, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.’²⁴ For the scope of this thesis I will focus on the “universal” museum, also known as the encyclopaedic museum or the cosmopolitan museum. In the last few years, the idea of the universal museum has been revived. Originally conceived as a tool of Enlightenment, it is now deployed specifically in defence of the continued ownership of massive collections of looted objects in the wealthiest museums of the global North-America and Europe.²⁵ The most striking campaign statement remains the “Declaration on the Importance and Value of Universal Museums”, created and signed in 2002 by 19 museums from North America and Europe, including the aforementioned British Museum, Rijksmuseum and the Louvre.²⁶ This Declaration claims that museums with geographically diverse collections could be ‘universal’ and so offer a more insightful perspective on objects than would be possible if objects were only displayed with material from a museum’s locality.²⁷ However, the Declaration does not start by pointing out why the universal museum is important, but it starts with a rather defensive paragraph:

The international museum community shares the conviction that illegal traffic in archaeological, artistic, and ethnic objects must be firmly discouraged. We should, however, recognize that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era. The objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that are not comparable with current ones.²⁸

²⁴ ICOM, "Museum Definition," , accessed Jun 4, 2021,

<https://icom.museum/en/resources/standards-guidelines/museum-definition/>.

²⁵ Magnus Fiskesjö, "The Global Repatriation Debate and the New “Universal Museums”, in *Handbook of Postcolonial Archaeology* (Abingdon: Routledge, 2016), 303-322.

²⁶ Curtis, "Universal museums," 118.

²⁷ Curtis, "Universal museums," 118.

²⁸ Curtis, "Universal museums," 125.

When the Declaration was issued, the most high profile repatriation case was the request by the Greek Government for the return of the Parthenon marbles from the British Museum to Athens in time for the 2004 Olympics.²⁹ Rather than focusing on that request, the statement emphasised ‘the importance of the context which a great museum offers’, with Neil MacGregor (the director of the British Museum at the time) saying that the Declaration was “an unprecedented statement of common value and purpose issued by the directors of some of the world’s leading museums and galleries. The diminishing of collections such as these would be a great loss to the world’s cultural heritage.”³⁰ The so-called cultural property internationalists, a term introduced by John Henry Merryman, advocate a liberal trade in cultural objects and argue that physical preservation and wide accessibility are the public interests at stake in heritage protection as this serves humanity as a whole, wherever the objects may be.³¹ Proponents of cultural internationalism typically uses claims about the universal value of cultural heritage to argue against nationalist restrictions on its export and sale, as well as against many repatriation claims. In international law, the cultural internationalist stance is best reflected by the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 The Hague Convention), which captures the view that cultural heritage is part of the human experience regardless of where it originated from or where the artefact currently is held. Therefore, the 1954 The Hague Convention places the duty of protecting cultural heritage on the international community as a whole, a view often adopted by museum curators who seek to “highlight our shared past as a civilization.”³²

While the word “heritage” occurs only once in the Declaration on the Importance and Value of Universal Museums, the idea of valuable objects that have been inherited from generation to generation occurs frequently.³³ However, it needs to be noted that the examples given are not drawn from colonial looted art, nor from Nazi looted art, but from ancient civilizations. When looking at the example of the stele of King Naram-Sin of Akkad it is easy to agree with the signatories that repatriation does not seem to be a straightforward solution. However, there’s a reason the examples used in the declaration involve ancient looted art, as we will see

²⁹ Curtis, "Universal museums," 119.

³⁰ Curtis, "Universal museums," 119.

³¹ Evelien Campfens, "Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims," *Netherlands International Law Review* 67, no. 2 (2020), 257-295,

³² Jenna Zhang, "Moving Beyond Cultural Nationalism: Communities as Claimants to Cultural Heritage," *California Law Review* (blog), accessed May 12, 2021,

³³ Curtis, "Universal museums," 120.

when the theory is put into practice, but first we will have a look at the philosophical foundations of cultural internationalism.

Philosophical foundations

Although the term cultural internationalism was coined by legal scholar John Henry Merryman, the same framework appears in writings about ethics. In his 2006 book *Cosmopolitanism: Ethics in a World of Strangers*, the Ghanaian-American scholar Kwame Anthony Appiah uses the term cosmopolitanism to refer to the idea “that no local loyalty can ever justify forgetting that each human being has responsibilities to every other.”³⁴ Appiah identifies two different strands in his cosmopolitanism: the idea that we have obligations to others beyond those to whom we are immediately related and a serious interest in the beliefs and practices that give human lives meaning.³⁵ In the chapter “Whose Culture Is It, Anyway?” Appiah discusses the practice of repatriation, citing Merryman and recognizing that cultural internationalism and cosmopolitanism are one and the same.³⁶ Appiah is in favour of the encyclopaedic or universal museum, rejecting the idea of “cultural patrimony” (the idea of culture as property belonging to members of specific groups) on the grounds that a great deal of what people want to protect or reclaim was made before the modern system of nations came into being, before the construct of nationalism, by members of societies that no longer exist.³⁷ According to him, Viking ironwork has little to do with modern day Norway, which as a nation only exists since 1905.³⁸ Appiah argues that:

the Vikings who made the wonderful gold and iron work in the National Museum Building in Oslo didn't think of themselves as the inhabitants of a single country that ran a thousand miles north from the Oslo fjord to the lands of the Sami reindeer herders. Their identities were tied up, as we learn from the sagas, with lineage and locality. And they would certainly have been astonished to be told that Olaf's gold cup or Thorfinn's sword belonged not to Olaf and Thorfinn and their descendants but to a nation.³⁹

³⁴ Kwame Anthony Appiah, *Cosmopolitanism* (New York: W. W. Norton & Company, 2006), xvi.

³⁵ Mark Busse, "Museums and the things in them should be alive," *International Journal of Cultural Property* 15 (2008) 189-200, 196, DOI: 10.1017/S0940739108080132.

³⁶ Appiah, *Cosmopolitanism*, 130-1.

³⁷ Appiah, *Cosmopolitanism*, 119.

³⁸ Appiah, *Cosmopolitanism*, 119.

³⁹ Appiah, *Cosmopolitanism*, 119.

This argument seems reasonable, but misses a lot of aspects that make most repatriation request particularly complex, such as historical injustices, power inequalities and colonialism. The objects of antiquity, in the vision of the internationalist, are borderless and should be treated as part of a universal heritage, the heritage of the whole of humanity. Appiah claims that objects, regardless of their geographic origin, should be entrusted to those institutions best equipped for their safekeeping and sharing.⁴⁰ The assumption is that less affluent countries or politically less stable, are less suited for the important task of stewardship:⁴¹

The mere fact that something you own is important to the descendants of people who gave it away does not generally give them an entitlement to it. (Even less should you return it to people who don't want it because a committee in Paris has declared it their patrimony.) It is a fine gesture to return things to the descendants of their makers - or to offer it to them for sale - but it certainly isn't a duty.⁴²

The fact that Appiah talks about “people who gave it away,” when writing about source communities, comes across as insensitive at the very least towards art that was taken away in the contexts of colonialism and genocide, sidestepping historical inequalities of power and taking the legality of oppressive regimes at face value. Thereby Appiah fails to acknowledge the actuality of a lot of museum acquisitions over the centuries that passed. Appiah concedes that the connections people feel to objects that are produced in a world of meaning created by their ancestors is important and should be acknowledged. However, he argues that the connection “despite difference” (people can feel this link to art from other cultures than their own) is equally important, for they can result in a cosmopolitan aesthetic experience.⁴³ However, this seems to elude to an idea of art beyond property, a sentiment not preserved in Appiah’s writing about repatriation, stating for instance that public ownership is not necessary the ideal fate of important works of art, because they should be available to people in the daily lives.⁴⁴ However, they are available only to the people in the West, denying the

⁴⁰ Appiah, *Cosmopolitanism*, 132.

⁴¹ Appiah, *Cosmopolitanism*, 132.

⁴² Appiah, *Cosmopolitanism*, 131.

⁴³ Busse, "Museums," 196.

⁴⁴ Busse, "Museums," 196.

general public in non-first-world countries public access to their own heritage.⁴⁵ Denying the relevance of repatriation claims by source communities, on the basis that these objects should be dissociated from their places and relations of origin, privileges the holding nations, with the universal museums exclusively located in the West.

When we return to the example of the stele of King Naram-Sin of Akkad, the moral intuitive appeal of cultural internationalism becomes clear, given that it is not really clear who the heirs of the Akkadian empire would be nowadays. When we apply the internationalist stance to a more recent example, like Nazi looted art, it appears that the cultural internationalist view can deal with this on the grounds of property rights. When property rights are not as straightforward though, such as in the case with colonial looted art, cultural internationalism seems ill equipped to come to moral intuitive conclusions. But first, we will take a look at the other side of the debate: cultural nationalism.

Cultural nationalism

There are several arguments for returning objects to what is believed to be their countries of origin and to make sure that objects stay there. The most common basis for a claim for repatriation, whether regulated by law or not, is cultural affiliation, namely that a living population today can prove some kind of connection to the items to be repatriated.⁴⁶ The attribution of national character to cultural objects, the idea that the cultural heritage belongs in the territory where it was produced and where the culture has its roots, is the basis for these claims.⁴⁷ It is based on the thought that all peoples have their own cultural heritage, crucial to national identity, and that they have a right to it – the cultural heritage belongs to the people that once produced it.⁴⁸ Cultural property differs from cultural heritage in the sense that cultural property refers to something (an artefact, artwork, style or place) that can be the property of a cultural group, with collective ownership and access, even if held by an individual. But when does someone have a claim on cultural property? In other words: who has a reasonable interest in cultural history? Does it belong to a particular culture? A nation? The whole of humanity?

⁴⁵ It is of course possible to visit the western museums for people outside of Europe and the United States, but only for a wealthy elite, so this cannot be seen as real public access.

⁴⁶ Stutz "Archaeology," 163.

⁴⁷ Matthes, "The Ethics."

⁴⁸ Stutz "Archaeology," 16.

Proponents of cultural nationalism typically use claims about the special national character of cultural heritage to argue in favour of nationalist retention policies that restrict or limit the export or sale of cultural heritage. In the words of William Logan: “Local communities need to have a sense of ‘ownership’ of their heritage; this reaffirms their worth as community, their ways of going about things, their ‘culture’.”⁴⁹ Cultural property, in this view, consists of cultural aspects which are significant for a nation, the formation of its history and make it stand out compared to others.⁵⁰ Every nation thus has the right to protect its own heritage. This approach also indicates that there is an original state that cultural objects can be returned to.⁵¹ The document that best reflects the viewpoints of the cultural nationalists’ side of the debate is the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention). The 1970 UNESCO Convention states that “cultural property constitutes one of the basic elements of civilization and national culture, and . . . its true value can be appreciated only in relation to the fullest possible information regarding its origin, history, and traditional setting.”⁵² The Convention expresses a view that cultural heritage is best understood in context of its geographic origin. This thinking reflected the concerns of developing countries that suffered great losses of cultural heritage during the colonial era and feeds into the role that cultural heritage plays in building a nation. When people feel that heritage belongs to them, it is thus directly related to their sense of collective identity.⁵³ This modern notion of cultural property and ownership emerged in Western Europe at the end of the 19th century with the building of nation-states and the development of nationalism.⁵⁴ Cultural objects were used to construct a national collective identity and to create unity in newly founded nation-states. In a lot of (European) nations, when becoming a nation-state, antiquity was used as the foundation of a national identity through a shared past, thus legitimizing the new nation-state. From then on, cultural objects started to belong to the nation-state and its people, and the idea emerged that national governments

⁴⁹ William Logan, ‘Cultural Diversity, Heritage and Human Rights’, in B. Graham and P. Howard (ed.) *The Ashgate Research Companion to Heritage and Identity* (Aldershot: Ashgate, 2008)439–49, 439.

⁵⁰ Karin Karlzén, "Cultural property and claims for repatriation." PhD Diss., 2010, 40.

⁵¹ Karlzén, "Cultural property, " 40.

⁵² UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (signed 14 November 1970), 823 UNTS 231 (1970 UNESCO Convention), 2.

⁵³ Zhang, “Moving Beyond.”

⁵⁴ Zhang, “Moving Beyond.”

should have the power over objects that are historically associated with their culture or ground.⁵⁵ Because of this mentality, many countries, such as Italy, Greece and Egypt, have strict laws on cultural property, deciding that any antiquities found within their jurisdiction are state property and export is forbidden without the state's permission.⁵⁶ The 1970 UNESCO Convention imposes an obligation on nations to protect cultural heritage within their borders, but has also been used as justification for retention of cultural property within the nation. The shift to cultural nationalism was beneficial in that it gave former colonial nations rights to their own cultural heritage that had been exported by Europeans and North Americans.

Philosophical foundations

In his article "Cultures and Cultural Property" James O. Young argues that the basis of a culture's claim on cultural property can simply be the great value that some property has for members of a culture.⁵⁷ According to Young the laws in many jurisdictions explicitly recognise that the value of cultural property can place restrictions on the rights of possessor, such as restrictions on the export of cultural property.⁵⁸ He believes this captures an important moral truth, based on the moral intuition that underlies these laws: the belief that the value some item has for an entire community gives the community some claim on it: "When an item of cultural property has aesthetic, historical or other value to the members of some culture, then the culture has some claim to the ownership of the property in question."⁵⁹ The suggestion that this leads to the conclusion that every item of cultural property ought to be returned to its original culture or, at any rate, the surviving culture closest to the original is a *reductio ad absurdum* according to Young.⁶⁰ Not every Monet ought to be returned to France or every Rembrandt to the Netherlands. Nevertheless, he admits it may appear difficult to explain why a culture has a claim on some items of tangible cultural property but not on others.⁶¹

Arguments based on cultural affiliation are not without flaws, as we will see when put into practice. The recognition of "identifiable earlier groups" or identifying

⁵⁵ Zhang, "Moving Beyond."

⁵⁶ Zhang, "Moving Beyond."

⁵⁷ James O. Young, "Cultures and Cultural Property," *Journal of Applied Philosophy* 24, no. 2 (2007), 111-124, 120.

⁵⁸ Young, "Cultures," 120.

⁵⁹ Young, "Cultures," 122.

⁶⁰ Young, "Cultures," 122.

⁶¹ Young, "Cultures," 122.

the “legitimate descendants” has been a point of contention. While museums often rely upon the culture-historical tradition of “archaeological cultures” defined by complexes of material traits in an attempt to establish an identifiable earlier group, this practice has been increasingly questioned in recent years.⁶² The problem stems in part from the fact that museums typically establish cultural affiliation working from the past (as represented by their collections) to the present, while Native American tribes, for example, tend to work from their present to their past.⁶³ If we stick to the example of Native Americans, the potential danger of this approach becomes apparent. The Native American Graves Protection and Repatriation Act (NAGPRA) from 1990 regulates the transfer of ownership of certain cultural items to federally recognized Native American Tribes in the United States, but in order for the argument from cultural affiliation to succeed, the demonstration of “a relationship of shared group identity” is needed.⁶⁴ However, this reflects the fundamentally flawed and untenable position that Native American identities have not changed through time. This reflects a static essentialist discourse, depicting Native Americans as simple, primitive, technologically immature, and static in contrast to the complex, modern, technologically advanced, and dynamic West. The Native American authenticity then is rooted in an unchanging essence.⁶⁵ This can be seen as the problem resulting from a supposed cultural continuity.

Furthermore, cultural nationalism runs the risk of becoming culturally essentialist. Appeals to repatriation on the ground of belonging to a specific culture implies cultural group boundaries that could exclude marginalized group members, glosses over the variability within defined groups, or construct caricatures or even oppressive conceptions of cultural authenticity, as we have seen in the case of Native Americans.⁶⁶ Furthermore, one might contend that essentialist definitions of culture are empirically false: cultures simply do not have rigid boundaries.⁶⁷ The way that ‘source communities’ are understood can thus be as much a product of Western culture as is the idea of the universal museum.⁶⁸ This happens in two distinct ways.

First, when we talk of ‘indigenous people’ or ‘source communities’ we are

⁶² Matthew Liebmann, "Postcolonial Cultural Affiliation: Essentialism, Hybridity, and NAGPRA," *Archaeology and the Postcolonial Critique* (2008), 73-90, 76.

⁶³ Liebmann, "Postcolonial," 76.

⁶⁴ Liebmann, "Postcolonial," 76.

⁶⁵ Liebmann, "Postcolonial," 79.

⁶⁶ Matthes, "The Ethics."

⁶⁷ Matthes, "The Ethics."

⁶⁸ Curtis, "Universal Museums," 123.

contrasting them with Western culture. The danger of doing this is that the differences between these cultures are minimised—homogenising them into an undifferentiated ‘Other’.⁶⁹ The Other, a key concept in postcolonial theory, is constructed in binary opposition to the Self; subject and object, the dominant West and the inferior East, colonizer and colonized.⁷⁰ The Other by definition lacks identity, decency and purity. To understand the concepts of the Self and the Other, they are juxtaposed in binary opposition, the rational West against the irrational East. According to Edward Said, this manifests itself in what he calls ‘Orientalism’, a style of thinking based on an ontological and epistemological distinction between the East and the West.⁷¹ One of the institutions that plays a crucial role in the continuation of this dichotomy is the museum.

Second, the strength of Western culture is such that indigenous peoples and source communities that were formerly colonized must deal with the West on their terms.⁷² Western notions of what it is like to be "indigenous" are rooted in a model that emphasizes linear descent from an ancestral population in a particular place. This is very different from the way many indigenous people traditionally view their relationship to a place: namely as a result of their lived experiences of their environment, the first-hand accounts and impressions of living as a member of a group.⁷³ When people express their claims to land or objects now in Western hands, they are forced to do so in ways that may differ from their traditional beliefs, ultimately affecting their own view of themselves. The historical relationships between the people from whom something was collected and those who claim it today can be very complex and ambivalent, while the source community very often is not a harmonious ethnic group.⁷⁴ This does not mean that objects should not be repatriated, but that these are issues that need to be addressed and discussed before repatriation can be properly considered.

In this chapter we have revealed the universal museum as an institutions employing the cultural internationalist stance when dealing with claims for repatriation. Furthermore, we have looked at the philosophical foundations

⁶⁹ Curtis, "Universal Museums," 123.

⁷⁰ Hasan Al-Saidi and Afaf Ahmed, "Post-Colonialism Literature the Concept of Self and the Other in Coetzee's *Waiting for the Barbarians*: An Analytical Approach," *Journal of Language Teaching & Research* 5, no. 1 (2014), 95-105, 95.

⁷¹ Edward Said, *Orientalism: Western Concepts of the Orient* (New York: Pantheon, 1978), 2.

⁷² Curtis, "Universal Museums," 123.

⁷³ Curtis, "Universal Museums," 123.

⁷⁴ Curtis, "Universal Museums," 123.

underlying cultural internationalism and its counterpart: cultural nationalism. Now the debate that seems to deadlock further progress in the dealings with repatriation is set out, we will have a look at the two sides of the debate put into practice. In the next chapter we will see that while the cultural internationalist and cultural nationalist standpoint come upon intuitive appealing conclusions when applied to ancient looted art and Nazi looted art, a more complicated category of requests for repatriation namely colonial looted art, results in morally problematic conclusions. Colonial looted art is often looted centuries ago, so cultural affiliation of the source communities with current cultures or nations is not always clear, though the injustice occurred recent enough to be able to see there are people who could be harmed by the plunder in the present day, though colonial power dynamics that are still present. The litmus test thus seems to be repatriation claims involving colonial artefacts.

Chapter 3: Both positions in practice

In the previous chapter we have looked at the universal museum, its ties with the ideology of cultural internationalism and the philosophical foundations underlying both cultural internationalism and cultural nationalism. In this chapter we will put both sides of the debate in practice, showing what results they produce when applied to a particular case. First we will look at ancient looted art, then we will look at Nazi looted art and finally we will apply both positions to the litmus test of claims for repatriation: colonial looted artefacts.

Ancient looted art: The stele of King Naram-Sin of Akkad

When we return to the example of the stele of King Naram-Sin of Akkad, the intuitive appeal becomes clear. The stele is one of the earliest works of art known to have been looted in war. The stele was carved in the third millennium BCE commemorating Naram-Sin's, king of the Akkadian Empire, victory in a battle against the Lullubi people, a mountain tribe in what is now Iran. It was taken as war plunder about a thousand years later by the Elamites who relocated it to their capital in Susa, Iran, where it remained for another 30 centuries, before it was uncovered in 1898 by French archaeologists and brought to the Louvre.⁷⁵

Cultural Internationalism

When adopting an internationalist stance, the stele can be seen as a masterpiece of the shared cultural heritage of mankind. To repatriate the stele lacks moral intuitive appeal, for it is not really clear who the source community would be. The stele originated in The Akkadian empire, located mostly in what is now Iraq, but afterwards remained in Iran for 30 centuries. However, there are still some problematic aspects that need to be noted. In its current context, standing within an encyclopaedic museum, it can also be seen as a lesson about the power differential between modern France and the Middle East, in that the Stele came to Paris but no comparable French masterpieces were sent to Tehran. But this is a point of contention I will return to later. Overall, the idea that cultural heritage belongs to the world as a whole seems to have undeniable moral intuitive appeal. However, the stele of King Sin-Naram of the Akkadian Empire, much like Appiah's example of the Vikings in present day Norway, is an example of ancient looted art, originating in a

⁷⁵ Thompson, "The Stele, " 1-2.

country that no longer exist, a culture that has no direct descendants and a context we know very little about. Yet when we follow the reasoning of the Declaration and accept that artefacts like the stele of King Sin-Naram belong to the whole world, what does that mean in practice? If heritage belongs to everyone equally, how do we ensure universal access? Who is the 'international public' for whom these museum collections are available? It is still a restricted community who have the resource to visit the universal museums located in the West. Furthermore, the Declaration is signed by 19 museums who claim that the objects are most accessible if possessed by them, however none of these museums are in Asia, none are in Africa, none are in Australia and none are in South America.

Cultural nationalism

When we apply a cultural nationalist perspective to the case of the stele of King Naram-Sin, a few drawbacks become clear. If we take the attribution of national character to cultural objects as the basis for repatriation claims, it is not directly clear where the stele should return to. The Akkadian dissolved long ago and the place it was originally created (Iraq) was not nearly as long in Iraq as it was in Iran. However, this might not be a problem for cultural nationalism: if there's no clear attribution of national character for the cultural property, there is simply no reason to repatriate. In this case, it seems reasonable to assume that cultural nationalists would come to the same conclusion as cultural internationalists: the Louvre is not morally required to repatriate the stele of King Naram-Sin. However, the stele of King Naram-Sin is one of the earliest examples of looted art and the source community is not clear. Let us turn to a more recent example, that of artefacts looted in the Second World War, in order to see how both positions deal with victims of looted artefacts that have clear heirs.

Nazi looted art: Camille Pissarro's Rue Saint-Honoré, dans l'après-midi. Effet de pluie

From 1933 to 1945, the Nazi State waged a relentless war against the Jews of Europe.⁷⁶ Parallel to their campaign of physically exterminating the Jews, the Nazi State established a legal and administrative machinery nationwide by which its agents could expropriate Jewish-owned property and transfer it to non-Jewish or

⁷⁶ Marc Masurovsky, "A comparative look at Nazi plundered art, looted antiquities, and stolen indigenous objects," *NCJ Int'l L.* 45 (2019): 497-525, 500.

“Aryan” ownership and control, resulting in a highly organized plan of cultural genocide that involved the confiscation or forced sale of hundreds of thousands of pieces of art.⁷⁷ Although most of these items were recovered by agents of the Monuments, Fine Arts, and Archives program immediately following the war, many are still missing. An international effort is underway to identify Nazi plunder that still remains unaccounted for, with the aim of ultimately returning the items to the rightful owners, their families or their respective countries.⁷⁸ However, some art is hiding in plain sight: museums are still in possession of Nazi looted art.

In 2019 a federal court in California has ruled that Madrid's Thyssen-Bornemisza Museum can keep an Impressionist painting, rejecting a claim by relatives of a German Jew who was forced to sell the painting before fleeing the Nazis. The ruling is the latest in the longstanding ownership dispute over “Rue Saint-Honoré, Après-midi, Effet de Pluie,” an 1897 painting by Camille Pissarro, which the German Jewish owner, Lilly Cassirer, had been forced to sell to a Nazi art appraiser in 1939 for the equivalent of \$360.⁷⁹ Via prior owner Baron Hans Heinrich Thyssen-Bornemisza, who bought the painting in 1976, the piece of art now belongs to Spain, after the nation acquired his collection after his death. The California court found that Baron Thyssen-Bornemisza paid “fair market value” when he acquired the Pissarro painting, and although he should have done more to discover the exact ownership history of the painting and trace it back to Nazi looting, this falls well short of demonstrating the baron’s actual knowledge.⁸⁰ According to Spanish law, if a collector or museum does not know that an artwork was looted when they acquire it, then they are legally entitled to keep it. However, this seems to collide with the moral intuitions most people would have, prompting even the ruling United States District Court Judge John Walter to criticize Spain for not keeping to the Washington Principles on Nazi-Confiscated Art - an international agreement to return Nazi looted art to the descendants of the people they were taken from.⁸¹ This morally problematic outcome is, in the first place, due to the Spanish laws governing ownership in this

⁷⁷ Erin L. Thompson, "Cultural Losses and Cultural Gains: Ethical Dilemmas in WWII-Looted Art Repatriation Claims Against Public Institutions," *Hastings Communications and Entertainment Law Journal*, 33, no. 3 (2011), 407-434, 408; Masurovsky, "A comparative look," 501.

⁷⁸ Masurovsky, "A comparative look," 501.

⁷⁹ BBC News, "Judge Rules Museum 'Rightfully Owns' Nazi-Looted Painting," accessed May 23, 2021. <https://www.bbc.com/news/world-europe-48118342>.

⁸⁰ Raphael Minder, "Court Rules Spanish Museum Can Keep a Painting Seen as Nazi Loot," *New York Times*, accessed May 23, 2021. <https://www.nytimes.com/2019/05/01/arts/design/court-rules-spanish-museum-can-keep-a-painting-seen-as-nazi-loot.html>.

⁸¹ Minder, "Court."

case. But would this outcome change when we apply the frameworks of cultural internationalism and cultural nationalism?

Cultural internationalism

However, when we take a cultural internationalist approach, it is not clear how much would actually change. The important Impressionist painting could be considered world heritage, belonging to humankind as a whole. From this stance, it does not really matter where the painting is held. Furthermore, in the museum the painting can be viewed by a lot of people and the preservation also seems safeguarded. Two problematic aspects of cultural internationalism become apparent from these examples. While it appears that the claim for repatriation in the case of ancient looted art is often weakened by the epistemic and metaphysical challenges, resulting in an situation where the stance of cultural heritage as belonging to the world as a whole seems to have significant intuitive appeal. There remain questions about just distribution and essentializing notions in the current form of universal museums. In more recent cases however, this stance seems even more problematic, because object of cultural importance is much easier to trace back to certain people in this case. Arguably, a cultural internationalist could make exceptions for more recent looted art, although it is not clear on what grounds this would be. It is possible to argue it is justified to allocate more importance to people living close to oneself in time. This could be considered intertemporal discounting, namely a sort of reverse “time discounting” from the climate justice debate, which involves allocating less moral weight to a person’s well-being the further into the future it is.⁸² Many philosophers though, including Rawls, Caney and Parfitt have been highly critical of this approach, arguing that it is objectionable to discriminate against people on the basis of when they are alive.⁸³ They argue it penalises people for a property that lacks any moral significance, namely, when they are born.⁸⁴

Someone's temporal location appears to align with their racial identity or gender or ethnicity; in that it is wrong to punish or discriminate against someone

⁸² Simon Caney, "Climate Justice," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2020 ed. Metaphysics Research Lab, Stanford University, 2020. <https://plato.stanford.edu/archives/sum2020/entries/justice-climate/>.

⁸³ Caney, "Climate Justice."

⁸⁴ Caney, "Climate Justice."

because of their race or gender.⁸⁵ In the same way it would be wrong to discriminate against someone because of their date of birth, for it is not the right kind of property to give people an extra or diminished moral status.⁸⁶

Cultural nationalists

When we look at the same case from the cultural nationalists perspective, it does not really seem equipped for reparation claims such as this one. Claiming that the painting, originally belonging to a Jewish German, is part of German heritage and should be returned to the nation of Germany seems frankly absurd. The term cultural nationalism is unnecessary narrow, leaving a lot of cases that do not involve nations as claimants outside of the scope of its framework. However, it needs to be noted that the term cultural nationalism was coined by Merryman in opposition to the position he subscribed to and it is not a big stretch to assume that most cultural nationalist believe this framework can be applied outside of nation states (as we have seen for example in the case of Native Americans). In this case, for example, it could be argued that a painting that was looted from a Jewish owner in the Second World War, should be returned to the heirs of the original owners, because it is part of their Jewish heritage. However, this does not appear really convincing.

Ancient looted art and Nazi looted art are two extremes on the spectrum of repatriation cases. Most artefacts that are at the centre of repatriation cases involve colonial or imperial looted art. Where we have seen that the cultural internationalist and cultural nationalist approach results in conclusions in line with our moral intuitions when applied to cases in which looted ancient artefacts are the object of repatriation cases, colonial looted art is a tougher hurdle, for it combines the relative recent nature of such historical injustices, without (in most cases) clear heirs to the original victims. Let us now look at the cultural internationalist and cultural nationalist approach applied to the litmus test of repatriation cases: requests involving colonial looted art.

The Banjarmasin Diamond

The Rijksmuseum in Amsterdam, one of the museums that signed the Declaration and which can be considered a universal or encyclopaedic museum, houses the

⁸⁵ Simon Caney, "Climate Change, Intergenerational Equity and the Social Discount Rate", *Politics, Philosophy & Economics*, 13(4): 320–342, 325, doi:10.1177/1470594X14542566

⁸⁶ Caney, "Climate," 325.

Banjarmasin Diamond. The diamond is the first example mentioned in the Advisory Committee on the National Policy Framework for Colonial Collections advising the Dutch Minister of Education, Culture, and Science. On the website of the Rijksmuseum, the diamond is described as following:

This diamond is war booty. It was once owned by Panembahan Adam, the sultan of Banjarmasin (Kalimantan). The stone belonged to the state heirlooms, symbols of the sultan's sovereignty. After his death, the Netherlands intervened in the battle of succession. In 1859 Dutch troops violently seized control of Banjarmasin and abolished the sultanate. The rough diamond was sent to the Netherlands, where it was cut into a rectangle of 36 carats.⁸⁷

In short, this sketches the contested history of the Banjarmasin Diamond, taken from what was then known as the Dutch East-Indies, current Indonesia. This is perhaps not the most complicated case as far as reparation claims for colonial looted art are concerned, but it gives a clear example of how both sides would react to such a request.

Cultural internationalism

When we view the Banjarmasin diamond as world heritage, belong in the deepest sense to all of us and of potential value to all human beings, it seems unclear why the diamond should be returned. It is safe and accessible in Amsterdam, where it can be viewed by a lot of people and its preservation seems safeguarded. Because of appeals to our common humanity, cultural internationalism would claim that a universal connection to art - a claim to pan-human ownership that sidesteps political and economic inequalities in the contemporary world – would be the best way to look at claims for repatriation. However, when applied to a case of colonial looted art this aspect of cultural internationalism becomes clearly problematic: it appears an insensitive approach towards what was taken away in the contexts of colonialism, sidestepping historical inequalities of power and resulting in the maintenance of colonial power balance. These inequalities privilege people living in metropolitan centres who have access to public museums and art galleries, and allow only the wealthiest individuals to enjoy valuable cultural objects on a daily basis. The

⁸⁷ Rijksmuseum, "The Banjarmasin Diamond, anonymous, c. 1875," accessed June 4, 2021, <https://www.rijksmuseum.nl/en/collection/NG-C-2000-3>.

framework of cultural internationalism does not appear to be able to deal with cases in which repatriation could be just, beyond common property claims.

Thus, we have come upon a familiar tension: while the universal museum, describing to a cultural internationalist stance in their argument for retention, claims to be truly universal, it appears to be merely Euro-American-centric. As Lyndel Prott argues: “The one-sidedness of this kind of cultural internationalism is evident—it looks far more like cultural imperialism, based as it seems to be on the activities of those from wealthy countries with each other and with poorer states whose cultural resources are flowing in one direction, without an equal exchange.”⁸⁸ Although they are supported by cosmopolitanists like Appiah, when we take a closer look at the institution, the universal museum does not escape an essentialist approach. Far from emphasizing the universal, museums in general, and the Declaration signatories in particular, tend to overemphasize the distinctiveness and separateness of cultures.⁸⁹ They focus on a narrow definition of authenticity which constantly tends towards an essentialist view of cultures and of the relationship between objects and cultures. They minimize the impact of interactions between cultures and of and present them as static.⁹⁰ As Mark O’Neill notes, each of the museums claiming universal status has had galleries devoted to diverse world cultures within the same building for decades or centuries.⁹¹ They have been universal, or at least global, in a geographic sense since the beginning, but for most of that time the objects were deployed to communicate messages of imperial, white, male superiority.⁹² They saw the world as appropriately ruled by the West and where the Western aesthetic was accepted as a universally valid perspective. While exhibits in universal museums may have been updated, they do not fundamentally differ in their epistemology and mode of communication from those of a century ago.⁹³ They still strive to be distant, academic, decontextualized and hierarchical, outside of time, history and politics, and favour Western aesthetics over other meanings.⁹⁴

Cultural nationalism

⁸⁸ Lyndel V. Prott, "The International Movement of Cultural Objects," *Ijcp* 12 (2005), 225-248, 228.

⁸⁹ Mark O’Neill, "Enlightenment Museums: Universal Or Merely Global?" *Museum and Society* 2, no. 3 (01, 2004), 190-202, 199.

⁹⁰ O’Neill, "Enlightenment," 197.

⁹¹ O’Neill, "Enlightenment," 197.

⁹² O’Neill, "Enlightenment," 197.

⁹³ O’Neill, "Enlightenment," 197.

⁹⁴ O’Neill, "Enlightenment," 197.

The cultural nationalist would claim that repatriation is justified on the grounds of cultural affiliation. Indonesia as a modern state did not yet exist when the diamond was looted, prompting the question why they would be the legitimate heirs of the diamond. Arguing that they should have the diamond on the ground of belonging to a specific culture implies cultural group boundaries that could lead to an essentialist notion of the Indonesian culture and presents them as static. However, it appears morally intuitive that the diamond, which was violently looted after all, should return to the legitimate descendants of the original owners or victims. Cultural nationalism lacks the tools to appoint them, without resorting to essentialism. Cultural nationalism, in contrast to cultural internationalism, does seem sensitive towards historical power imbalances and imperialism, but needs to rely on essentialist notions of cultures, source communities and nations, which bears the inherent danger of homogenizing cultures in an undifferentiated Other. Therefore, in order to guide repatriation requests in a manner that is sensitive towards imperialism, historical injustices and power imbalances, but does clear the charge of essentialism, another framework is needed. In the next chapter we will look at a position that I call “true” universalism, and combine a cultural internationalist stance in favour of repatriation with Bernard Boxill’s harm argument from the debate about slavery reparations. A model that can address claims for repatriation beyond property claims, without having to resort to essentialist notions of cultures.

Chapter 4: A “truly” universalist approach towards repatriation

In the last two chapters we have seen that both cultural internationalism and cultural nationalism come with their own problems. While universalism views cultural heritage as belonging to the world which results in intuitive conclusions when applied to ancient art, in practice it seems ill equipped to deal with colonial looted art and artefacts, ignoring historical power imbalances. Furthermore, the current universal museum still has distinct imperial overtones, while appearing merely Euro-American-centric, not truly universal. Cultural nationalism on the other hand, seems better suited to deal with colonial looted art, but it can't overcome the charge of essentialism. In this chapter I will propose a solution to this, revealing the perception of cultural nationalism and cultural internationalism as two opposed sides of the dispute as false. While the cultural internationalist side of the debate is often, if not always, deployed in defence of retention for the museum, thus against repatriation, a compelling case can be made in favour of repatriation, avoiding the charge of essentialism cultural nationalism cannot escape. When we look closer at the two sides, there seems to be no real dichotomy, but an arbitrary classification. The framing of internationalists and nationalist as to sides of the debate appears to be far more political and historical, than resulting from an ethical difference. There is no inherent quality of cultural internationalism preventing it from defending repatriation. I will argue in this chapter that when following the argument of universalism through, it actually raises a defence of repatriation. When combined with concepts from the reparations for slavery debate, a model appears that is sensitive towards the imperial and colonial tendencies of universalism, without the essentialist notion needed to contrive an argument for repatriation from a cultural nationalist standpoint. When analysing the cultural internationalist viewpoint, we encountered some problems when looking at Nazi looted art. However, much of the problems that occur when employing a universalist stance, come from the fact that the strategy is currently deployed specifically in defence of the continued ownership of massive collections of looted objects in the wealthiest museums of the global North-America and Europe. This does not necessarily follow from the principles of cultural internationalism, as we will see in what follows.

Philosophical foundations

While cultural heritage, at least from this viewpoint, belongs to the world as a whole, there can still be an obligation to correct an historical injustice. The universal museum seems to suggest that there's no need to return stolen or looted art since cultural heritage belongs to mankind as a whole. However, this does not prevent the possibility of the necessity of reparations for historical injustices, repatriation as reparation, so to speak. Although there is considerable intuitive appeal in the idea that somebody who wrongs another person ought to compensate for that injustice, we have seen that appeals for repatriation based on cultural affiliation cannot escape the charge of essentialism. Instead of resting claims for repatriation on appeals to cultural property and thus on cultural affiliation, one might instead argue that repatriation is required as a component of reparations for historical injustices: in particular for the unjust campaigns of colonial occupation and genocide in which such acquisitions were embedded.⁹⁵ Because many repatriation claims concern objects that changed hands during previous generations, reparations for unjust acquisition or the unjust treatment of the former owners can seem to provide a suitable framework for justifying repatriation.⁹⁶ Contrary to the cultural internationalist and cultural nationalist position that does not require a framework that's confined to property claims, which are not sensitive towards historical inequalities in the case of the cultural internationalists and result in an essentialist understanding of cultures in the case of cultural nationalism. To ask and answer the question using the language of cultural property is both to reinforce rigid ideas about culture and is ill-equipped to deal with cases which ask questions beyond property rights. Cultural property can be considered a paradox because it places special value on cultural artefacts but does so based on a sanitized and domesticated view of cultural production and identity. At the same time, relying only on property rights leaves a lot of cases, especially cases involving colonial looted art, outside of the scope of repatriation.

However, repatriation as a form of reparations still requires a justifiable account of to whom an object should be returned, even if it is not views as property. In the context of reparations, this requires an idea about how the "transfer of victimization" would come about.⁹⁷ This concepts derives from Bernard Boxill's work

⁹⁵ Matthes, "The Ethics."

⁹⁶ Matthes, "The Ethics."

⁹⁷ Karin Edvardsson Bjornberg, "Historic Injustices and the Moral Case for Cultural Repatriation," *Ethical Theory and Moral Practice* 18, no. 3 (2015), 461-474, 464. doi:10.1007/s10677-014-9530-z.

on reparations for slavery. According to Boxill's "harm argument," past harms can initiate a chain of harms that continue to harm people today.⁹⁸ So the unjust acquisition of artefacts not only harmed their owners at that time, but also initiated a chain of events that harms people in the present.

The harm argument

In Boxill's original argument, the harm argument relies on the idea that the transgressions of slavery initiated an unbroken chain of harms linked as cause and effect that began with the slaves and continues among African Americans to the present day.⁹⁹ Therefore since the transgressions of slavery harm present day African Americans they have rights to reparation against those who committed those transgressions.¹⁰⁰ To this original argument however, some objections can be made, with the non-identity problem (originally posed by Derek Parfitt) being the most persistent.¹⁰¹ This objection states that making reparations to the present black population in the United States for the harms that slavery caused it is impossible because if slavery had never occurred the present black population would not exist.

The non-identity problem would be unlikely to obtain in many repatriation cases: most of the wrongdoings referred to are simply not substantial enough to have affected conception.¹⁰² In contrast to pervasive wrongs like genocide, slavery, or structural discrimination, it is in many cases not plausible that the descendants of victims of wrongful removals of cultural objects would not be alive today had the objects not been wrongfully removed in the past.¹⁰³ Thus, the harm argument should face less scrutiny when applied in the case of repatriation. When applied to repatriation, the core idea is that the unjust acquisition of artefacts not only harmed their owners at that time, but also initiated a chain of events that harms people in the present. It could be argued that this still requires the identification of the "legitimate descendants" of the original victims and thus to appeal to bonds of common culture

⁹⁸ Bernard Boxill, "A Lockean Argument for Black Reparations," *The Journal of Ethics* 7, no. 1 (Jan 01, 2003), 63-91, 66, doi:10.1023/A:1022826929393.

⁹⁹ Andrew I. Cohen, "Compensation for historic injustices: completing the Boxill and Sher argument," *Philosophy & public affairs* 37, no. 1 (2009): 81-102, 82.

¹⁰⁰ Bernard Boxill, "Black Reparations," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2016 ed. Metaphysics Research Lab, Stanford University, 2016. <https://plato.stanford.edu/archives/sum2016/entries/black-reparations/>.

¹⁰¹ Boxill, "Black. "

¹⁰² Bjornberg, "Historic Injustices," 467.

¹⁰³ Bjornberg, "Historic Injustices," 467.

in order to identify the relevant inheritors.¹⁰⁴ However, that would raise the same cultural group problems of cultural essentialism that cultural nationalism cannot escape. On at least one reading of the harm argument, however, the legitimate descendants of the original victims are identified by the fact that we can trace a present harm to the past harm in question, not the other way around.¹⁰⁵ This would still require an appeal to some variety of continuity, but this would not necessarily be equivalent to cultural continuity. For instance, one might be able to trace a chain of harms between an original victim group and a later group, even if the latter group has undergone radical cultural changes. The question that needs to be asked thus becomes: who's story is the object telling? Who has agency over this piece of material history, of cultural heritage?

Although it is impossible to say in whose possession a particular object might be today had it not been wrongfully removed from its original owners in the past, it is reasonable to assume that, for at least some cultural artefacts that play an important role in the religious, cultural or political life, by functioning as a symbol of collective ideals, a source of identity for its members or, for example, as a link with founders or ancestors, the most likely scenario is that they would have remained in the hands of their original owners and their descendants throughout time.¹⁰⁶ To be sure, it may still be difficult to adequately demonstrate the relevant causal chain of harm, so identifying the legitimate descendants may well still be difficult. But it should be clear that this approach reveals who the moral descendants of past victims are, rather than presupposing it, by looking at who's story the object tells.¹⁰⁷ This allows for viewing cultures as dynamic, hybrid and contaminated, ruffled around the edges. The Banjarmasin diamond tells the story of the Indonesian people, even if the culture's gone through changes over time. A country and its people can more easily combat stereotypes if they understand the historical reasons behind them.¹⁰⁸ In this way, the Indonesian people are harmed, because they are not in control of their own cultural heritage. Repatriation would allow them to bring their material history to life and shed light on where their culture has been and where they are headed

Thus, it is reasonable to assume that the victims' living descendants are in

¹⁰⁴ Matthes, "The Ethics."

¹⁰⁵ Matthes, "The Ethics."

¹⁰⁶ Bjornberg, "Historic Injustices," 468.

¹⁰⁷ Matthes, "The Ethics."

¹⁰⁸ Elizabeth A. Klesmith, "Nigeria and Mali: The Case for Repatriation and Protection of Cultural Heritage in Post-Colonial Africa," *Notre Dame Journal of International & Comparative Law*: Vol. 4: Iss. (2014), 46-64, 52.

general worse off than they would have been if the objects had not been wrongfully taken from their ancestors.¹⁰⁹ This harm, experienced in the present day, thus justifies repatriation, without having to rely on essentialist notions of cultures or nations. Harm can be caused by the knowledge of an historical injustice committed against peoples forbears, for which they never received reparations and which does not allow them to tell their own story in the present.¹¹⁰ This psychological harm is often easier to establish, for had the property not been taken away, had the historical injustice not been committed, then the victims' descendants would not be suffering today by knowing about it, and about the lack of reparations ever since. Furthermore, the removal of the object itself can be the cause of psychological harm for the descendants of the victims, for it harms their control over their own narrative.¹¹¹ This concept is sensitive towards the role that colonial dynamics have played in establishing current patterns of access to, and control over, cultural heritage. When an artefact, such as the Banjarmasin diamond for example, is looted in a colonial context, it makes much more sense to assume that the victims' living descendants are worse off than they would have been if the objects had not been plundered from their ancestors, then when we look at Appiah's example of the Vikings who made the gold and iron work now in the National Museum Building in Oslo. It would appear farfetched to argue people are harmed in the present day by the manifestation of the gold and iron in Oslo, for it does not carry the same history of inequality nor the same colonial dynamic. But in order to elucidate this more clearly, we will look at the museum as a contact zone and the obligations for the museum that arise when they take universalism seriously. This results in a framework that is by no means a one size fits all solution, but carries different moral weight in different situations. Thus, we have seen that the harm argument does not have to rely upon cultural group membership in order for the claimants to have a case. This opens up the possibility to claim repatriation, without committing oneself to an essentialist notion of one's culture or nation.

The argument from universalism

¹⁰⁹ Bjornberg, "Historic Injustices," 468.

¹¹⁰ Bjornberg, "Historic Injustices," 468.

¹¹¹ Bjornberg, "Historic Injustices," 468.

Besides the harm argument, borrowed from the reparations for slavery debate, there are other arguments in favour of repatriation, when the universal stance is followed through. Precisely because the universal museum is committed to showing world heritage and serving mankind, they should be in favour of just distribution.¹¹² We have seen in Chapter 2 that the museum considers itself to be universal, relying on the cultural internationalist position to argue for retention. However, the “universal” museum in its current form is not truly universal. It appears much more accurate to view museums as “contact zones”, as James Clifford argues. The term ‘contact zone’, borrowed by Clifford from Mary Louise Pratt, refers to a ‘space in which peoples geographically and historically separated come into contact with each other and establish ongoing relations, usually involving conditions of coercion, radical inequality, and intractable conflict.’¹¹³ Artefacts in museums embody both the local knowledge and histories that produced them, and the global histories of Western expansion which have resulted in their collection and subsequent transfer to museums.¹¹⁴ As sites of intersecting histories, artifacts have overlapping but different meanings to museums and source communities – and are often interpreted quite differently by each group. Especially for indigenous peoples, for whom the effects of colonization have brought about rapid and profound changes, museum artefacts represent material heritage and incorporate the lives and knowledge of ancestors. As Aura Peers and Alison K. Brown note: “knowledge surrounding historic artefacts tends to live on in source communities even without their presence, sometimes for many decades, and can be reinvigorated and used for new purposes when those artefacts are encountered again.”¹¹⁵ It is inadequate to portray museums as collections of universal culture, repositories of uncontested value, sites of progress and the accumulation of human, scientific, or national patrimonies.¹¹⁶ A contact zone perspective of the museum views all culture-collecting strategies as responses to particular histories of dominance and hierarchy, which helps us see how claims to both universalism and to specificity are related to concrete social locations.¹¹⁷ Ultimately, it argues for a distribution of resources that recognizes diverse audiences

¹¹² Matthes, "Repatriation," 940.

¹¹³ James Clifford, *Routes: Travel and translation in the late twentieth century* (Cambridge: Harvard University Press, 1997), 192.

¹¹⁴ Alison K. Brown and Laura Peers, eds. *Museums and source communities: A Routledge reader* (Abingdon: Routledge, 2005), 5.

¹¹⁵ Brown and Peers, *Museums*, 5.

¹¹⁶ Brown and Peers, *Museums*, 5.

¹¹⁷ Clifford, *Routes*, 213.

and multiply centred histories of encounter. For the museum to be truly universal then, means to be available to everyone. A retentionist position that hoards everything in only a couple of places, divided over just two continents, is not in line with the cultural internationalist viewpoint. When applying a universalist perspective and borrowing the harm argument from the debate about reparations for slavery, a framework becomes apparent that bridges the tension between universalism and cultural specificity, by enabling justly reacting to claims for repatriation, without failing the charge of essentialism.

This framework moves away from the stalemate in the debate about cultural property, towards a framework where artefacts of cultural importance are not exclusively seen as property, but as cultural histories of contact zones. Moving away from cultural property, built on Euro-American concepts of property, with inherent commercial connotations, stops highlighting certain kinds of relationships and rights (property rights), in favour of other important rights, such as the right to self-determination.¹¹⁸ A nation and its people can combat stereotypes if they understand the historical reasons behind them and in this way, cultural heritage does not distort culture or rely upon static notions of the culture, but brings it to life and sheds light on where a culture has been and where they are headed.¹¹⁹

In practice

We will now return to the examples used to test the cultural internationalist and cultural nationalist sides of the debate, in order to see how this new framework deals with the different types of repatriation claims: the stele of King Sin-Naram of the Akkadian Empire, Camille Pissarro's *Rue Saint-Honoré, dans l'après-midi. Effet de pluie* and the diamond of the Sultan van Banjarmasin.

The stele of King Sin-Naram

When we apply a truly universal perspective combined with the harm argument to the case of the stele, the significant moral intuitive appeal becomes clear. The stele, that originated in the Akkadian Empire and subsequently stayed for centuries in Iran, before it moved to its current place, the Louvre in Paris, does not have clear heirs. When we apply the harm argument, it appears farfetched to claim people living in what once was the Akkadian Empire are harmed by the removal of the stele. The

¹¹⁸ Busse, "Museums," 193.

¹¹⁹ Klesmith, "Nigeria," 52.

stele, switching from nation to nation in the thousands of years since it was carved, can be considered world heritage, while it seems impossible to trace back a chain of harms from the present day, all the way through to the third millennium BCE. This does not mean however, that returning the stele to the place it once stood can be just, it just does not seem to be morally necessary from the truly universalist standpoint. However, a case can be made for the return of the stele on the grounds of fairer distribution. On its own though, this claim appears quite weak, for it is not clear where the stele should return to.

Camille Pissarro's Rue Saint-Honoré, dans l'après-midi. Effet de pluie

When looked at from an cultural internationalist perspective, the rejection of a repatriation claim by relatives of a German Jew who was forced to sell the painting, now in the collection of Madrid's Thyssen-Bornemisza, before fleeing the Nazis, would be justified. This conclusion changes dramatically when we apply the truly universalist stance combined with the harm argument. It then becomes quite clear that the relatives of the Jewish owner of the painting are harmed in the present by the fact that the painting was looted by the Nazi's. The looted painting represents the continuation of the historical injustice, causing the moral descendants suffering. They are not in control of their own narrative, not in control of their own material history, but their story is told by the museum, that has no real agency to tell their story. This is a clear chain of harms that can be traced back. Furthermore, it does not seem intuitive to argue that this claim could be trumped, for example by arguments for optimal preservation or scientific research. As Alison Wylie notes, focussing exclusively on preservation and scientific concerns can exclude other ways of valuing the past (and the communities that relate to the past in different ways) from how the west pursues preservation goals.¹²⁰ When something is looted, it does not appear reasonable to repatriate solely on the terms of the looter, other perspectives need to be taken seriously.

The Banjarmasin Diamond

The Banjarmasin diamond, currently on display at the Rijksmuseum, has a contested history. Taken as the spoils of war, the diamond was violently looted. When we apply the harm argument, it seems plausible that this historical injustice still causes harm

¹²⁰ Alison Wylie, "The promise and perils of an ethic of stewardship," In *Embedding ethics* (2004), 47-68, 55.

to the descendants of the Sultan of Banjarmasin and the nation of Indonesia, who are reminded of the colonial history. These considerations make it clear that the case for the return of the Banjarmasin Diamond is much stronger than the claim for the stele of King Sin-Naram. It needs to be noted that this is not because of some kind of temporal discounting, the gauge after all is the harm experienced by the people who are alive in the present. The combination of a cultural internationalism, combined with the harm argument delivers intuitive conclusions, that do not need to rely on essentialism of time discounting. This proposed “real” universalism has the potential to alleviate the tension between Euro-American-centric universalism and cultural specificity. While conceiving of cultural heritage as universally valuable, particular groups and individuals can still claim repatriation, on the basis of the harm argument. This allows for a framework that is sensitive towards the unequal distribution of power and the role that colonial dynamics have played and still play in shaping the current control and accessibility regarding cultural heritage. Because the harm argument works from the present, establishing who is currently harmed by past events, it can account for cultural changes over time, for it reveals who the moral descendants of past victims are, rather than presupposing it. Furthermore, when universalism is followed through, it becomes clear that universal museums should be in favour of a fairer distribution of cultural heritage and thus against retention.

The encyclopaedic museum and repatriation requests

When we apply this framework to the encyclopaedic museum, it becomes clear how they could act morally justified with regards to requests for repatriation. As the Advisory Committee on the National Policy Framework for Colonial Collections report chaired by Lilian Gonçalves-Ho Kang You puts it in the context of repatriation policies for Dutch museums: “The recognition of injustice and the willingness to rectify it as far as possible should be the key principles of the policy on colonial collection in Dutch museums.”¹²¹ This can be considered a very fruitful starting point. However, it is argued in this thesis that universal museums, when handling a claim for repatriation, should apply the harm argument, working backwards from the present in designating who is currently harmed by the historical injustice, in order to

¹²¹ Raad voor Cultuur, “Summary of report Advisory Committee on the National Policy Framework for Colonial Collections,” Raad voor Cultuur, accessed June 4, 2021, <https://www.raadvoorcultuur.nl/documenten/adviezen/2020/10/07/summary-of-report-advisory-committee-on-the-national-policy-framework-for-colonial-collections>

avoid essentialist notions of cultures, nations or source communities. Furthermore, their self-understanding as universal should result in a willingness to agree with claimants of repatriation, for they usually are non-Western claimants, resulting in a fairer distribution of cultural heritage around the globe.

Conclusion

What I have proposed in this thesis is an approach towards repatriation from a cultural internationalist viewpoint, a truly universal viewpoint, while acknowledging historical injustices and the necessity for repatriation. This allows for an approach that avoids the charge of essentialism, while it is able to deal with cases in which retention collides with moral intuitions and is sensitive towards power inequalities and colonialism. This answer coincides with the aims of this thesis. The moral weight of preferences that are frustrated and satisfied by the practice of repatriation become clear from this framework. Repatriation is justified when a community is currently harmed by the looting that happened in the past and the missing artefact. The weight of this argument depends on multiple influences, including the context in which an object was taken. Furthermore, when universalism is followed through, it becomes clear that the arguments usually deployed in favour of retention should be considered arguments for repatriation instead. Accessibility supports the practice of repatriation, resulting in a more even distribution of cultural heritage around the globe, instead of a lot of artworks in a few places spread over just the European and North-American continent.

Secondly, we have seen how combining cultural universalism with the harm-argument from the reparations for slavery debate can overcome the charge of essentialism in claims for the repatriation of looted cultural heritage, while still being sensitive towards injustices from the past, inequalities and imperialism.

Thirdly, this resulted in the following policy advice for encyclopaedic museums: when handling a claim for repatriation, they should work from the harm argument, in order to avoid essentialist notions of cultures, nations or source communities. Furthermore, their self-understanding as universal should result in a willingness to agree with claimants of repatriation, for it usually are claims from outside the west, resulting in a fairer distribution of cultural heritage.

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