Restitutions of Cultural Property: The Transnational Production of Frames of Reference and Norms of Ownership for Cultural Property

Restitutions de biens culturels : la production transnationale de référentiels et de normes de propriété des biens culturels
Restituciones de bienes culturales: la producción transnacional de marcos referenciales y normas de propiedad para los bienes culturales
Rückgabe von Kulturgütern: Die transnationale Produktion von Referenzsystemen und Normen für die Eigenschaften von Kulturgütern

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In the public policy sphere, the concepts of policy transfer and policy diffusion constitute models for the regional and international circulation of government policies. The work of David Dolowitz and David Marsh (2012) on policy transfer has revealed how copying, emulation, and in some cases lesson-drawing take place between states in the production of public policy. More importantly still, these concepts highlight not only the existence, but also significance, of the international circulation of the ideas and strategies that contribute to the production of public policy. Like Dolowitz and Marsh, Antoine Vauchez (2013), and Sabine Saurugger (2013), Diane Stone (2012) has also explored policy transfer, with her approach focusing on the actors involved in transfer and diffusion practices. In particular, her work shows that these diffusion and circulation practices operate within transnational relations (Stone 2008). In other words, public policies are circulated via exchanges and transfers across a constellation of actors whose relations and affiliations go beyond the formal frameworks of the state. Think tanks, networks of international experts, professional associations, and citizens’ groups all contribute to the process of transnational policy diffusion.
These concepts have also influenced the study of state cultural policy. Since the early 2000s, researchers have explored the dynamics of transnational influence involved in the production of new cultural policies. Key contributions to this literature include studies of the diffusion of “creative towns and cities” strategies (Alasuutari 2013) and the “creative industries” model (Prince 2010; Rindzeviciute et al. 2016; Vlassis & De Beukelaer 2019), and accounts of experiences of policy diffusion in the institutional space of the European Union (Dewey 2008). Looking back over two decades of research on cultural policy transfer, two observations are in order. The first of these is that cultural policy transfers appear to operate across relatively limited cultural spaces (Paquette 2015). While they are not confined by borders as such, there are patterns of circulation that reflect historic institutional logics, but also cultural and in some cases linguistic logics. The British institutional model for supporting culture—the “arms-length” approach of the Arts Council, which was created in 1946—was, for example, emulated by the Canadian (1957) and Australian (1967) governments. And it was also on the basis of cultural ties and existing professional networks that the Government of Quebec turned instead to France to develop a Culture ministry, on the French model (Alasuutari & Kangas 2020). The shift from the “cultural” to the “creative” industries also reflects a diffusion dynamic that largely stems from existing ties in the Anglophone cultural and linguistic space. The second observation is that cultural policy tends to be discussed in the literature on the basis of non-contentious examples and contexts, and indeed areas on which there is a certain degree of consensus.

This article contributes to the discussion of transnationalism in the study of cultural policy by looking at the transnational production and circulation of discourses and forms of collective action in favour of the restitution of cultural property acquired during the colonial era, i.e. primarily between the eighteenth century and the 1960s. This discussion raises questions about cultural property in a range of contexts, from the colonization of the Americas to the colonization of Asia and Africa by the European powers. As such, in recent years, museums, libraries, and archives have been the focus of fierce debates about cultural objects originating from all continents, but in particular from Africa, which are now being sought (and claimed) by states, by professionals from museums abroad, and by political and cultural associations. In ethical terms, these initiatives draw on moral debates that are often influenced by ideologies (Third-Worldism, nationalism, and new social movements) and are reflected in numerous calls for the political, institutional, and even professional transformation of cultural heritage by means of these restitution claims (Price 2007). This article describes the forms of collective action that have developed in the cultural (historical and linguistic) spaces of the Anglophone and Francophone world, and focuses in on their underpinning norms and intellectual histories.

1. Restitutions of Cultural Property

The concept of restitution requires particular attention, since it draws on four different dimensions simultaneously. Firstly, in its most general sense, the restitution of cultural property assumes a disagreement, a legal dispute about the legitimate ownership of a cultural object. Speaking of restitution implies a controversy over a cultural object (as being ill-gotten or stolen) and sets a legitimate owner against an allegedly illegitimate current owner. In recent years, there has been extensive coverage in the media of such
disputes over the ownership of cultural property, involving museums, libraries, and archives, as well as private collections. The speech given by French president Emmanuel Macron in Ouagadougou on 28th November 2017 makes clear the political and symbolic nature of the issue of restitutions. Secondly, the concept of restitution raises an ethical question, albeit implicitly. The idea of a potential return—which is inherent to the concept of restitution—takes us towards the sphere of ethics and morals, and more specifically towards issues relating to the ethics of recognition. Effective—or successful—restitution constitutes an act of recognition, an acknowledgement of wrongdoing. Following Paul Ricoeur (2005), successful restitution can be said to involve both an imputability to the past, and an opening up—a promise about the possibilities of developing new relations, new and more harmonious social ties. Restitution can be seen to embody these two moments of an ethics of recognition. It is this moral dimension that particularly dismays the critics of and opponents to restitutions of objects acquired during the colonial period.

These first two dimensions are accompanied by an academic reality: the fact that restitutions also reflect numerous academic art and heritage research programmes that have contributed to the broader dissemination of restitution as a concept. The term became established in the research sphere in the context of the aftermath of the Second World War, when the consequences of the German invasions were being assessed and questions were being asked about the disappearance of certain cultural objects from either public collections or private individuals, in particular Jewish families. Restitution research programmes thus originate in the provenance studies that were carried out to trace the legitimate owners of looted cultural property. In recent years, restitution research programmes have developed around critical debates about the cultural effects of colonialism. These two relatively contemporary contexts have undoubtedly contributed to establishing the word “restitution” as a term of use for research programmes exploring disputes over the ownership of cultural property.

Fourthly and finally, the concept of restitution also has a praxeological dimension, embodying a universe of norms and practices. As Manuel Valentin (2019) rightly reminds us, restitution is not a neutral concept, and there may be value in considering the use of alternative terms such as the “retrocession” or “repatriation” of cultural property. The key issue revealed here is not so much the “bias” of the concept, but rather the meaning it has for the actors involved. Speaking of restitution prompts us to consider the universe of meaning that drives the networks of actors that have taken shape, exert pressure, and carry out forms of collective action designed to bring about the return of certain cultural objects. In addition to individual actors and activist groups, heritage professionals have also taken up the issue and have contributed to the discussion of practices in the heritage sphere. In the same vein, in recent years we have seen the emergence of a legal field centring on the practice of (national and international) restitution law. Restitutions draw not only on (conflicting) practices, norms, and expertise, but also an emerging field of public policy—an emerging field, it should be recalled, that develops from dynamics, actors, and ideas circulating via transnational networks.
2. Heritage Restitutions: The Structuring of a Transnational Debate and Its New Frames of Reference

Broadly speaking, restitutions of cultural property mainly involve a dispute over the ownership of a cultural object. The long history of restitutions has been characterized by relations between states exercised in a strict diplomatic tradition. From the restitution of artworks imposed on the Louvre in 1815, following the defeat of Napoleon, to more recent claims, such as that made by the Greek government against the United Kingdom (UK) and the British Museum for the recovery of the Parthenon sculptures (known as the Elgin Marbles) (Poulot 2005), restitutions have been driven by political elites and handled through conventional diplomatic relations. But alongside this conventional approach to restitutions, new trajectories of cultural property claims have developed over the course of the twentieth century, driven by new actors and institutions.

The traumatic aftermath of the Second World War created the conditions for the coming together of three forces crucial to the development of the new norms and new institutions that would go on to shape practices in favour of restitution. Firstly, the looting of cultural property belonging to Jewish people under the Nazi occupation of Europe was followed by considerable efforts after the war to return the stolen objects to their owner(s) or heir(s). This unprecedented work in the cultural sphere contributed to the development of expertise, methods, and extensive research programmes to study the provenance of cultural property. As such, the subject of restitution was characterized by the emergence of a technical, expert-focused discourse regarding the ownership of cultural property. Secondly, a number of landmark moments and international initiatives contributed to the development of greater awareness of heritage issues, which was further increased by the success of certain measures. These events included the Venice floods (particularly those of 1966) and their impact on the development of a discussion about heritage conservation, and the campaign in the 1960s to relocate and preserve the Abu Simbel temples in Egypt. Finally, in addition to greater awareness of heritage in the public discourse and in the collective imaginary, the post-war conditions also put cultural property on the international agenda with the introduction of a whole host of new international legal instruments, including the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), and the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), which created the conditions for the development of international governance for the protection of cultural property. In 1978, an Intergovernmental Committee was created to study restitution claims involving cultural property within the United Nations Educational, Scientific and Cultural Organization (UNESCO) bodies. It must be recognized, however, that these institutional developments did not in fact have the desired effect, and bodies such as the Intergovernmental Committee are rarely called upon to intervene in restitution cases. The underuse of this mechanism may be due to the fact that disputes over the ownership of cultural property can play a strategic role in the context of bilateral relations: transposing the debate into a multilateral space can therefore be damaging.
to diplomatic relations, or neutralize a potential diplomatic bargaining chip. Several social groups and civil society actors have decided to circumvent these institutions and bring cases before national governments and cultural institutions, and to mobilize public opinion in favour of numerous cultural property restitution claims.

The political and social climate of the late 1970s, marked by decades of decolonization in Africa and Asia, contributed to the emergence of intellectual materials that were mobilized in the production of new frames of reference, giving way to new logics on which cultural property restitution claims were based. New nationalisms and postcolonial and Third-Worldist ideas contributed to a re-problematization of the concepts of culture and heritage, but also cultural property. As such, the restitution of cultural property is informed by the institutional, political, normative, and professional conditions that have shaped the ownership of cultural property since the latter half of the twentieth century.

Each of the three following sections looks at a different discursive logic mobilizing the issue of cultural property in its ideational system. The first of these, the discourse of “authenticity,” is used to support the construction of a national identity. The second discourse, that of restitution as reparation, operates by reframing the issue of cultural property within the activist discourse of reparations due to Black peoples. These reparations, both symbolic and financial, are associated with the slaving history of certain states. The third and final discourse, that of autochthony or indigeneity, highlights the conflicts involved in the heritage process. Restitution claims—particularly those concerning human remains held in museum collections—reveal a clash between heritage values and spiritual and religious values. While each of the three discourses has its own specific features, they have been mutually enriched by one another, and over time, through transnational networks of collective action.

2. 1. Zaire and the Policy of Authenticity

In the 1970s, the issue of restitutions came together with that of decolonizing heritage. On 18 December 1973, as part of the 28th session of the United Nations (UN) General Assembly, Zaire (now the Democratic Republic of Congo) tabled a motion for a resolution on the restitution of works of art to countries that had been victims of expropriation (resolution 3187). This resolution—largely drawn up by the country’s Culture minister under President Mobutu Sese Seko—was supported by 113 member states, with 17 abstaining. The rationale for the resolution refers directly to colonialism, but also to two events that can be seen to have played a decisive role in this meeting between decolonization and heritage in the UN space, namely the Fourth Conference of Heads of State or Government of Non-Aligned Countries (Algiers, 5-9 September 1973), and the third Congress of the International Association of Art Critics (Kinshasa, 14-17 September 1973), at which major speeches were made by the Zairean Culture minister, Kin-Kiey Mulumba, and the head of state Marshal Mobutu Sese Seko. On this occasion, Mobutu addressed the congress delegates and appealed to foreign heads of state to “ensure that rich countries possessing works of art from poor countries return some of them to the latter.” In his speech, Mobutu naturally recalled the conditions in which this “systematic looting” of Congolese heritage took place, but also referred to his policy of “authenticity,” which consisted of constructing a new social and political identity for Zaire (as part of his broader policy of “Zairianization”).
At the same meeting, the speech by the Zairean Culture minister was also influenced by the policy of authenticity, which was linked to the issue of restitution: an authenticity that, in the minister’s words, “mobilizes and transforms the Zairian man.” The political, and to a certain extent intellectual, contribution made by Mobutu and the Zairian government was a decisive one, and represents an—often overlooked—turning point in the development of a discursive political logic mobilizing cultural property in support of an identity politics and making the restitution of cultural property an instrument of this politics. More broadly during this period, it should be noted that the then Director-General of UNESCO, Amadou-Mahtar M’Bow, made a plea in 1978 for states to actively engage in restitution of cultural property.

These initiatives and the mobilization by governments in the Global South and international officials and experts ultimately led to the creation in 1978 of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. As Lyndel Prott points out, Tanzania is the only African state that has approached this body to seek a settlement for the restitution of cultural property (Prott 2009: 16). Other actors have however made use of it, including the Greek government as part of its strategy for recovering the Parthenon sculptures. In total, since its creation, the committee has only been asked to examine restitution claims on a handful of occasions, and resolved just six cases between 1983 and 2011. This mechanism, the creation of which was motivated by a call for greater cultural equity for the countries of the Global South and which embodies the will of the driving forces present in the 1970s, opened up a space for discussion, a channel through which the norms and values driving the debate on restitution might circulate. However, this institutional space has never established itself as the primary decision-making, administrative, and political space in which to negotiate and support restitutions. This mechanism is enmeshed in the logics and operating principles of international and multilateral institutions, is not ultimately binding, and is based on the voluntary participation of the states involved. States involved in significant disputes can simply avoid this conciliation mechanism and decline to participate. In summary, nationalist and Third-Worldist policies contributed to problematizing heritage and the ownership of cultural property from the perspective of the equity and dignity of nations, and the cultural rights of states in the Global South. Ultimately, these discourses have shaped a logic of national appropriation or reappropriation of a looted heritage; a logic that is expressed in multilateral institutions, but also in professional practices.

2. 2. The 1990s: the Turn of Nigeria

While the 1970s made the restitution of cultural property a Third-Worldist issue, in the 1980s and 1990s the restitution of cultural property took shape within the framework of bilateral relations, often as part of cultural diplomacy strategies. Famous restitution cases from this period include Italy’s agreement in 1983 to return almost 12,000 pre-Columbian objects and artefacts to Ecuador, and the United States returning the Phra Narai lintel in 1988 following a request from the Thai government.

France was no exception. From 1991 onwards, the South Korean government had repeatedly asked the French government to return historical manuscripts from the time of the Joseon dynasty (Uigwe) that had been looted by France in 1867 during a...
punitive military expedition. In 1993, to general surprise, President François Mitterrand returned one of the manuscripts to the South Korean government during a diplomatic visit held on the background of major trade negotiations. During the same period France also developed cultural policy projects designed to ease tensions with its overseas territories and departments, including the Jean-Marie Tjibaou Cultural Centre in Nouméa in New Caledonia, which it agreed to in the Matignon Accords of 1988, and the Mémorial ACTe (Caribbean Centre of Expressions and Memory of the Slave Trade and Slavery), which was built in Guadeloupe in 2015. Similarly, in the late 1990s, the French government provided technical and financial support for the development of the Vietnam Museum of Ethnology. This project, strongly tied into French cultural diplomacy, is clearly echoed in the current plans for a new museum in Benin, which has received funding from the French Development Agency and is designed to house twenty-six of King Behanzin's treasures after their restitution by France. This project is directly associated with one of the most important turning points in restitution in the Francophone sphere, as it comes out of the recommendations made in the 2018 Sarr-Savoy report, which was produced by a committee of experts with a view to sparking a debate in France about the restitution of cultural property to African countries, co-chaired by Bénédicte Savoy, a French professor and restitution expert based in Germany, and Felwine Sarr, an academic with a background in economics and cultural studies.

One of the countries of the Global South that has actively pursued efforts to decolonize heritage is Nigeria, which has taken over the reins—administratively and politically—from the efforts initiated by Zaire. The former British dependency took an active approach on the museological front, developing museums and assembling collections, and making acquisitions as early as the late 1950s, ten years before its independence in 1960. In 1979, the country set up a National Commission for Museums and Monuments, which has become an important body not only for heritage administration but also for developing local expertise.

Nigeria thus became the epicentre of a second phase of construction of a discursive logic for restitutions of cultural property. The Nigerian authorities suffered several setbacks in their museum development work. In 1968, Nigeria appealed to several countries for the generous return of objects to furnish the collections of a new museum being built in Benin City (Nafzinger & Nicgorski 2009: 162), only for the invitation to fall on deaf ears. In 1977, the Nigerian government requested the loan of an ivory mask from the British Museum, which asked it to put in place an insurance policy of £2 million, and ultimately rejected the request on the grounds that the item was too fragile (Shyllon 2003: 136). In the 1980s, Nigerian museums turned to the international markets to develop their collections, participating in auctions at Sotheby’s and Christie’s, but struggling to compete with the financial might of the world’s big museums. In 1987, for example, the Museum of Fine Arts Boston acquired—at great expense—unique pieces that were beyond the reach of the Nigerian museums. The 1980s also saw media coverage of numerous cases of looting and destructive excavations carried out to supply the international art markets, with trafficking in Nigerian heritage objects commonplace.

These events provoked frustration among heritage professionals, who found themselves unable to compete with major international institutions, museums, libraries, and archives that were themselves supported by their governments in order
to limit any return (even on a temporary basis) of works of art to Nigeria. In the 1990s, the influence of professional actors such as Ekpo Eyo, director of Nigeria’s National Museums since 1968, played a decisive role, as it facilitated a new link between heritage institutions and the political sphere. Renewed political interest in the issue of restitutions was fuelled by the approaching centenary of the 1897 raid on Benin City and the looting of its cultural property, particularly bronzes and terracotta objects. In 1991, the ruler of the Edo people, Omo N’Oba Erediauwa, contributed to this repoliticization by championing a communications campaign entitled “We Want Our Treasures Back,” which breathed new life into the restitution debate. The ferment of ideas circulating in the early 1990s favoured a resignification of restitutions, which were seen as laudable not only because they enabled former colonies to develop museums and to have contact with their heritage, but also because they were associated with an act of restorative justice. In 1993, the First Pan-African Conference on Reparations was held in Abuja. The Abuja Proclamation referred to the cultural effects of colonialism, and called for Black peoples to receive reparations and compensation. This conference gave rise to the development of forms of community collective action, including the Africa Reparations Movement in the UK, in which Bernie Grant, a British Labour member of parliament (MP), played an active role.11

Bernie Grant and the Africa Reparations Movement led the charge against several major British museums. In 1996, on behalf of Nigerian museums, they provided political and administrative support for restitution claims against several museums in the UK, including the British Museum, the Kelvingrove Museum, and the Hunterian Museum. Grant’s work, and his interactions with Nigerian actors, helped to consolidate the coming together of the political discourse of reparations with the cultural and heritage sphere. This period consolidated the idea of restitution as a form of political and cultural reparation. This movement was echoed in the Francophone colonial world in the work of community actors such as the Conseil Représentatif des Associations Noires (Representative Council of Black Associations, CRAN) in France, and its Belgian equivalent (Bamko-CRAN Belgique). For these groups, reparations and the heritage sphere became a focus for collective action in the latter half of the 2010s.

This “restitution as reparation” frame of reference was produced by the interaction between heritage actors, activist groups, and politicians promoting the cause of Black reparations, and circulates in the transnational space. It has also taken on more specific forms depending on how it is received within the debates taking place in the socio-political spaces of former colonial areas (the Anglophone, Francophone, Hispanophone and Lusophone spheres). In the Francophone world, particularly in France and Belgium, this frame of reference is also often enriched by critiques from the African diasporas. Numerous activist initiatives, such as those by Mireille-Tsheusi Robert, a member of Bamko-CRAN Belgique, have developed since 2018, illustrating both the pursuit of justice and reparations for colonial abuses, and the importance of this recognition for a migrant population of African descent. As such, this frame of reference for restitution is both the product of complex transnational dynamics, and a reflection of diasporic ties and attachments with implications for domestic politics. Macron’s 2017 speech in Ouagadougou and the subsequent Sarr-Savoy report were informed by this perspective on the restitution of cultural property.12 While Macron’s political discourse and actions reflect the complex reality in which heritage is now
embedded, the Sarr-Savoy report draws directly on the forms of collective action and social discourses on reparation that emerged in the 1990s.

2. 3. Autochthony and Spirituality: Human Remains

Are human remains cultural objects? Most natural history and ethnography museums, along with several major national archives and libraries, hold human remains in their collections—“specimens” that were acquired over time from scientific expeditions all over the world. Art museums are no exception, since some art objects are made from human bones and tissue. From a heritage point of view, some human remains are thus indeed deemed to be cultural objects.

By the late 1980s, however, these human remains were being claimed by First Nations peoples in Canada and the United States, the indigenous peoples of Australia and the Torres Strait, and the Māori in New Zealand. In the settler colonies of North America and Oceania, the 1980s heralded a political resurgence and forms of resistance and collective action with a particular focus on cultural demands. Some restitution claims for cultural property have become well known, such as the one involving the Lakota Ghost Dance shirt, which was returned to the Lakota Nation after a formal request was submitted to the Kelvingrove Museum in Glasgow in 1991: an example that illustrates the challenges and issues involved, but also a powerful symbol. It is, however, primarily restitution claims involving human remains that have received the most media coverage and had the biggest impact on opinion and debate. Such cases include the proposed auction of the head of a Māori warrior at Bonham House in London in 1988, which provoked a highly charged debate and greatly contributed to the mobilization of activists working to secure the restitution of these ancestral human remains.

These cultural claims have two specific features that have shaped a frame of reference of “cultural and religious/spiritual rights” of indigenous peoples. The first of these features concerns the political process by which these claims are constructed. They sit within political and symbolic processes of cultural reparation; they serve not only social justice, but also political aspirations for a new way of living together, sustained by the official discourses of the elites and descendants of European settlers. Supporting the cultural claims of indigenous peoples in a sense serves these various international reparations and political reconstruction projects. The 1990 Native American Graves Protection and Repatriation Act (NAGPRA), and more recently in Canada, the Truth and Reconciliation Commission (2015) (Lacassagne 2017: 2) are examples of policy instruments designed to support restitution claims involving cultural property. In this scenario, restitution claims are drawn up by indigenous peoples (Fforde et al. 2020), and then relayed politically and administratively by the relevant ministerial authorities (Foreign Affairs or Culture), who support the claims via traditional diplomatic channels. At another level, if the parties want to be involved and work together, the emergence of dialogue and expressions of solidarity may also be seen between the museum professionals who receive and support these claims, and the representatives of the indigenous nations responsible for them.

The second feature concerns the normative universe of this logic of restitution of cultural property. In relation to heritage organizations, terms such as cultural objects and collections are used, but in relation to indigenous peoples, we speak in terms of ancestors and human remains whose relationship invokes a spiritual dimension. As
such, restitution claims are built on a conflict of norms and a clash of cultural values. Under some circumstances, the conflict between these normativities is sometimes so great as to be irreconcilable (Paquette 2012). Some institutions often limit themselves to protecting their cultural missions and may thus find themselves unable to accommodate requests made on the basis of religious and spiritual values. In the late 1990s, however, several restitution claims submitted to French and British museums were resolved, as the shift in bioethical debates about the removal of human tissue and its storage in public institutions created an undreamt-of window of opportunity. In both France and the UK, new laws were developed to overcome the cultural property / human remains opposition, resulting in a favourable outcome for the claims made by certain communities. These laws resulted in the successful resolution of certain claims by the Māori in particular, while at the same time leaving the European museum institutions concerned room to manoeuvre in order to avoid opening the door to a flood of restitution claims from all sides. Each restitution claim, and the response to it, constitutes an important precedent for any future claim.

3. The Transnational Production of Restitutions: A Summary

The restitution of cultural property involves several political, historical, and cultural realities; it does not constitute a single debate, but rather several debates that enrich the study of cultural policy. This article has sketched out the transnational dimension of the debate about the restitution of cultural property. Over the course of nearly five decades, a range of practices and discourses concerning restitution have developed on the fringes of existing practices. The restitution projects that have emerged since the late 1970s differ from the strictly diplomatic traditions and experiences because they are primarily driven by activist collective actions. But they also differ from the restitution practices that emerged in the immediate aftermath of the Second World War, which originated in the mass thefts (and worse) perpetrated by a state against individuals, and were perhaps resolved more in line with prevailing principles and ideas about law and private property than the cases associated with colonial abuses. In other words, the various frames of reference for restitution that emerged in the late 1970s were different to those seen in the aftermath of the Second World War. Cases of restitution involving the looting of cultural property from European Jewish communities were considered in terms of private law mechanisms, and handled essentially as private disputes, leading to the lawful return of a cultural object to an individual or his or her heirs. But the new frames of reference for restitution that emerged at the end of the 1970s have also made space for the question of the ownership of new states, minority groups, or communities linked—spiritually—to the cultural property in question.

Frames of reference (Jobert & Muller 1995) are normative cognitive matrices by which actors structure their forms of resistance and collective action; they constitute a way of understanding the world and steering action. In political science, the concept of a frame of reference has typically been used to reflect the strength of a dominant way of thinking. As in the work of Thomas Kuhn, this concept often suggests the idea of a dominant view, or even paradigm. But any way of thinking—no matter how central and dominant—is also exposed to the production of alternative ideas. All dominant values
eventually come up against alternative, countercultural expressions. In this article, I have documented the new frames of reference for the restitution and ownership of cultural property that have taken shape in social discourses since the late 1970s. These various frames of reference share certain values and principles (justice, equity, imbalance between the Global North and Global South, or inequities between different cultural groups within a society), but also display certain fragmentations that suggest not one, but several frames of reference (or sector-specific frames of reference), as multiple possibilities seeking to establish themselves on the cultural space.

26 The first frame of reference, that of authenticity, was embodied in Mobutu’s cultural aspirations in the 1970s. Restitution claims involving cultural property helped to construct a national identity formulated in reaction to the colonial experience. The example of Mobutu recalls certain philosophical principles advocated by the Cultural Revolution in China, showing the darker side of the discourse of affirmation and reconstruction of a national identity. This frame of reference has an ambivalent relationship to heritage: it seeks to know the past, but also to be freed from it. Authenticity is therefore less of a return to the sources than a desire to reinterpret these sources, or even an aspiration to go beyond them. Nevertheless, this frame of reference is founded on transnational dynamics, in particular on “Third-Worldist” professional and community networks and on Asian or pan-African regional relations. Here, restitution is used to support national assertions (Table 1).

27 The “restitution as reparation” frame of reference, meanwhile, is deeply rooted in the transnational community and activist sphere. This frame of reference draws its energy from the actions of groups that, in the 1990s, sought to create forms of solidarity between people of African descent, and looked on restitution as a leading symbolic issue for the cause. Here, restitutions are used to support social justice. The “restitution as reparation” frame of reference is mobilized by professionals and activists in several countries. More importantly still, their strategies now increasingly involve mobilizing and bringing together diasporas and migrant populations that have put down roots in Europe or America. These cases of restitution seek to redress and provide reparations for injustices and humiliations.

Table 1. Frames of Reference for Restitution

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<tr>
<th>Frame of reference</th>
<th>Forms of restitution</th>
<th>Principles and key concerns</th>
<th>Transnationalism</th>
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<tbody>
<tr>
<td><strong>Authenticity</strong></td>
<td>To recover the models of traditional society in order to go beyond them.</td>
<td>National recognition. Regional and transnational forms of solidarity.</td>
<td>Professional and political networks of the “Third-Worldist” movements.</td>
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<tr>
<td><strong>Human and spiritual rights</strong></td>
<td>In conflict with heritage logics.</td>
<td>Recognition of and support for ancestral rights. Social and transitional justice. Cultivating harmonious</td>
<td>Transnational professional and community networks (transnational indigeneities)</td>
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Although the “reparation” and “human rights” frames of reference share an aspiration for social justice, and a desire to repair and rebuild intercultural relations, there are key differences between them. The “human rights” frame of reference is a product of the specific conditions of settler colonial societies. As such, restitution dynamics and claims exercised at the international level support national political concerns, in particular “reconciliation” projects between settlers and indigenous populations. Although transnational forms of solidarity and learning exist between indigenous populations throughout the Americas or in the cultural space of the Pacific Ocean, it remains the case that restitutions typically operate through traditional diplomatic channels. States are omnipresent and champion restitution projects. Perhaps more importantly, this approach to restitution focuses on the return of remains, and in some cases objects of great spiritual value, which still play a role in some of the religions and beliefs of many of these peoples. This approach to restitution also stands out by expressing an opposition to, and reflecting a conflict with, the logics that underpin the heritage values and norms of Western cultural institutions.

Nevertheless, despite their fragmentation, these alternatives to dominant cultural thinking are gaining in importance and making their impact felt on many levels. This is evidenced by the Declaration on the Importance and Value of Universal Museums, signed in 2002 by eighteen major museums—including the Louvre, the Prado Museum and the Metropolitan Museum—which represents a moment of solidarity among museums and a strong reaction to the growing number of restitution claims. The following year, the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) was ratified. Championed notably by heritage professionals from Asia, this agreement also represents a decisive point in the construction of a new heritage discourse, less centred on European or American conservation values and principles. In other words, while these activist discourses still provoke strong reactions and continue to reveal conflicts of heritage norms, a number of recent achievements also illustrate trends favourable to their legitimization.

Conclusion

By way of conclusion and discussion, I would like to highlight two aspects of the frames of reference for restitution that have emerged since the late 1970s. Firstly, I want to emphasize the subtleties involved: the lines of fragmentation that illustrate not one, but several forms of problematization of restitution, indeed several “frames of reference.” Secondly, it should be pointed out that this apparent fragmentation, which is not at all a source of conflict, in no way inhibits learning and the transnational circulation of ideas and cultural strategies—quite the contrary.

It is important to emphasize the fact that, despite the differences between these frames of reference, they do not evolve in a vacuum, but are themselves enmeshed in practices of knowledge circulation and strategy diffusion. Learning takes place between each claim. The Sarr-Savoy report itself, which drew extensively on the views of activist
community actors in favour of restitutions, and which has been heavily criticized for this precise reason, provides a clear illustration of the forms of transnational learning that take place and defy the boundaries of the cultural and linguistic spaces (Francophone, Anglophone, Lusophone, etc.) typical of certain forms of diffusion of cultural strategies and policies (Paquette 2012). Whether or not there is a desire, or an attempt, to resist restitution claims, each individual case, whether resolved or rejected, becomes material for transnational learning.

BIBLIOGRAPHY


NOTES

1. The term “arms-length” refers to an administrative and political structure that is shielded from direct political intervention, with ministers and politicians unable to participate in deliberations about which projects should be funded.


3. This can be seen in the comments made by France’s former Culture minister, Jean-Jacques Aillagon, and in certain publications that have questioned the ethical basis of restitution. It is also the position taken by Emmanuel Pierrat, who has published a book on the subject (see Pierrat 2019).
4. In 2018, for example, the French Culture ministry set up a research and restitution task force for cultural property looted between 1933 and 1945, with a focus on reparations for the victims.

5. France, the United Kingdom, Belgium, Canada, and the United States were among the Member States that abstained.


7. Ibid.

8. All of the manuscripts were transferred from the French National Library to the South Korean government in 2011.


10. In 2014, after in-depth provenance studies, the Boston museum acknowledged that some of the pieces had been trafficked, and committed to returning the objects at the centre of this dispute to Nigeria.

11. As well as being an MP, Grant (1944-2000) was born in Guyana and was a Black rights activist in the UK. He attended the 1993 conference in Abuja.

12. The report was not well received by the press and was fiercely criticized by several actors in the cultural sphere, in both the public arena and on parliamentary committees. See Paquette 2020.

13. The case of France’s return of the remains of Saartje Baartman, known as the Hottentot Venus, to South Africa in 2002 is also worth noting here.

ABSTRACTS

The restitution of cultural property draws on a series of legal and moral considerations that underpin the legitimacy of the ownership of cultural property. Restitution is the act of restoring something to its legitimate owner(s), but the legitimacy of the latter is based on institutional, legal, and moral principles whose purpose and interpretations may vary over time. This article looks at the emergence since the late 1970s of new frames of reference in the context of relations between transnational actors. These frames of reference all question the legitimacy of the ownership of cultural property acquired during the period of European colonization, from the seventeenth and eighteenth centuries through to the 1960s. Here I identify and explain three frames of reference for the restitution of cultural property: authenticity, restitution as reparation, and human and spiritual rights.

La question de la restitution des biens culturels renvoie à une série de considérations juridiques et morales qui sont les fondements de la légitimité de la propriété de biens culturels. La restitution est un acte qui vise à restaurer un bien, qui vise à le rendre à son ou à ses propriétaires légitimes. Cette légitimité s’assoit donc sur des principes institutionnels, légaux et moraux dont la raison d’être et les interprétations peuvent varier sur le plan historique. Cet
article porte un regard sur l’émergence de nouveaux référentiels qui s’inscrivent dans le cadre de relations d’acteurs transnationaux depuis la fin des années 1970. Ces référentiels ont en commun d’interroger la légitimité de la propriété de biens culturels acquis durant la colonisation européenne, des XVIIᵉ et XVIIIᵉ siècles jusqu’aux années 1960. Finalement, trois référentiels de restitution des biens culturels qui émergent alors sont identifiés et expliqués, à savoir le référentiel de l’authenticité, le référentiel de la restitution-réparation et le référentiel des droits humains et spirituels.

El asunto de la restitución de los bienes culturales remite a una serie de consideraciones jurídicas y morales que constituyen los fundamentos de la legitimidad de la propiedad de bienes culturales. La restitución es un acto que busca restaurar un bien, devolverlo a su(s) legítimo(s) propietario(s). Esta legitimidad, por lo tanto, se funda en principios institucionales, jurídicos y morales, cuya razón de ser, así como sus interpretaciones, pueden variar históricamente. Este artículo examina la aparición de nuevos marcos referenciales que se inscriben en el contexto de las relaciones entre actores transnacionales desde finales de los años 70. Estos marcos referenciales comparten el hecho de interrogar la legitimidad de la propiedad de los bienes culturales adquiridos durante la colonización europea, desde los siglos XVII y XVIII hasta los años 60. Por último, se identifican y explican tres marcos referenciales para la restitución de bienes culturales surgidos en ese momento: el marco referencial de la autenticidad, el marco referencial de la restitución-reparación y el marco referencial de los derechos humanos y espirituales.


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Mots-clés: biens culturels, colonisation, patrimoine, référentiel, restitution, transnationalisation de normes

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