



ICOM International Committee for Museology
33rd ICOFOM Annual Symposium

Comité international pour la muséologie de l'ICOM
33^{ème} Symposium annuel de l'ICOFOM

Comité internacional para la museología del ICOM
33^o Simposio anual del ICOFOM

**DEACCESSION AND RETURN OF CULTURAL
HERITAGE: A NEW GLOBAL ETHICS**

**L'ALIÉNATION ET LA RESTITUTION DU PATRIMOINE
CULTUREL : UNE NOUVELLE DÉONTOLOGIE
MONDIALE**

**LA ALIENACIÓN Y EL RETORNO DEL PATRIMONIO
CULTURAL: UNA NUEVA ÉTICA GLOBAL**



Shanghai, China
7-12 November 2010

ICOFOM Study Series – ISS 39

ICOFOM Study Series – ISS 39

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Editing and layout by André Desvallées and Suzanne Nash

Cover by Hilarie Cutler, from the title page of *Natur und Materialien Kammern, Ost Indianische Send-Schreiben*, in the volumes *Museum Museorum*, by Michael Bernhard Valentini, Frankfurt am Mayn, 1714.

Printed in China by the Zhejiang Provincial Museum



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Comité international pour la muséologie du Conseil International des Musées (ICOM/UNESCO)

Comité internacional para la museología del Consejo Internacional de Museos (ICOM/UNESCO)

1, rue Miollis, 75015 Paris, France

October 2010

ISBN 978-988-18325-6-6

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PREFACE

Nelly Decarolis

The topic that brings us together this year in Shanghai is *Museums and Social Harmony*. When ICOFOM was invited to hold its 33rd Annual Symposium at the ICOM General Conference under this theme, new ideas began to crisscross among our members.

While thinking about Social Harmony within theoretical museology, we asked ourselves: what is, actually, social harmony? What can museums do to help societies reach that goal? How and when do museum people fit into this picture? Later on we discovered that there are many ways to do so. On the one hand, the guidelines for peaceful behaviour are always ethical, and respect for each person's vision of his or her social and cultural identity is another aspect of social harmony.

In Liège, a year before our meeting in Shanghai, some members of our Board discussed about the possibility of choosing a challenging theme: *A new global ethics for deaccession and return of cultural heritage*. It was not easy to handle a topic which includes so many implications. So, to make it more accessible, André Desvallées proposed three questions to divide the main idea into three sub-themes to be discussed separately when necessary:

1. Are deaccession and return the same problem?
2. Do museums have the right to deaccession?
3. Do museums have the duty to return cultural property to previous owners?

These concerns are not only practical, they are theoretical and emotional, involving the entire society in a reality that affects all of us. The papers received from all over the world for the ICOFOM Study Series 39 approach the issue from many angles, where different opinions and conclusions enrich our own thoughts on the topic.

I would like to mention here the work done by a group of our Chinese colleagues, most of them from important Chinese Universities, who have felt deeply involved with ICOFOM premises, based on the theoretical foundations of museology. In consequence, through their papers, they have dealt with theoretical issues where difficult terms as deaccession and restitution were presented from the viewpoints of their own reality.

We owe our special gratitude to our Chinese hosts for receiving us in their country at the fascinating city of Shanghai which surprises us at all times and to An Laishun, whose silent and steady work within the organization of the General Conference has been decisive.

My special acknowledgement to the Editorial Committee presided by André Desvallées and to Suzanne Nash for the careful editing of this volume; to the authors of the papers submitted from all over the world and to those of our Chinese colleagues whose abstracts in English, French and Spanish are published in Section IV, even though their papers were not included in the review process. However, it was considered that they should be added as a valuable contribution, a landmark on the development of theoretical museology in China.

Buenos Aires, October 2010

Nelly Decarolis
Chair ICOFOM – ICOM

PRÉFACE

Nelly Decarolis

Musée et Harmonie Sociale est le thème qui nous réunira cet année-ci en Chine. Lorsqu'on a invité l'ICOFOM à réaliser son XXXIII Symposium Annuel lors de la Conférence Générale de l'ICOM, à avoir lieu à Shanghai autour de ce thème, des nouvelles idées ont surgi, un peu en désordre, dans nos pensées.

Pendant que nous réfléchissions autour des contenus de l'Harmonie Sociale dans le cadre théorique de la muséologie, nous nous demandions : qu'est-ce que c'est, en réalité, l'harmonie sociale ? les musées, que peuvent ils faire pour aider la société à atteindre cet objectif ? Comment et de quelle façon les travailleurs des musées sont ils en disposition de s'adapter à ce cadre ?

Plus tard, on a découvert qu'il y a des nombreuses manières de le faire. D'une part, les lignées d'une conduite pacifique sont toujours éthiques et de l'autre part, la vision de chaque personne sur son identité sociale et culturelle est en rapport avec une des facettes de l'harmonie sociale.

Il y a un an à peine, à Liège, quelques membres de notre Conseil Exécutif débattaient sur la possibilité de choisir un thème défiant pour notre Symposium à Shanghai: *une nouvelle éthique globale pour l'aliénation et la restitution du patrimoine culturel aux pays d'origine*. Ce n'est pas facile de maîtriser une thématique aussi riche des complications et d'implications. En conséquence, et pour faire plus facile le travail, André Desvallées a proposé trois questions capables de diviser l'idée principale en trois sous - thèmes qu'ils seraient débattus séparément s'il était nécessaire.

1. L'aliénation et la restitution, constituent-elles le même problème ?
2. Les musées, ont-ils le droit d'aliéner ?
3. Les musées, ont-ils le devoir de restituer la propriété culturelle au pays d'origine.

Ces soucis ne sont seulement pas d'ordre pratique, mais d'ordre théorique et émotionnelle aussi et ils concernent la société en son ensemble, et s'installent dans une réalité qui nous comprend tous également. Tous les textes destinées à notre publication ICOFOM Study Series 39, reçus de partout dans le monde, sont une approche au thème, même en partant des regards différents où la diversité d'opinions contribue à enrichir nos propres conclusions sur le thème.

Je voudrais souligner en ce moment-ci, le travail réalisé par un groupe des collègues chinois, la plupart d'entre eux issus d'importantes universités de la région les quels, ressentant leur compromis avec les prémisses de l'ICOFOM, dont les bases sont les fondements théoriques de la muséologie, ont essayé de traiter, à travers leurs documents, des thèmes d'origine théorique. Ils ont envisagé les problèmes en partant de leur propre réalité, en laissant de côté les difficultés que présente le fait de réfléchir autour des idées sous-jacentes quand il est question de faire face à termes tels que « aliénation » ou « restitution ».

Je fais parvenir notre remerciement le plus sincère à nos hôtes chinois pour nous avoir accueilli chez eux, à cette fascinante ville de Shanghai qui nous surprend à chaque instant et nous voulons remercier spécialement le Dr. An Laishun, dont le travail ferme et silencieux pendant plus de deux ans a été décisif pour le succès et la correction de l'organisation de cet important événement.

Notre vive reconnaissance au *Comité Éditorial* présidé par André Desvallées et au Jury chargé du choix de tous les documents présentés; à Suzanne Nash, pour le délicat procès d'édition de l'ISS 39; aux auteurs chinois des textes dont les abrégés en anglais, français et espagnol ont été publiés à la Section IV de l'ICOFOM Study Series 39 en considérant que, même s'il n'ont pas été inclus lors du procès de sélection, nous avons proposé leur publication parce que l'ensemble des documents constitue une contribution qui montre le développement de la théorie de la muséologie en Chine.

Buenos Aires, octobre 2010

Nelly Decarolis
Chair ICOM / ICOFOM

PREFACIO

Nelly Decarolis

El tema que nos reúne este año en China es *Museos y Armonía Social*. Cuando el ICOFOM fue invitado a realizar su XXXIII Simposio Anual durante el transcurso de la Conferencia General del ICOM a desarrollarse bajo ese lema en Shanghai, nuevas ideas se entrecruzaron en forma desordenada en nuestras mentes.

Mientras reflexionábamos acerca de los contenidos de la *Armonía Social* dentro del marco teórico de la museología, nos preguntábamos: ¿qué es, en realidad, la armonía social? ¿qué pueden hacer los museos para ayudar a las sociedades a alcanzar ese objetivo? ¿cómo y de qué manera los trabajadores de museos están dispuestos a adaptarse en este cuadro? Más tarde descubrimos que hay muchas maneras de hacerlo. Por un lado, los lineamientos de una conducta pacífica siempre son éticos, y por el otro, la visión de cada persona sobre su identidad social y cultural, se corresponde con una de las facetas de la armonía social.

Hace apenas un año, en Liège, algunos miembros de nuestro Consejo Ejecutivo debatían la posibilidad de elegir un tema desafiante para nuestro Simposio en Shanghai: *una nueva ética global para la alienación y el retorno del patrimonio cultural a su país de origen*. No es fácil manejar una problemática con tantas connotaciones e implicancias... Por lo tanto, para hacerlo más accesible, André Desvallées propuso tres preguntas capaces de dividir la idea principal en tres sub-temas que serían debatidos en forma separada cuando fuera necesario.

1. ¿Constituyen el mismo problema la alienación y el retorno?
2. ¿Tienen los museos el derecho de alienar?
3. ¿Tienen los museos el deber de restituir la propiedad cultural a sus previos dueños?

Estas preocupaciones no son sólo de orden práctico, sino también teórico y emocional e involucran a la sociedad en su conjunto en una realidad que nos afecta a todos por igual. Los textos recibidos para el ICOFOM Study Series 39, nuestra publicación, desde todos los rincones del mundo se aproximan al tema a partir de muy diversos ángulos, donde la diversidad de opiniones y conclusiones contribuye a enriquecer nuestras propias reflexiones sobre el tema.

Desearía destacar al llegar a este punto el trabajo realizado por un grupo de colegas chinos procedentes, en su mayoría, de importantes universidades de la región quienes, sintiéndose involucrados con las premisas del ICOFOM, basadas todas en los fundamentos teóricos de la museología, han procurado referirse, a través de sus escritos, a asuntos de raigambre teórica. Salvando las dificultades que presenta reflexionar sobre cuestiones subyacentes en determinados términos como 'alienación' y 'restitución' encararon los problemas desde el punto de vista de su propia realidad.

Hago llegar nuestra sincera gratitud a nuestros anfitriones chinos por habernos recibido en su país en esta fascinante ciudad de Shanghai que nos sorprende a cada instante y muy especialmente agradecemos a An Laishun, cuyo trabajo silencioso y

firme a lo largo de más de dos años ha sido decisivo en la correcta y exitosa organización de este importante evento.

Nuestro más especial reconocimiento al Comité Editorial presidido por André Desvallées; a Suzanne Nash por el esmerado proceso de edición del ISS 39; al Jurado encargado de la selección de documentos y a los autores chinos de los textos cuyos resúmenes en inglés, francés y español han sido publicados en Sección IV del ISS 39 por considerarse que, si bien no fueron incluidos en el proceso de selección, es recomendable la publicación porque constituyen una interesante contribución que marca el desarrollo de la teoría museológica en China.

Buenos Aires, octubre de 2010

Nelly Decarolis
Presidente ICOFOM - ICOM

I

Provocative papers

Documents provocateurs

Documentos provocativos

THE ISSUE OF DEACCESSION FIVE LINES OF THOUGHT FOR REFLECTION

François Mairesse

Royal Museum of Mariemont, Belgium

The least one can say about deaccession is that it is controversial¹. It is, of course, an issue that ICOM addresses in its Code of Ethics. One of the paragraphs (2.16) of the Code summarizes some of the intrinsic difficulties that persist in countries that admit collection deaccessioning. "Museum collections are held in public trust and may not be treated as a realizable asset. Money or compensation received from the deaccessioning and disposal of objects and specimens from a museum collection should be used solely for the benefit of the collection and usually for acquisitions to that same collection"².

It is usually acknowledged that museums have been created to preserve specimens, objects and works of art which have been passed on to them while, at the same time, they complete their collections with new acquisitions. The principle of museums is based on the concept of preserving certain types of heritage; furthermore, the possibility of disposing of a part of what was entrusted to them is usually experienced by many curators as a thwart to their vocation. For many decades it has been known that this notion is not equally addressed by museums in Anglo-American and Latin countries, such as France, Argentina, Italy or Spain.

Nonetheless, discussions on the problem of deaccessioning seem to have shifted. In the United States of America, the sale of several master works of art from collections pertaining to Jefferson University, Pennsylvania or to Albright-Knox Art Gallery, Buffalo, triggered an important wave of criticism within the world of museums which was widely relayed by the press³. The current financial crisis which is hitting US museums has refueled these tensions. Overwhelmed by debts, certain museums – the most well-known case is that of the National Academy Museum, New York – were forced to sell part of their collections to alleviate their deficit, which annoyed and even gave rise to a boycott from the powerful Association of US Art Museum Directors⁴. A bill, drafted by Lower House Representative Richard Brodsky and Senator José Serrano, that aims at regulating sale conditions for works of art pertaining to New York State Museum collections, is an attempt to regulate the issue but has brought about different reactions⁵.

In France a bill submitted by Lower House Representative Jean-Francois Mancel in 2007 to allow deaccessioning of part of the French museums' collections, as well as

¹ These comments were brought forth by a debate organized at the Royal Museum of Mariemont in April 2009. See F. Mairesse (Ed.), *L'inaliénabilité des collections de musée en question*, Morlanwelz, Royal Museum of Mariemont, 2009. I wish to thank André Dsvallées and Bernard Deloche for their careful review of this article, as well as for their suggestions

² Paragraphs 2.12 to 2.17, ICOM. *Code of Ethics for Museums*, 2006. http://icom.museum/ethics_fr.html

³ J. Morris, "A seller's market", in *Museum Journal*, July 2007, pages 16-17.

⁴ On the current debate, see the blog on de-accessioning by Sergio Muñoz Sarmiento, The de-accessioning blog, <http://clanco-theartdeaccessioningblog.blogspot.com>

⁵ M. Marozeau, "Une loi pour réguler le "deaccessioning"", *Le Journal des Arts*, 10 July 2009.

the preparatory work for a bill which considers a similar regulation for the federal museums of Belgium, triggered great outrage within the museal village⁶.

Below I will describe five lines of thought for a potential discussion on the topic of heritage deaccession and cession of collection objects.

1. The origin of some terms

The French and Spanish languages are not prepared to describe the process of *deaccessioning* since most of the collections of the countries that use those languages are generally inalienable. In its *Code of Ethics*, ICOM uses the terms *cession* in French and *cesión* (or remove from collections) in Spanish to translate the English terms deaccessioning and disposal.

In French just like in Spanish the notion of *inalienability* is one of the essential principles of a museum collection, of museums that are considered to be institutions⁷. According to the ICOM definition, museums are permanent institutions and their long-lasting nature – if it arises from consensus within society – also becomes clear through those devices in charge of integrating museum collections into the public domain. In law, public property is by definition *inalienable*. The opposite term is *alienable* and, therefore, the action of definitively removing an object from a collection's inventory is called deaccessioning. The first connotation of this term is legal: *deaccessioning* in Civil Law means conveying property, an interest, etc. to someone else (*Trésor de la langue française*). The origin of the term derived from the Latin word *alienatio* dates back to the 13th century. Only a century later, experts started working on the second connotation of the term, that is to say, “alienation of mind” or deep psychic damage. The term *cession* is also defined in Civil, International or Commercial Law and means transferring – either at a price or free of charge – ownership of property, an interest or right to another person.

The *Oxford Dictionary* defines the verb “to deaccession” as follows: “to remove an entry (for an exhibit, book) from the accession register of a museum, a library, etc., usually in order to sell the item concerned”. Although the term “dé-accession” does not exist in French, the term “accession” overall⁸ means “the action of accessing a power or dignity, a higher political or social situation”. In this regard, *accession* describes the transfer of an object from daily life to a museum collection by adding it to the inventory. *Accession* to the collection somehow illustrates a status that curators will define as superior, due to the loss of use of an object or its exchange for a value of significance (semiphore). As Zbyněk Stránský already pointed out “A museum object is not an object in a museum”. The term *deaccession* is in this sense a kind of degradation, a return to daily life values. If we then add the second psychological meaning of the term alienation, the delisting of an object removed from the inventory, deaccessioned or “*dé-accédé*” is not at all enviable.

2. Practical issues

If deaccession supporters resort to a number of broad principles related to the role of the State (underlining the consequences of deaccessioning, such as the ultimate loss

⁶ D. Rykner, *Le spleen d'Apollon. Musées, fric et mondialisation*, Paris, Nicolás Chaudun, 2008; J. Clair, *Malaise dans les musées*, Paris, Flammarion, 2007.

⁷ B. Desbiolles, “L'institution du musée: concepts, enjeux et perspective”, *ICOFOM Study Series*, 38, pp 181-198.

⁸ The term “cession” has no legal meaning in French while in English the notion is legally defined as an “addition to property by natural growth or by artificial improvement”

of an object that can no longer be consulted), most of the arguments for its supporters are, above all, practical. Recent British and Dutch publications⁹ insist on the principle (currently applied to private collections) according to which the optimization of collection management, under the pressure of limited material resources, lies necessarily on a partial curtailment. It would be advisable to preserve only those objects directly related to a museum's mission or, more specifically, to its project (as defined by its mission statement and stated in the organization's operational plans) and the related collection policy. From this standpoint, it can be noted that the problem of deaccession is undeniably related to that of acquisitions and collection management¹⁰ According to this same rational, undoubtedly museum reserves are not endless. If the notion of inalienability is strictly respected, how will the world of museums (institutions defined as permanent) be addressed five or ten centuries from now? More so, when the material production of our societies is considered exponential, dragging along in its wake the development – also exponential – of those objects that have lost their use or exchange value (management of remains) and that of musealized objects.

In this regard, the problem is embedded within a paradox already summarized by Jean-Pierre Babelon and André Chastel when they referred to heritage: "its loss is acknowledged to be a sacrifice and its preservation is also a sacrifice"¹¹. What sacrifice are we willing to make? To preserve collections as best as possible according to the *inalienability* principles guaranteed by the State ends up by turning society into one controlled by public powers, increasing the necessary resources to preserve such collections and, obviously, taxes. If a curator is willing to live on less income to ensure that heritage is perennial, we wonder whether that feeling is shared by society at large. It is doubtful.

3. Financial matters

Although practically speaking a great number of museum professionals (in the United States, Great Britain, the Netherlands, etc.) favour deaccession, most of them voice their fears – surveyed by ICOM as stated above – with regard to the sale of collections and particularly with respect to the risk of them being used to make up for potential financial deficits¹². Indeed for some years now the commitment of those who are in charge of management within museums and hold a Master's degree in Business Administration has not really favoured the possibility of considering that collections are true "assets"¹³

⁹ National Museum Director Conference, *too much Stuff?*; October 2003, available on the Internet: www.nationalmuseums.org.uk/media/documents/publications/too_much_stuff.pdf; F. Bergevoet, A. Kok, M. de Wit, *Netherlands guidelines for deaccessioning of museum objects*. Amsterdam, Instituut Collection Nederland, 2006 (available on the Internet: www.icn.nl); Museums Association, *Making collections effective*, London, Museums Association, 2007; Museums Association, *Disposal toolkit. Guidelines for museums*, London; Museums Association, sd. Visit:

http://www.museumassociation.org/asset_arena/text/it/disposal_toolkit.pdf. P. Timer, a. Kok, *Niets gaat verloren. Twintig jaar selectie en afstoting uit Nederlandse museale collecties*, Amsterdam, Boekman Stichting, 2007. On the other hand, adjustments made in order to separate from superfluous objects always privileges the public domain, focusing first on the transfer of objects to other museums or public collections, before proposing their dispersion into the private domain.

¹⁰ C Neves, *Concern at the Core. Managing Smithsonian Collections*, Washington, Smithsonian Institution, April 2005. Consult on the Internet: <http://www.si.edu/opanda/2005.html>.

¹¹ J-P. Babelon, A. Chastel, "La notion de patrimoine", *La Revue de l'Art*, 49, 1980, Reprint. Paris, Liana Levi, 1994.

¹² P. Van Mensch, "Collectieontwikkeling of geld verdienen?", *Kunstlicht*, 29,1/2, 2008, pages 57-59.

¹³ On the latter, see S. Millar, "Selling items from museum collections", in S. Weil (ed.), *A Deaccession Reader*, Washington, American Association of Museums, 1997, pages 51-61. In France, Lévy-Jouyet fully

Financial matters, so cautiously addressed by most museum professionals, have been joyfully dealt with by neoclassical economists. These economists never show doubt in reporting museums' bad management because, unlike businesses, they do not use their collections as monetary capital. When analyzing the development of collections and the lack of inventories, US economist William Grampp, based on examples that support his theories, calls for waiving any subsidies to museums with a view to having them operate as commercial organizations. According to the above economist, should part of the dormant collections or those on show be sold, museums would no doubt have a more reasonable idea about the objects that the public at large wishes to see and would organize more popular temporary exhibitions to benefit all¹⁴. Grampp's controversial reasoning is rarely followed by his colleagues, more so because the supporters of "the invisible hand" of the market have seen their star get dimmer in light of the current crisis. This has not hindered most economists from pointing out the museal stock, of unlimited growth, apparently aberrant in the eyes of the market, suggesting the sale of such stock.

Only vis-à-vis the prospects of making a purchase will a stock manager address a potential sale. Managers who cannot decide to sell the assets in their portfolio in order to purchase others would go bankrupt in the long term, since very often it is better to sell and to buy wisely.

4. Moral and ethical dimensions

The debate on deaccession appears to be problematic within the universe of museums; the pertinent sections in the above-mentioned *Code of Ethics* are good evidence thereof, as well as the bibliography prepared by ICOM¹⁵. Does this mean "it is wrong" to sell museum collections and that "it is right" to preserve and care for them or whether "it is necessary" to be able to dispose of them? If a part of the debate is – in a caricature of the issue – based on such a stance we must agree that the matter cannot be set forth in those terms. On the other hand, money becomes a disturbance both for the supporters and opponents of deaccession. It is worth pointing out that all collection pieces do not appear to be the same vis-à-vis *deaccession* principles. Overall, it is essential to consider the *unique* works of art and objects which entail a real problem. Among the objects, works of art are the main focus of discord. In other words, specimens of natural history, multiple objects, etc., until they become unique objects of history just by chance, seem to be easier to remove from collections.

The multiple issue inevitably refers to the substitute (see ISS 8-9 on *Originals and Substitutes in museums*, Zagreb, 1985) and we know to what extent it is conditioned by worship of the original, authentic object. Such an issue led to worshipping relics which extended all throughout the Middle Ages. In that regard, it is worth pointing out that Canon Law banned their sale and marketing at a very early stage. In this context, we could make the hypothesis that this object worship is about the re-emergence of certain kinds of conflicts which violently hit Protestants and Catholics in the 16th century. Almost five centuries later a sort of demarcation line (that reminds us of religious wars) seems to still act as a dividing line between supporters and detractors of the *inalienability* principle.

share this rationale (Lévy M., Jouyet J. P., *L'économie de l'immatériel: la croissance de demain. Rapport de la commission sur l'économie de l'immatériel*, Paris 2006).

¹⁴ W. D. Grampp, *Pricing the Priceless, Art, Artists and Economics*, New York, Basic books Inc., 1989.

¹⁵ http://icom.museum/biblio_deaccessioning.html

The problem of relics and iconoclasm is related to religion and morality. ICOM aims at guiding the behaviour of professionals. But museal deontology must undeniably be reviewed on the basis of ethics. This philosophical discipline discusses the determination of those values that guide the behaviour of museum professionals. Thus ICOFOM – as a discussion platform – is embedded in the heart of the ethical process of reflecting on the values of museums as institutions. Which are the current principles that have allowed the formulation of ICOM standards? Worship of relics? Cult for money? The relationship between human beings and the environment? In any case, it must be recognized that these principles are conditioned by the creation and development of the capitalistic world economy in which we live and that has spread worldwide. Maybe the notion of museums is not totally alien to the principles of accumulation which are the essence of all capitalist societies.

5. A museological outlook

The decisively pragmatic outlook that Anglo-Saxon museology supports does not greatly differ from the notions outlined as from the 1960s by Eastern museology. When the problem of *deaccessioning* is analyzed with a view to improving the quality of collections, it comes closer to the concept of the active collections policy and to the principles of musealization defined by Zbyněk Stránský or Klaus Schreiner¹⁶. Musealization, which focuses on the thoughtful selection of material evidence of reality, its preservation as authentic testimonies and the *modeling* of reality (museum-collection) does not go against the deaccessioning or disposal of some objects to favour others whose specific features (museality) are superior. This position is based on the principle of musealization considered to be a scientific act which can be extended on the basis of the whole of the museal field.

The collection of essays which support the definition of museums, published immediately after the ICOFOM Symposium held in Calgary,¹⁷ shows how broad the museal field is, based on which the museum-institution can be analyzed as well as the relative precariousness of its related rules. Therefore, as proposed by Bernard Deloche, museums shall be apprehended “as a specific function which might be in the form of an institution or not, whose purpose is to ensure by means of a sensitive experience, the archiving and transmission of culture understood as the set of acquisitions that turn a being which is genetically human into a man”¹⁸.

Vis-à-vis such a prospect, although collection deaccessioning can be treated from an etymological, practical, economic or ethical standpoint, it firstly appears as ancillary since it does not participate directly in the museal project, focused on the development of the human aspects of mankind. Those responsible for museums – although they do not really intend to obtain ICOM's institutional recognition – must respect certain criteria established by the profession. A museum that does not respect any commitment can be considered by museologists as a for profit institution in the universe of museums. A for-profit museum which sells part of its collections operates more aberrantly than an institutional museum based on heritage *inalienability*.

Although museology can be defined as the ethics of the museal field (reflecting the values that condition responses to the problems set forth in this field) analysis of inalienability, or of deaccession shall undeniably cut across the fields of the museal

¹⁶ P. van Mensch, *Towards a Methodology of Museology*, University of Zagreb, Faculty of Philosophy, PhD Thesis, 1992.

¹⁷ F. Mairesse, A. Desvallées (Ed.), *Vers une redéfinition du musée?* Paris, L'Harmattan, 2007.

¹⁸ *Ibid.*

aspects themselves, of museums and the values evoked therein (based on sensorial presentation and on setting aside reality). Certainly, the location of objects is preponderant within the museal world – their presence allows sensitive apprehension, the main form of operation of modern museums – but their preservation *ad vitam* or their authenticity are variants only recently determined (in the 19th century). The current museums of substitutes (for instance, on the Internet) forcibly result from rules which singularly move away from what has been prescribed in the field of unique object preservation. Could management of the latter have an influence on the development of the institution as a whole?

At present it is necessary to recognize that the specific role of museums of masterpieces, which has been discredited or relativized by generations of museologists (from Brown Goode to Stránský, through Rivière), continues to be an established reference model within the museum world following the example of the Louvre or the British Museum. Such a museum model, which was recently positioned on the basis of the concept of universal museums¹⁹, has so far done a good job at mainstreaming the notions of inalienability (or very restricted alienability) and non restitution. Just the same, the economic rationale prevails in the market economy. This rationale is known to be opposed to *inalienability*.

Are we about to see normative changes in collection management?

¹⁹ See special *ICOM News* issue on this topic, published in January 2004. <http://icom.museum/universl-fr.html>

LA QUESTION DE L'ALIÉNATION : CINQ PISTES DE RÉFLEXION

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La question de l'aliénation constitue un sujet pour le moins polémique¹. L'ICOM, bien sûr, traite de cette question dans son code de déontologie. L'un des paragraphes (2.16) du code résume bien certaines des difficultés intrinsèques qui persistent, même dans les pays où la cession de collection est admise. « Les collections des musées sont constituées pour la collectivité et ne doivent en aucun cas être considérées comme un actif financier. Les sommes ou avantages obtenus par la cession d'objets et de spécimens provenant de la collection d'un musée doivent uniquement être employés au bénéfice de la collection et, normalement, pour de nouvelles acquisitions »².

Il est généralement admis que les musées ont été créés pour conserver les spécimens, les objets et les œuvres qui leur ont été transmis, tout en complétant leurs collections par de nouvelles acquisitions. Le principe du musée se fonde sur le concept de préservation d'un certain type de patrimoine ; aussi, la possibilité de se dessaisir d'une partie de ce qui leur a été confié est souvent vécue par nombre de conservateurs comme un contresens à leur vocation. Certes, on sait depuis des lustres que cette notion n'est pas envisagée de la même manière dans les musées anglo-américains et dans les pays latins, comme la France, l'Argentine, l'Italie ou l'Espagne.

Depuis quelques années, les discussions autour de la question de l'aliénation semblent avoir pris un nouveau tournant. Aux États-Unis, de nombreuses ventes d'œuvres majeures provenant des collections de l'Université Jefferson, en Pennsylvanie, ou de l'Albright-Knox Art Gallery de Buffalo, ont déclenché une importante vague de critiques au sein du monde des musées, largement relayées par la presse³. La crise financière actuelle, qui touche de plein fouet les musées américains, a ravivé ces tensions. Certains musées – le cas le plus célèbre est celui du National Academy Museum de New York – acculés par les dettes, ont été amenés à vendre une partie de leurs collections pour éponger leur déficit, déclenchant la colère, voire le boycott de la puissante association des directeurs de musées américains⁴. Le projet de loi visant à réguler les conditions de vente d'œuvres appartenant aux collections des musées de l'État de New York, rédigé par le député Richard Brodsky et le sénateur Jose Serrano, constitue à cet égard une tentative de régulation suscitant des réactions divergentes⁵.

¹ Ces réflexions sont alimentées par un débat organisé au Musée royal de Mariemont en avril 2009. Voir F. MAIRESSE (Ed.), *L'inaliénabilité des collections de musée en question*, Morlanwelz, Musée royal de Mariemont, 2009.

² Paragraphes 2.12 à 2.17. ICOM, *Code de déontologie pour les musées*, 2006.
http://icom.museum/ethics_fr.html

³ J. MORRIS, « A sellers' market », in *Museums Journal*, July 2007, p. 16-17.

⁴ Sur l'ensemble du débat actuel, voir le blog consacré au *deaccessioning* par Sergio Muñoz Sarmiento, *The deaccessioning blog*, <http://clancco-theartdeaccessioningblog.blogspot.com/>

⁵ M. MAROZEAU, « Une loi pour réguler le "deaccessioning" », *Le Journal des Arts*, 10 juillet 2009.

En France, un projet de loi déposé par un député français (Jean-François Mancel), en 2007, visant à permettre l'aliénation d'une partie des collections des musées français, de même que les travaux préparatoires au projet de loi visant à régler la même question pour les musées belges fédéraux, ont suscité un très grand mouvement d'indignation au sein du Landerneau muséal⁶.

Je me permettrai de décrire ici cinq pistes de réflexion visant à initier une possible discussion sur la question de l'aliénation du patrimoine et la cession d'objets de collection.

1. L'origine de quelques termes

Les langues françaises ou espagnoles ne sont pas vraiment outillées pour décrire le processus de *deaccessioning* (de sortie de l'inventaire) puisque les collections de la plupart des pays utilisant ces langues sont pour la plupart inaliénables. L'ICOM, dans son *code de déontologie*, utilise les termes de « cession » en français, et *cesión (baja de colección)* en espagnol pour traduire les termes anglais *deaccessioning* et *disposal*.

En français (mais ces propos sont largement identiques pour l'espagnol), le concept d'inaliénabilité est l'un des principes fondateurs de la collection du musée pris comme institution⁷. Le musée, défini par l'ICOM, est une institution permanente ; mais la pérennité de cette institution, si elle ressort d'un consensus au sein de la société, transparaît aussi par le dispositif qui intègre les collections des musées au domaine public. Le domaine public, par définition, est déclaré inaliénable dans les institutions du droit. Le terme qui s'oppose à l'inaliénabilité est l'aliénabilité, l'action de sortir un bien de la collection est l'aliénation. La première acception de ce terme est juridique : l'aliénation, en droit civil, est l'action de transmettre la propriété d'un bien, d'un droit, etc. à autrui (*Trésor de la langue française*). L'origine du terme, dérivé du latin *alienatio*, remonte au 13^e siècle. Ce n'est qu'un siècle plus tard que l'on commencera à parler du second sens de ce terme, soit « l'aliénation d'entendement », ou trouble psychique profond. Le terme « cession » est aussi défini en droit (international ou commercial) et signifie également le transfert à une personne de la propriété d'un bien, d'un titre ou d'un droit.

L'*Oxford Dictionary* définit le verbe *to deaccession* comme : « *to remove an entry for (an exhibit, a book) from the accession register of a museum, a library, etc. usually in order to sell the item concerned* ». Si la « de-accession » n'existe pas en français, le terme « accession », de manière générale⁸, signifie « l'action d'accéder à un pouvoir ou à une dignité, à une situation politique ou sociale supérieure ». En ce sens, l'accession décrit assez bien le processus de passage d'un objet du monde commun vers la collection du musée, par le biais de son entrée dans l'inventaire. L'accession à la collection représente en quelque sorte un stade que le conservateur définira volontiers comme supérieur, soit la perte des valeurs d'usage ou d'échange, pour une valeur de signification (sémiophore). « Un objet de musée n'est pas un objet dans un musée », signalait déjà Zbyněk Stránský.

La « dé-accession » constitue en ce sens une sorte de dégradation, de retour aux valeurs communes. Si l'on ajoute à cette réflexion le second sens psychologique du

⁶ D. RYKNER, *Le spleen d'Apollon. Musées, fric et mondialisation*, Paris, Nicolas Chaudun, 2008 ; J. CLAIR, *Malaise dans les musées*, Paris, Flammarion, 2007.

⁷ B. DESBIOLLES, « L'institution du musée : concepts, enjeux et perspective », *Icofom Study Series*, 38, p. 181-198.

⁸ Le terme « cession » n'a pas de sens juridique en français, contrairement à l'anglais, qui définit juridiquement la notion comme « *addition to property by natural growth or by artificial improvement* ».

terme d'aliénation, le sort d'un objet déclassé et éliminé de l'inventaire, aliéné et « dé-accédé » apparaît bien peu enviable.

2. La voie pratique

Si les partisans de l'inaliénabilité se fondent sur un certain nombre de grands principes liés au rôle de l'État (tout en soulignant les conséquences pratiques de l'aliénation, soit la perte d'un objet qui ne pourra plus être aussi aisément consulté), la plupart des arguments, pour les partisans du *deaccessioning*, sont d'abord d'ordre pratique. Ainsi, les récentes publications britanniques ou néerlandaises⁹ insistent sur le principe (couramment utilisé dans les collections privées) selon lequel l'optimisation de la gestion des collections, sous la contrainte de ressources matérielles limitées, repose nécessairement sur un partiel élagage. Il conviendrait donc de ne conserver que les objets directement liés avec les missions du musée ou, plus spécifiquement, avec son projet (tel que défini par son *mission statement* et décliné dans les plans opérationnels de l'organisation) et la politique de collection qui en découle. Dans cette perspective, la question de l'aliénation s'avère inexorablement liée à celle des acquisitions et à la maîtrise (à la gestion) de la collection¹⁰.

Selon cette même logique, il apparaît comme indubitable que les réserves d'un musée ne puissent s'étendre à l'infini. Si le principe d'inaliénabilité est respecté scrupuleusement, comment envisager le monde des musées (institution que l'on définit comme permanentes) d'ici cinq ou dix siècles ? D'autant plus que la production matérielle de nos sociétés apparaît comme exponentielle, entraînant dans son sillage le développement tout aussi exponentiel des biens ayant perdu leur valeur d'usage ou d'échange (la gestion des déchets), et celle des biens muséalisés.

La question, en ce sens, s'inscrit au cœur d'un paradoxe que résumaient déjà Jean-Pierre Babelon et André Chastel à propos du patrimoine : il « se reconnaît au fait que sa perte constitue un sacrifice et que sa conservation suppose des sacrifices »¹¹. Mais quels sacrifices sommes-nous prêts à réaliser ? Conserver au mieux toutes les collections, selon les principes de l'inaliénabilité garantie par l'État, revient à terme, dans une société fondée sur la prise en charge par les pouvoirs publics, à augmenter les ressources nécessaires pour les préserver, et donc fort logiquement les impôts. Si un conservateur est sans doute prêt à vivre un peu moins bien pour assurer la pérennité du patrimoine, ce sentiment est-il partagé par toute la société ? On peut en douter.

3. La question de l'argent

⁹ NATIONAL MUSEUM DIRECTOR'S CONFERENCE, *Too much Stuff ?*, octobre 2003, disponible sur Internet : www.nationalmuseums.org.uk/media/documents/publications/too_much_stuff.pdf; F. BERGVOET, A. KOK, M. DE WIT, *Netherlands guidelines for deaccessioning of museum objects*, Amsterdam, Instituut collection Nederland, 2006 (disponible sur Internet : www.icn.nl); MUSEUMS ASSOCIATION, *Making collections effective*, London, Museums Association, 2007 ; MUSEUMS ASSOCIATION, *Disposal toolkit. Guidelines for museums*, London, Museums Association, sd. Consultable sur Internet :

http://www.museumsassociation.org/asset_arena/text/it/disposal_toolkit.pdf. P. TIMMER, A. KOK, *Niets gaat verloren. Twintig jaar selectie en afstoting uit Nederlandse museale collecties*, Amsterdam, Boekman Stichting, 2007. La procédure mise au point pour se séparer d'objets superflus privilégie par ailleurs toujours le domaine public, en envisageant d'abord le transfert des objets à d'autres musées ou collections publiques, avant de proposer leur dispersion dans le domaine privé.

¹⁰ C. NEVES, *Concern at the Core. Managing Smithsonian Collections*, Washington, Smithsonian Institution, April 2005. Consultable sur Internet : <http://www.si.edu/opanda/2005.html>

¹¹ J.-P. BABELON, A. CHASTEL, *La notion de patrimoine*, Paris, Liana Levi, 1994.

Si, sur le plan pratique, un grand nombre de professionnels de musée (aux États-Unis, en Grande-Bretagne, aux Pays-Bas, etc.) sont favorables à l'aliénation, la plupart expriment cependant leurs craintes – relayées par l'ICOM, comme on l'a vu plus haut – vis-à-vis de la question de la vente de collections, et notamment le risque de voir les collections servir à combler de potentiels déficits financier¹². Depuis quelques années en effet, l'engagement de gestionnaires, au sein des musées, disposant d'un *Master in Business Administration*, a-t-il quelque peu favorisé la possibilité de voir dans la collection des « actifs » comme les autres¹³.

La question financière, traitée avec circonspection par la plupart des professionnels de musée, est allègrement dépassée par certains économistes néo-classiques qui n'hésitent pas à dénoncer la mauvaise gestion des musées parce que ceux-ci, au contraire des entreprises, n'utilisent pas leur collections comme un capital monnayable. C'est en examinant le développement des collections et les carences d'inventaires, à l'aide de nombreux exemples pour appuyer ses théories, que l'économiste américain William Grampp appelle ainsi à renoncer à toutes subventions envers les musées, en vue de les faire fonctionner comme des organisations commerciales. Ainsi, selon Grampp, s'ils vendaient une part des collections qui dorment en réserve ou qui sont exposées, ils deviendraient sans doute d'une taille plus raisonnable, montreraient les objets que le grand public souhaite vraiment voir, organiseraient des expositions temporaires plus populaires, au bénéfice de tous¹⁴. Le raisonnement de Grampp, volontiers polémique, n'est que rarement suivi dans sa logique jusqu'au-boutiste par la plupart de ses collègues – et ce d'autant plus que les partisans de la « main invisible » du marché ont vu leur étoile quelque peu pâlir à la lumière de la crise actuelle. Il n'empêche que la plupart des économistes pointent l'aspect apparemment aberrant, aux yeux du marché, d'un « stock » muséal à croissance illimitée, tout en appelant à la vente.

La question d'une vente ne peut par ailleurs être envisagée, pour tout gestionnaire de stock (ou de fonds de pension), que dans une perspective d'achat. Un gestionnaire de portefeuille d'action qui ne pourrait se résoudre à vendre les valeurs qu'il possède, pour en acquérir d'autres, tomberait vraisemblablement, à terme, en faillite : il vaut souvent mieux de vendre pour pouvoir bien acheter.

4. Aspects moraux et éthiques

Le débat sur l'aliénation apparaît donc comme problématique au sein du monde des musées ; en témoignent les sections qui lui sont consacrées dans le code de déontologie, mentionné plus haut, ainsi que la bibliographie élaborée par l'ICOM¹⁵. Est-ce à dire que « c'est mal » de vendre des collections de musée et que « c'est bien » de les conserver et s'en occuper, ou au contraire qu'« il faut » pouvoir s'en dessaisir ? Si une partie du débat repose, peut-être caricaturalement, sur de telles prises de position, on conviendra que la question ne peut être posée en ces termes.

D'une part, la question de l'argent inquiète de manière transversale partisans autant qu'opposants à l'aliénation ; d'autre part, il convient de remarquer que toutes les pièces de collection ne semblent pas égales face aux principes de l'inaliénabilité. De manière générale, c'est essentiellement la question des *unica*, des œuvres et des objets uniques, qui pose réellement problème. Et parmi ces objets, les œuvres d'art

¹² P. VAN MENSCH, « Collectieontwikkeling of geld verdienen ? », *Kunstlicht*, 29, 1/2, 2008, p. 57-59.

¹³ Sur ce dernier point, voir S. MILLER, « Selling items from museum collections », in S. WEIL (ed.), *A Deaccession Reader*, Washington, American Association of Museums, 1997, p. 51-61.

¹⁴ W. D. GRAMPP, *Pricing the Priceless, Art, Artists and Economics*, New York, Basic books Inc., 1989.

¹⁵ http://icom.museum/biblio_deaccessioning.html

constituent le point principal de discordance. Autrement dit, les spécimens d'histoire naturelle, les objets multiples, etc., pour autant qu'ils ne soient pas devenus, par le biais du cours de l'histoire, des objets uniques, semblent pouvoir bien plus facilement sortir des collections.

La question du multiple renvoie inévitablement à celle du substitut (voir l'ISS 8-9 sur les *Originaux et substituts dans les musées*, Zagreb, 1985), dont on sait combien la place de ce dernier est conditionnée par le culte de l'original ou de l'objet authentique. Une telle question ramène au culte des reliques, qui traversa tout le Moyen-âge et dont il convient de remarquer que le droit canon, très tôt, interdit la vente et le commerce. Dans ce contexte, on pourrait émettre l'hypothèse d'une résurgence de ce type de conflits qui secoua violemment protestants et catholiques au 16^e siècle. Près de cinq siècles plus tard, une sorte de ligne de démarcation semble encore départager, selon des frontières qui ne sont pas sans rappeler les guerres de religion, les partisans et détracteurs du principe d'inaliénabilité.

La question des reliques et de l'iconoclasme renvoie à la religion et à la morale. La morale de l'ICOM, diffusée par son code de déontologie, vise à guider la conduite des professionnels. Mais la déontologie muséale est inévitablement amenée à être révisée sur les bases de l'éthique, discipline philosophique qui discute de la détermination des valeurs qui guideront la conduite des professionnels de musée. L'ICOFOM, en tant que plate-forme de discussion, s'inscrit au cœur du processus éthique de réflexion sur les valeurs du musée comme institution. Quels sont, en ce sens, les principes actuels qui ont permis la formulation des normes de l'ICOM : le culte des reliques, celui de l'argent, le rapport à l'homme et à son environnement ? En tout état de cause, force est de reconnaître que ces principes sont conditionnés par la création et le développement de l'économie-monde capitaliste dans laquelle nous vivons encore, laquelle a progressivement étendu son influence sur l'ensemble du monde. Peut-être la notion de musée, après tout, n'est-elle pas tellement étrangère aux principes d'accumulation qui constituent le cœur de toute société capitaliste.

5. Un regard muséologique

La voie résolument pragmatique, privilégiée par la muséologie anglo-saxonne, ne diffère pas sensiblement des concepts élaborés à partir des années 1960 par la muséologie de l'Est. La question du *deaccessioning*, lorsqu'elle est envisagée afin d'améliorer la qualité de la collection, se rapproche du concept de politique de collection active et des principes de muséalisation définis par Zbyněk Stránský ou par Klaus Schreiner¹⁶. L'acte de muséalisation, qui envisage la sélection réfléchie de témoignages matériels de la réalité, leur préservation sous la forme de témoins authentiques, et la modélisation de la réalité (la collection-musée) n'est pas antinomique avec la cession ou la destruction de certains objets au profit d'autres dont les caractéristiques spécifiques (la muséalité) seraient supérieures. Cette première perspective part du principe de la muséalisation envisagée comme acte scientifique ; la réflexion peut être prolongée à partir de l'ensemble du champ muséal.

La collection d'essais publiés à la suite du symposium de l'ICOFOM à Calgary, portant sur la définition du musée¹⁷, montre bien l'étendue du champ à partir duquel le musée institutionnel peut être analysé, de même que la relative précarité des règles liées à ce dernier. On peut ainsi, comme le propose Bernard Deloche appréhender le musée

¹⁶ MENSCH P. van, *Towards a Methodology of Museology*, University of Zagreb, Faculty of Philosophy, PhD Thesis, 1992.

¹⁷ F. MAIRESSE, A. DESVALLÉES (Ed.), *Vers une redéfinition du musée ?*, Paris, l'Harmattan, 2007.

comme « une fonction spécifique, qui peut prendre ou non la figure d'une institution, dont l'objectif est d'assurer, par l'expérience sensible, l'archivage et la transmission de la culture entendue comme l'ensemble des acquisitions qui font d'un être génétiquement humain un homme »¹⁸.

Dans une telle perspective, la question de l'aliénation des collections, si elle peut être traitée d'un point de vue étymologique, pratique, économique ou éthique, apparaît d'abord comme auxiliaire, puisqu'elle ne participe pas directement au projet muséal, centré sur le développement de ce qu'il y a d'humain dans l'homme. Certes les responsables d'un musée, pour peu qu'ils souhaitent prétendre à la reconnaissance institutionnelle – celle-là qui est reconnue par l'ICOM – se devront de respecter un certain nombre de critères établis par la profession. Mais un musée qui ne respecterait aucunement ce type d'engagement peut absolument, pour le muséologue, être considéré comme partie prenante du monde des musées. Un musée lucratif, vendant une partie de ses collections, ne fonctionne pas de manière plus aberrante qu'un musée institutionnel, fondé sur l'inaliénabilité de son patrimoine.

Si la muséologie peut être définie comme l'éthique du champ muséal (comme réflexion sur les valeurs conditionnant les réponses aux problématiques posées au sein de ce champ), l'examen de la question de l'inaliénabilité ou de l'aliénation passe inmanquablement par la définition du champ muséal lui-même (fondé sur la présentation sensible et la mise en marge de la réalité), du musée et des valeurs qui s'y rapportent. La place des objets apparaît certes comme prépondérante dans le dispositif muséal – puisque leur présence rend possible l'appréhension sensible, mode principal de fonctionnement du musée moderne – mais leur préservation *ad vitam* ou leur authenticité constituent des variantes qui ont été déterminées à une époque somme toute récente (le 19^{ème} siècle). Les musées de substituts actuels (sur Internet, par exemple), à l'opposé, obéissent forcément à des règles qui s'écartent singulièrement du prescrit en matière de préservation des *unica*. La gestion de ces derniers pourrait-elle avoir une influence sur le développement de l'institution dans son ensemble (et le renversement du prescrit actuel de la déontologie muséale) ?

Force est de reconnaître, pour l'heure, que le rôle spécifique du musée de chefs-d'œuvre, décrié ou relativisé par des générations de muséologues (de Brown Goode à Stránský, en passant par Rivière), continue de s'imposer comme modèle de référence au sein du monde des musées, dans le sillage du Louvre ou du British Museum. Un tel modèle de musée, qui s'est récemment positionné à partir du concept de musée universel¹⁹, intègre pour l'heure assez bien les notions d'inaliénabilité (ou d'aliénation très restreinte) et de non-restitution, mais également, de plus en plus, la logique économique qui prévaut dans l'économie marchande. On sait que cette dernière logique est opposée à l'inaliénabilité.

Sommes-nous donc sur le point de connaître un changement normatif pour ce qui concerne la gestion des collections ?

¹⁸ *Ibid.*

¹⁹ Voir le numéro spécial des *Nouvelles de l'icom* consacré à ce sujet en janvier 2004.
http://icom.museum/universal_fr.html

EL PROBLEMA DE LA ALIENACIÓN CINCO PISTAS PARA REFLEXIONAR

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El problema de la alienación constituye un tema polémico¹ que el ICOM trata en su *Código de Deontología*. Uno de los párrafos (2.16) de este documento, resume algunas de las dificultades intrínsecas que persisten aún en los países donde se admite la cesión de colecciones. “Las colecciones de los museos son constituidas para la colectividad y en ningún caso deben ser consideradas como un activo financiero. Las sumas o ventajas obtenidas por la cesión de objetos y especímenes procedentes de la colección de un museo sólo deben ser empleados en beneficio de la misma, normalmente para nuevas adquisiciones”².

Se suele admitir que los museos han sido creados para conservar los especímenes, los objetos y las obras que le han sido transmitidas, mientras completan sus colecciones con nuevas adquisiciones. El principio del museo se basa en el concepto de la preservación de cierto tipo de patrimonio. La posibilidad de deshacerse de una parte de aquello que le ha sido confiado suele ser vivida por muchos conservadores como un contrasentido para su vocación. Se sabe desde hace lustros que esta noción no es encarada de la misma manera en los museos anglo-americanos que en aquellos de países latinos como Francia, Argentina, Italia o España.

Desde hace algunos años, las discusiones en torno al problema de la alienación parecen haber tomado un nuevo giro. En los Estados Unidos, numerosas ventas de obras maestras, procedentes de las colecciones de la Universidad de Jefferson, en Pensilvania o de la Galería de Arte Albright-Knox en Buffalo, desencadenaron una importante ola de críticas en el seno del mundo de los museos, largamente comentadas por la prensa³. La crisis financiera actual que golpea a los museos americanos, ha reavivado esas tensiones. Ciertos museos -el caso más célebre es el del Museo de la Academia Nacional de New York- acosados por las deudas, se han visto obligados a vender una parte de sus colecciones para paliar su déficit desencadenando la ira e incluso el *boicot* de la poderosa Asociación de Directores de Museos Norteamericanos⁴. El proyecto de ley que apunta a regular las condiciones de venta de obras pertenecientes a las colecciones de los museos del Estado de New York, redactado por el diputado Richard Brodsky y el senador José Serrano, constituye una tentativa de regulación que suscita reacciones divergentes⁵.

El proyecto de ley del diputado Jean-Francois Mancel, presentado en Francia en 2007, destinado a permitir la alienación de una parte de las colecciones de los museos

¹ Estas reflexiones están alimentadas por un debate organizado en el Museo Real de Mariemont en abril de 2009. Ver F. Mairesse (Ed.), *L'inaliénabilité des collections de musée en question*, Morlanwelz, Museo Real de Mariemont, 2009. Agradezco a André Dsvallées y a Bernard Deloche por la atenta relectura de este artículo, así como por sus sugerencias.

² Párrafos 2.12 a 2.17, ICOM, *Código de Deontología para los museos*, 2006.

http://icom.museum/ethics_fr.html

³ J. Morris, “A seller’s market”, en *Museum Journal*, julio 2007, pp. 16-17.

⁴ Sobre el conjunto del debate actual, ver el blog consagrado a deaccessioning por Sergio Muñoz Sarmiento, *The deaccessioning blog*, <http://clancco-theartdeaccessioningblog.blogspot.com>

⁵ M. Marozeau, “Una loi pour réguler le “deaccessioning””, *Le Journal des Arts*, 10 de julio de 2009.

franceses, al igual que los trabajos preparatorios realizados para el proyecto de ley que contempla una regulación similar para los museos federales de Bélgica, despertaron intensos movimientos de indignación en el seno del *Landerneau* museal⁶.

A continuación, me permitiré describir cinco pistas que llamen a la reflexión y apunten al inicio de una posible discusión sobre el tema de la alienación del patrimonio y la cesión permanente de objetos de colección.

1. El origen de algunos términos

Las lenguas francesa y española no están preparadas para describir el proceso de alienación (baja del inventario) ya que las colecciones de la mayoría de los países que utilizan dichas lenguas son inalienables. El ICOM, en su *Código de Deontología*, usa los términos *cession*, en francés y *cesión* (o baja de colecciones) en español, para traducir los términos ingleses *deaccession* y *disposal*.

En francés, del mismo modo que en español, el concepto de inalienabilidad es uno de los principios fundamentales de la colección del museo, considerado como institución⁷. El museo, según la definición del ICOM, es una institución permanente y su perennidad -si surge de un consenso en el seno de la sociedad- se transparenta también a través de los dispositivos encargados de integrar las colecciones de los museos al dominio público. En las instituciones de derecho, el dominio público, por definición, es inalienable. El término opuesto a inalienable es alienable, por lo tanto, la acción de sacar definitivamente un bien del inventario de una colección se llama alienación. La primera acepción de este término es jurídica: la alienación, en Derecho Civil, es la acción de transmitir la propiedad de un bien, un derecho, etc. a otro (*Trésor de la langue française*). El origen del término, derivado del latín *alienatio*, se remonta al siglo XIII. Sólo un siglo más tarde se comenzará a hablar de la segunda acepción de este término, es decir “la alienación del entendimiento” o daño psíquico profundo. El término “cesión” también se encuentra definido en Derecho Civil, Internacional o Comercial, y significa la transferencia a una persona de la propiedad de un bien, de un título o de un derecho, ya sea a título oneroso o a título gratuito.

El *Oxford Dictionary* define el verbo *to deaccession* como: “*to remove an entry (for an exhibit) from the accession register of a museum, a library, etc., usually in order to sell the item concerned*”. Si bien el término *dé-accession* no existe en francés, el término *accession*, de manera general⁸ significa “la acción de acceder a un poder o a una dignidad, a una situación política o social superior”. En este sentido, el acceso describe el paso de un objeto desde el mundo cotidiano hacia la colección del museo por la vía de su ingreso al inventario. El acceso a la colección representa, de algún modo, un estado que el conservador definirá como superior, debido a la pérdida de sus valores de uso o de intercambio por un valor de significación (semióforo). “Un objeto de museo no es un objeto en un museo”, señalaba ya Zbyněk Stránský. El término *de-accession* constituye en este sentido una suerte de degradación, de retorno a los valores cotidianos. Si agregamos a esta reflexión el segundo sentido psicológico del término alienación, la baja de un objeto desclasificado y eliminado del inventario, alienado/enajenado o *dé-accédé* no resulta envidiable.

⁶ D. Rykner, *Le spleen d'Apollon. Musées, fric et mondialisation*, Paris, Nicolás Chaudun, 2008; J. Clair, *Malaise dans les musées*, Paris, Flammarion, 2007.

⁷ B. Desbiolles, “*l'institution du musée: concepts, enjeux et perspective*”, ICOFOM Study Series, 38, p. 181-198.

⁸ El término “cession” no tiene sentido jurídico en francés, contrariamente al inglés, que define jurídicamente la noción como “*addition to property by natural growth or by artificial improvement*”

2. La vía práctica

Si los partidarios de la ‘inalienabilidad’ se basan en cierto número de grandes principios ligados al rol del Estado (subrayando las consecuencias de la alienación, como ser la pérdida definitiva de un objeto que ya no podrá ser consultado), la mayoría de los argumentos para los partidarios de la ‘alienación’ son ante todo de orden práctico. Las recientes publicaciones británicas y holandesas⁹ insisten sobre el principio (utilizado corrientemente en las colecciones privadas) según el cual la optimización de la gestión de colecciones, bajo el apremio de recursos materiales limitados, descansa necesariamente sobre su cercenamiento parcial. Convendría conservar sólo los objetos que estén directamente ligados con la misión del museo y específicamente con su proyecto tal como es definido por su *mission statement* y enunciado en los planes operativos de la organización y en la política de colecciones derivada. Desde esta perspectiva, es dable observar que el problema de la alienación se encuentra inexorablemente ligado al de las adquisiciones y a la gestión de colecciones¹⁰.

Siguiendo esta misma lógica, es indudable que las reservas de un museo no puedan extenderse hasta el infinito. Si el principio de inalienabilidad se respeta escrupulosamente ¿cómo encarar al mundo de los museos (institución que se define como permanente) de aquí a cinco o diez siglos? Tanto más cuando la producción material de nuestras sociedades, considerada exponencial, arrastra en su huella el desarrollo, también exponencial, de aquellos bienes que han perdido su valor de uso o de intercambio (la gestión de los restos) y los bienes musealizados.

En este sentido, el problema se inscribe en el seno de una paradoja que ya resumían Jean-Pierre Babelon y André Chastel al referirse al patrimonio: “se reconoce que su pérdida constituye un sacrificio y que su conservación supone sacrificios”¹¹. Pero, ¿qué sacrificios estamos dispuestos a realizar? Conservar lo mejor posible todas las colecciones según los principios de la inalienabilidad garantizados por el Estado, termina por generar una sociedad basada en el control de los poderes públicos, dispuesta a aumentar los recursos necesarios para preservar dichas colecciones y desde ya, los impuestos. Nos preguntamos si un conservador está dispuesto a vivir con menores ingresos para asegurar la perennidad del patrimonio y, en tal caso, este sentimiento es compartido por toda la sociedad? Lo dudamos.

3. La cuestión del dinero

Si bien, en el plano práctico, un gran número de profesionales de museos (en los Estados Unidos, en Gran Bretaña, en los Países Bajos, etc.) son favorables a la

⁹ National Museum Director Conference, *too much Stuff?*, octubre de 2003, disponible en Internet: www.nationalmuseums.org.uk/media/documents/publications/too_much_stuff.pdf; F. Bergevoet, A. Kok, M. de Wit, *Netherlands guidelines for deaccessioning of museum objects*. Amsterdam, Instituut collection Nederland, 2006 (disponible en Internet: www.icn.nl); Museums Association, *Making collections effective*, London, Museums Association, 2007; Museums Association, *Disposal toolkit. Guidelines for museums*, Londres; Museums Association, sd. Consultar en Internet:

http://www.museumassociation.org/asset_arena/text/it/disposal_toolkit.pdf. P. Timer, a. Kok, *Niets gaat verloren. Twintig jaar selectie en afstoting uit Nederlandse museale collecties*, Amsterdam, Boekman Stichting, 2007. La puesta a punto para separarse de objetos superfluos privilegia siempre, por otra parte, el dominio público, enfocando primero el traspaso de los objetos a otros museos o colecciones públicas, antes de proponer su dispersión en el dominio privado.

¹⁰ C Neves, *Concern at the Core. Menaging Smithsonian Collections*, Washington, Smithsonian Institution, abril de 2005. Consultar en Internet: <http://www.si.edu/opanda/2005.html>.

¹¹ J-P. Babelon, A. Chastel, “La notion de patrimoine”, *La Revue de l’Art*, 49, 1980, Reedición. Paris, Liana Levi, 1994.

alienación, la mayoría expresa sus temores -relevados por el ICOM como se ha visto más arriba- en relación con el problema de la venta de colecciones y especialmente con el riesgo de verlas destinadas a satisfacer potenciales *déficits* financieros¹². En efecto, desde hace algunos años, el compromiso de quienes tienen a su cargo la gestión en el seno de los museos y disponen de un *Master en Administración de Negocios*, poco ha favorecido la posibilidad de ver en la colección verdaderos “activos”¹³.

La cuestión financiera, tratada con circunspección por la mayor parte de los profesionales de museos, ha sido alegremente superada por ciertos economistas neo-clásicos que no dudan en denunciar la mala gestión de los museos que, a diferencia de las empresas, no utilizan sus colecciones como capital monetario.

Al examinar el desarrollo de las colecciones y las carencias de inventarios, el economista norteamericano William Grampp, basándose en ejemplos que sustentan sus teorías, llama a los museos a renunciar a toda subvención, con vistas a hacerlos funcionar como organizaciones comerciales. Según el mencionado economista, si vendieran una parte de las colecciones que duermen en las reservas o están en exhibición, sin duda tendrían una dimensión más razonable, mostrarían los objetos que el gran público desea ver y organizarían exposiciones temporarias más populares en beneficio de todos¹⁴. El razonamiento de Grampp, voluntariamente polémico, rara vez es seguido en su lógica por la mayoría de sus colegas, más aún porque los partidarios de “la mano invisible” del mercado han visto palidecer su estrella a la luz de la crisis actual. Esto no impide que la mayoría de los economistas señalen el aspecto, aparentemente aberrante a los ojos del mercado, de un *stock* museal de crecimiento ilimitado, y apelen la venta.

El problema de la venta sólo puede ser encarado por un gestor de stock (o de fondos de pensión) desde una perspectiva de compra. Un gestor que no pudiera resolverse a vender los valores que posee en cartera, para adquirir otros caería irremisiblemente en falta: a menudo conviene vender para poder comprar mejor.

4. Aspectos morales y éticos

El debate sobre la alienación aparece como algo problemático en el seno del mundo de los museos; de ello dan testimonio las secciones que le son consagradas en el *Código de Deontología* mencionado más arriba, así como en la bibliografía elaborada por el ICOM¹⁵. ¿Quiere decir que “está mal” vender las colecciones del museo y que “está bien” conservarlas y ocuparse de ellas o, por el contrario, que “es necesario” poder desprenderse de las mismas? Si una parte del debate descansa, quizá caricaturalmente, sobre tales tomas de posición, convendremos que el asunto no puede ser planteado en dichos términos. Por otra parte, el dinero inquieta de manera transversal tanto a los partidarios como a los oponentes de la alienación. Conviene señalar que todas las piezas de colección no parecen ser iguales ante los principios de la inalienabilidad. De manera general, los que esencialmente suscitan un verdadero

¹² P. Van Mensch, “Collectieontwikkeling of geld verdienen?”, *Kunstlicht*, 29,1/2, 2008, pp. 57-59.

¹³ Sobre este último punto, ver S. Millar, “Selling items from museum collections”, en S. Weil (ed.), *A Deaccession Reader*, Washington, American Association of Museums, 1997, pp. 51-61. La relación Lévy-Jouyet, en Francia, participa plenamente de esta lógica (Lévy M., Jouyet J. P., *L'économie de l'immatériel: la croissance de demain. Rapport de la commission sur l'économie de l'immatériel*, Paris, 2006).

¹⁴ W. D. Grampp, *Pricing the priceless: art, artists and economics*, New York, Basic books Inc., 1989.

¹⁵ http://icom.museum/biblio_deaccessioning.html

problema son las obras y objetos **únicos**. Entre todos los objetos, las obras de arte constituyen el principal foco de discordia. Dicho de otro modo, los especímenes de historia natural, los objetos múltiples, etc., hasta tanto no se hayan convertido por el azar de la historia en objetos únicos, pareciera que pueden ser dados de baja de las colecciones con mayor facilidad.

El tema de lo múltiple remite indefectiblemente al sustituto (ver ISS 8-9 sobre los *Originales y sustitutos en los museos*, Zagreb, 1985) del cual se sabe hasta qué punto está condicionado por el culto del original o del objeto auténtico. Tal cuestión conduce al culto de las reliquias que atravesó toda la Edad Media. Al respecto, conviene destacar que el Derecho Canónico, ya muy temprano, prohibió su venta y su comercialización. En este contexto, se podría emitir la hipótesis del resurgimiento de un cierto tipo de conflicto que sacudió violentamente a protestantes y católicos en el siglo XVI. Casi cinco siglos más tarde, una especie de línea de demarcación (que recuerda las guerras religiosas) parece dividir todavía las fronteras entre partidarios y detractores del principio de inalienabilidad.

La problemática de las reliquias y de la iconoclasia reenvía a la religión y a la moral. La moral del ICOM, difundida a través de su *Código de Deontología*, apunta a guiar la conducta de los profesionales. La deontología museal ha de ser revisada indefectiblemente sobre bases éticas. Esta disciplina filosófica debate la determinación de los valores que guiarán la conducta de los profesionales de museos. El ICOM, en tanto plataforma de discusión, se inscribe en el corazón del proceso ético de reflexión sobre los valores del museo como institución. ¿Cuáles son, en este sentido, los principios actuales que han permitido la formulación de las normas del ICOM? ¿El culto de las reliquias? ¿El del dinero? ¿La relación entre el hombre y su entorno? De todos modos, es forzoso reconocer que estos principios están condicionados por la creación y el desarrollo de la economía del mundo capitalista en el cual vivimos, que ha extendido progresivamente su influencia sobre el mundo entero. Quizá la noción de museo no sea totalmente extraña a los principios de acumulación que constituyen la esencia de toda sociedad capitalista.

5. Una mirada museológica

La vía decididamente pragmática, privilegiada por la museología anglosajona, no difiere sensiblemente de los conceptos elaborados a partir de la década del 60' por la museología del Este. El problema de la alienación, cuando es examinado a fin de mejorar la calidad de la colección, se acerca al concepto de política de colecciones activa y a los principios de musealización definidos por Zbyněk Stránský o por Klaus Schreiner¹⁶.

El acto de musealización que enfoca la selección reflexiva de testimonios materiales de la realidad, su preservación bajo la forma de testimonios auténticos y la *modelización* de dicha realidad (el museo-colección) no es antinómico con la cesión o la destrucción de algunos objetos en provecho de otros, cuyas características específicas (la musealidad) serían superiores. Pero desde esta perspectiva, la constitución de una colección es encarada como cualquier base de datos o colección de referencia que se distinguen por el lazo científico que privilegian más allá de las cualidades estéticas, a menudo *plebiscitadas* por el mercado. Tal reflexión parte del principio de una musealización encarada como acto científico, que puede ser prolongada a partir del conjunto del campo museal.

¹⁶ Mensch P. Van, *Towards a Methodology of Museology*, University of Zagreb, Faculty of Philosophy, Doctor's Thesis, 1992.

La colección de ensayos que sustenta la definición de museo, publicados inmediatamente después del Simposio del ICOFOM realizado en Calgary,¹⁷ muestra la extensión del campo museal a partir del cual el museo institucional puede ser analizado, al igual que la relativa precariedad de las reglas ligadas al mismo. Se puede así, como lo propone Bernard Deloche, aprehender al museo como “una función específica, que puede tomar o no la figura de una institución, cuyo objetivo es asegurar, por medio de la experiencia sensible, el archivo y la transmisión de la cultura, entendida como el conjunto de adquisiciones que hacen de un ser, genéticamente humano, un hombre”¹⁸.

Ante tal perspectiva, el tema de la alienación de colecciones, si es tratado desde un punto de vista etimológico, práctico, económico o ético, aparece primero como auxiliar -ya que no participa directamente del proyecto museal- centrado en el desarrollo de aquello que hay de humano en el hombre.

Los responsables de un museo, por poco que pretendan el reconocimiento institucional aceptado por el ICOM, deberán respetar un cierto número de criterios establecidos por la profesión. Un museo que no respete ningún compromiso no puede ser considerado en absoluto por el museólogo como parte constitutiva del mundo de los museos. Un museo lucrativo, que vende parte de sus colecciones, no es más aberrante que un museo institucional basado en la inalienabilidad de su patrimonio.

Si es posible definir a la museología como la ética del campo museal (como reflexión sobre los valores que condicionan las respuestas a las problemáticas planteadas en el seno del mismo), el examen de la cuestión de la inalienabilidad o de la alienabilidad, pasa indefectiblemente por la definición del campo museal en sí mismo, del museo y de los valores que allí se evocan (basados sobre la presentación sensible y la puesta al margen de la realidad). Ciertamente, el lugar de los objetos resulta preponderante en el dispositivo museal -su presencia hace posible la aprehensión sensible, principal modo de funcionamiento del museo moderno- pero su preservación *ad vitam* o su autenticidad, constituyen variantes que han sido determinadas en una época muy reciente (el siglo XIX). Los actuales museos de sustitutos (por ejemplo, en Internet), obedecen forzosamente a reglas que se apartan singularmente de lo prescripto en materia de preservación de objetos únicos. La gestión de estos últimos ¿podría tener influencia sobre el desarrollo de la institución en su conjunto?

En la hora actual, es forzoso reconocer que el rol específico del museo de obras maestras, desacreditado o relativizado por generaciones de museólogos (desde Brown Goode a Stránský, pasando por Rivière), continúa imponiéndose como modelo de referencia en el seno del mundo de los museos a través de la estela del Louvre o del Museo Británico. Tal modelo de museo, recientemente posicionado a partir del concepto de museo universal¹⁹, integra bastante bien, hasta ahora, las nociones de inalienabilidad (o de alienación muy restringida) y de no restitución, del mismo modo que la lógica económica que prevalece en la economía de mercado. Se sabe que esta lógica es opuesta a la inalienabilidad.

¿Estamos, pues, a punto de conocer un cambio normativo en lo concerniente a la gestión de colecciones?

¹⁷ F. Mairesse, A. Desvallées (Ed.), *Vers une redéfinition du musée?* Paris, L'Harmattan, 2007.

¹⁸ Ibid.

¹⁹ Ver el número especial de las Novedades del ICOM consagrado a este tema en enero de 2004. http://icom.museum/universl_fr.html

MUSEUMS, MUSEOLOGY AND THE RESTITUTION OF CULTURAL HERITAGE AT THE DAWN OF A NEW GLOBAL ETHICS

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Some provocative thoughts for ICOFOM 2010

Throughout the years, much has been said I ICOM about museums and their importance as guardians of cultural heritage; and in recent times, much is being said about the ethical relevance of museums for the enhancement of intercultural dialogue. Those ideas are an important part of our personal beliefs and concerns, and contribute as a steady framework for our professional practice. Yet they seem to be always new, and bring an everlasting glow that makes us believe that our work in the museum field has a special kind of significance.

Commitment to museums and heritage has become a significant part of our lives and has helped us become more and more engaged in the cultural and social atmosphere of our times. Even if we may still be seen by some as a strange professional community devoted to the past, or to inanimate objects, we know that this is just a part of our reality.

As ICOFOM members, we are concerned with the Museum phenomenon in all its manifestations and forms. That means we are able to perceive the Museum in flux, as a process, as a powerful instance of enhancement of the total heritage.

Museology encompasses not only the perception and study of the Museum in theory, but the set of practices that make museums a reality as guardians of the total heritage. Museum professionals are thus assigned a very special kind of responsibility, that of accepting different world views and developing narratives that meet the diverse approaches of reality which represent all kinds of communities and societies, in all times and everywhere.

We must try to enhance the difficult balance between tradition and development, giving special emphasis to creativity, emotional intelligence and discovery. This requires a lot of concern for difference, as well as a very special capacity to connect with the Other and to find means and ways of improving tolerance among people, stimulating social and cultural inclusion, with total respect for the Other's limits and perspectives.

The theme chosen for this year's General Conference, to be held in Shanghai in November, is Museums for Social Harmony. This is a very important theme both for ICOM and for the international museum community, since it puts a special emphasis on the concept of harmony, something for which all individuals strive. As our Chinese colleagues have already said, the idea of social harmony reflects the relationships in the museum world, putting the social function of museums under a special highlight. It includes the care for the natural and the social environments, as well as respect for the different human cultures, it also reflections the actions taken concerning modernization, globalization and the ways by which such issues are addressed by contemporary societies and by contemporary museums.

Within this framework, ICOFOM will make a specific approach to the restitution of cultural heritage. From the point of view of applied museology, this has to do with the deaccessioning and alienation of cultural property, with all the delicate, complex technical and ethical aspects that such issues encompass. Recognizing that important cultural objects, incorporated as part of museum collections, may (or must) be restituted to their cultures of origin or to their descendents, is an act of courage and modesty. It requires the recognition and acceptance of the fundamental rights of every social group to the representations of their own culture, as well as a strong will to promote historical revisions of the processes through which such objects were acquired or simply taken by some cultures from others. There is no possible harmony within social and cultural abuse; as professionals we know how much this has to do with the concept of heritage and the development of museums.

From the point of view of theoretical museology, we must remember that the concept of restitution encompasses not only material objects or pieces of land, but mainly the feelings, thoughts and beliefs that are also part of human heritage. Moreover, theory reminds us that land, monuments and objects physically impersonate that which some cultures name as 'the soul of things'.

Restitution of cultural property is thus an act of giving back significant parts of the soul of cultures. It is an open hand towards the Other, a symbolic act that unveils the will to develop intercultural dialogue and establish new forms of relationships among cultural groups. It represents the capacity of our museum community to develop a post-colonial, post-dictatorial approach to culture – and to understand that it takes two sides to build a cultural dialogue. It reminds us that, together with material property, a lot more will be restituted: the intangible heritage of specific groups.

Restitution is just one side of the movement: on the other side, there is an important moment of cultural recovery, of regaining cultural pride and confidence. It is an act of re-empowerment – of rebuilding dreams and hopes in a better future: of recovering the capacity to raise voices in autochthonous languages. It has to do with the freedom to become complete human beings.

Museology can participate in the movement for social harmony by helping museum professionals make use of the museum phenomenon in all its manifestations, to help societies step forward towards another phenomenon: that of cultural tolerance, and in this environment museums must work in all possible ways to help human societies to live to their fullest.

MUSEOS, MUSEOLOGÍA Y RESTITUCIÓN DEL PATRIMONIO CULTURAL EN LOS ALBORES DE UNA NUEVA ÉTICA GLOBAL

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Algunos pensamientos provocativos para el ICOFOM 2010

A través de los años, mucho se ha dicho en ICOM sobre los museos y su importancia como guardianes del patrimonio cultural. Mucho se dice también en los últimos tiempos sobre la pertinencia ética de los mismos para la significación del diálogo intercultural. Estas ideas, constituyen una parte importante de nuestras creencias e inquietudes que contribuyen como un marco estable a nuestras prácticas profesionales. Sin embargo, parecieran ser siempre nuevas y portadoras de una perpetua luminosidad que nos hace creer que nuestro trabajo en el campo museal tiene un especial significado.

El compromiso para con los museos y el patrimonio se ha convertido en una parte significativa de nuestras vidas y nos ha ayudado a involucrarnos cada vez más en la atmósfera social y cultural de nuestro tiempo. Aún cuando todavía somos vistos por algunos como una extraña comunidad profesional dedicada al pasado o a los objetos inanimados, sabemos que esa es sólo una parte de nuestra realidad.

Como miembros del ICOFOM estamos preocupados con el fenómeno museo en todas sus formas y manifestaciones. Esto significa que somos capaces de percibir al museo en fluctuación, como un proceso, una poderosa instancia de la esencia del patrimonio total.

La Museología no sólo incluye la teoría museal, sino también el conjunto de prácticas que hacen del museo una realidad, como guardián del patrimonio total. A los profesionales de museos se les asigna una responsabilidad muy especial: la de aceptar diferentes visiones del mundo y desarrollar narrativas que vayan al encuentro de las diversas aproximaciones a una realidad representada en todo tipo de comunidades y sociedades, en todos los tiempos y lugares, en todas partes.

Debemos tratar de realzar el difícil balance entre tradición y desarrollo, poniendo especial énfasis en la creatividad, la inteligencia emocional y los descubrimientos. Esto requiere una gran dosis de interés por la diferencia, como así también una capacidad muy especial para relacionarse con el Otro, encontrar la manera y los medios de mejorar la tolerancia entre los pueblos, estimulando la inclusión social y cultural, con total respeto por los límites y las perspectivas del Otro.

El tema elegido este año para la Conferencia General, que será llevada a cabo en Shanghai el próximo mes de noviembre es Museos para la Armonía Social. Es éste un tema muy importante tanto para el ICOM como para la comunidad internacional de museos, dado que pone especial énfasis en el concepto de armonía, algo que buscan todos los individuos. Como ya lo han expresado nuestros colegas chinos, la idea de armonía social refleja las relaciones en el mundo de los museos, destacando especialmente su función social. Incluye el cuidado del entorno natural y cultural como

así también el respeto por las diferencias culturales. Refleja también las acciones que conciernen a la globalización y modernización y los caminos utilizados por las sociedades y los museos contemporáneos. Dentro de este marco, el ICOFOM procurará realizar una aproximación específica acerca de la restitución del patrimonio cultural.

Desde el punto de vista de la Museología aplicada, esto está relacionado con la alienación de los bienes culturales y con los delicados y complejos aspectos técnicos y éticos que involucran el asunto en cuestión.

El hecho de reconocer que importantes objetos culturales –incorporados como parte de las colecciones del museo- debe (o deberían) ser restituidos a sus culturas de origen o a sus descendientes, representa un verdadero acto de coraje y modestia. Requiere el conocimiento y la aceptación de los derechos sociales de todo grupo social a la representación de su propia cultura, como también el fuerte deseo de promover la revisión histórica de los procesos a través de los cuales tales objetos fueron adquiridos o simplemente tomados de algunas culturas para ser transferidos a otras. No hay armonía posible en el abuso social y cultural; como profesionales, sabemos bien hasta qué punto esto tiene que ver con el concepto de patrimonio y el desarrollo de los museos.

Desde el punto de vista de la museología teórica, debemos recordar que el concepto de restitución incluye no sólo los objetos materiales, sino principalmente sentimientos, reflexiones y creencias que también son parte del patrimonio de la humanidad. Además, nos recuerda que el territorio, los monumentos y los objetos personifican físicamente aquello que algunas culturas han dado en llamar “el alma de las cosas”.

La restitución de bienes culturales es, por lo tanto, un significativo acto de devolución del “alma de las culturas”. Es tender la mano hacia el Otro, es un acto simbólico que devela el deseo de desarrollar el diálogo intercultural y establecer nuevas formas de relación entre los diferentes grupos culturales. Representa la capacidad de nuestra comunidad museal de desarrollar una aproximación post-colonial o post-dictatorial a la cultura, y comprender así que hacen falta dos partes para elaborar un diálogo cultural. Nos recuerda que junto con el patrimonio cultural es mucho más lo restituido: El patrimonio intangible de grupos específicos.

Por una parte la restitución es tan sólo una faceta del movimiento; por la otra, surge el importante momento de la reconciliación, decisivo para la recuperación de la confianza y el orgullo cultural. Es un acto de otorgamiento de poder, de reconstrucción de sueños y esperanzas para un futuro mejor; es elevar las voces en lenguajes autóctonos. La posibilidad de desarrollarse en plenitud como seres humanos tiene que ver con la libertad de actuar con dignidad y con el orgullo de sus propias raíces culturales.

La Museología puede participar en este movimiento para la armonía social ayudando a los profesionales de museos a hacer uso del fenómeno museo en todas sus manifestaciones para ayudar a las sociedades a dar un paso adelante con vistas a otro fenómeno: el de la tolerancia cultural y la reconciliación.

La nueva ética global requiere también un nuevo acercamiento al patrimonio, y en este entorno los museos deben trabajar de todas las maneras posibles para ayudar a las sociedades a vivir en plenitud.

II

Do museums have the right to deaccession?

Les musées, ont-ils le droit d'aliéner?

¿Tienen los museos el derecho de alienar?

DE-ACCESSIONING AND RESTITUTION THE INDIAN CONTEXT

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ABSTRACT

This paper, not written in a very formal and academic format, tries to focus on the current Indian situation concerning cultural policies, legal instruments, and Government emphases on the conservation of cultural heritage. Very brief elaborations are made on the historical aspects of museum development in Indian contexts. An attempt is made to elaborate upon the broader international issues affecting museums and museology regarding de-accessioning and restitution. Ethical questions are raised for close scrutiny. Deliberate gaps are kept in the text to evoke critical discussions. The paper is expected to raise many queries that may need attention.

Key words: Cultural diplomacy, restitution, illicit antiquities, cultural nationalism, cultural internationalism, cultural policy, universal museum, cultural patrimony, cultural parochialism, cultural hegemony, multiculturalism

RESUMEN

Alienación y restitución – el contexto indio

Este documento, escrito en forma no muy académica, enfoca la situación actual de la India en lo referente a políticas culturales, instrumentos legales y al énfasis gubernamental acerca de la conservación del patrimonio cultural. Asimismo, hace una breve referencia a los aspectos históricos del desarrollo de los museos en la India. Se ha procurado plantear los grandes temas internacionales que afectan a los museos y a la museología en lo atinente a la alienación y la restitución del patrimonio, pero surgen problemas éticos que necesitarían una mirada más escrutadora.

Palabras clave: diplomacia cultural, restitución, antigüedades ilícitas, nacionalismo cultural, internacionalismo cultural, política cultural, museo universal, patrimonio cultural, localismo, hegemonía cultural, multiculturalismo.

RÉSUMÉ

Aliénation et restitution: le contexte indien

Cette intervention, rédigée dans un style qui n'est ni formel ni académique, passe en revue la situation actuelle des politiques culturelles, leurs instruments juridiques, et l'importance accordée par les gouvernements à la préservation de leur patrimoine culturel. De très brèves explications sont faites sur l'aspect historique du développement des musées dans le contexte de l'Inde. Cela commence par une présentation brève des problèmes internationaux ayant trait à l'aliénation et à la restitution des biens, et touchant aux musées et à la

muséologie. On y est invité à un examen plus en profondeur des questions d'éthique. Des écarts sont intentionnellement laissés dans le texte afin de solliciter des discussions critiques. Le but de cette intervention est de soulever des questions auxquelles il est important de prêter attention.

Mots clé : diplomatie culturelle, restitution, antiquités illicites, nationalisme culturel, internationalisme culturel, politique culturelle, musée universel, patrimoine culturel, provincialisme culturel, hégémonie culturelle, multiculturalisme

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The basic functions of modern museums may best be described by three Cs – Collection, Care and Communication. Acquiring objects thus is a prime concern for any museum, which is, by default, a permanent institution¹. Deaccessioning or the permanent removal of objects from museum collections justifiably should not be the prerogative of the museum. Returning and restituting objects to their rightful owners also are not basically in the hands of museum authorities, especially in countries like India, where the majority of museums having very important collections are run directly by the Government, State or Central authority. Major policy decisions are taken by Government authorities in consonance with political and diplomatic necessities and the very rigidly structured legal instruments.

Historically speaking, the great problem in India has always been having plenty of cultural relics across the country. In reference here, India includes the geographical boundaries before 1947 when present India, Pakistan and Bangladesh were a unified political entity, juxtaposed with a number of culturally akin neighbouring countries in Asia. Though it is to be confessed that despite being divided by different political and social compulsions, the entire Indian sub-continent still bears a common, broad cultural identity with many local and regional variations in the same cultural matrix.

The large cultural abundance of India invited repeated invasions that took away large quantities of relics as booty. For centuries, continuous subjugation under imperialistic rulers also robbed the country of many important and representative cultural pieces most of which attained prominent places in the major museums of Europe and the U.S. Political, ethnic and military unrest also resulted in the trafficking of cultural objects to destinations outside the subcontinent.

Throughout the ages, people of diverse cultures like the Saka, Hun, Pathan, Mughal, Greek, Arabian, Persian, Portuguese, Dutch, French and lastly, British, invaded India. But instead of gobbling up the local culture, they became assimilated into the mainstream and gave birth to the unique, homogenous, tolerant, rich Indian culture. This is best expressed in the following excerpts from Visvakabi Rabindranath Tagore's famous poem *Bharat Tirtha* (2nd Stanza)²

“Keho nahin jaane kar ahwane
kato manusher dhara
durbar shrote elo kotha hote
samudre holo hara.
Hethaye arya, hetha anarya,
hethaye drabir cheen–
saka-huna dal pathan mogal
ek dehe holo leen.

¹ Article 3, Section 1 of the *ICOM Statutes*, adopted by the 22nd General Assembly at Vienna, Austria on 24 August 2007.

² *Gitanjali: Swarabitan* – 47

Paschim aaji khuliachhe dwar,
setha hote sabe aane upahar,
dibe aar nibe, melabe milibe,
jabe na phire–
ei Bharoter mahamanaber
sagartire.”

Literally translated, it means: “Unknowingly, from time immemorial, these hordes of people, perhaps responding to some primordial call, had inexorably surged to culminate in a cascade, as it were. The Aryans and the non-Aryans, the Sakas, the Huns, the Pathans and other conquistadors, traversing from the diverse corners of the globe, have all but congregated here, embodying themselves in the nation’s eternal ethos. The West has opened its frontals and is eager to share some of its choicest offerings with the rest of the world; India, too, on its part, serving as the grand confluence of this sea of humanity, cannot afford to turn its face away and has to foster this bridge of exchange and companionship, locking itself in a gracious bond of reciprocity, with one and all.”

Interestingly, the establishment of museums in India was initiated under the direct influences of the British colonialists. In 1784, the Asiatic Society of Bengal was founded in Calcutta, and there, in 1814, the society founded the Indian Museum. Besides the initiative of individual Europeans, backed by official agencies, a great impetus for the emergence of museums in the 1850’s was also due to the ‘Great Exhibition’ of 1851 in London. In 1862, the Archaeological Survey of India (ASI) was formed. Numbers of site museums were created under the aegis of the ASI. At the insistence of the Europeans, the princely states of India also started establishing museums. In 1947, along with the partition of India, archaeological and cultural divisions also occurred and important archaeological sites of the Indus and Peshawar region went to Pakistan. Again, another division occurred in 1971, when Bangladesh separated from Pakistan.

Though India does not have a clearly defined cultural policy, the Ministry of Culture, which controls most of the major museums in India, along with the Archaeological Survey of India, states³ in its Mission Statement that:

The mission of the department is to preserve, promote and disseminate all forms of art and culture. And (inter alia) Maintenance and conservation of heritage, historic sites and ancient monuments.

The Citizen’s Charter of the same Ministry sets out its Vision as:

To protect, conserve and propagate the tangible and intangible [sic] cultural heritage of India by supporting and sustaining cultural creativity and expressions, as a unifying factor within our rich diversity.

The Ministry reiterates its Mission in the Citizen’s Charter as:

- To preserve our cultural heritage by protecting the monuments, preserving the archival materials and safeguarding the classical, folk and tribal traditions.

³ <http://indiaculture.nic.in/indiaculture/index.asp> (accessed on 28.05.2010).

- To promote the diversity of cultural expressions by providing support and creating a conducive environment.
- To disseminate the creative expression of our artists through exhibitions, performances, publications and by supporting institutions and individuals engaged in the furtherance of these activities.

To be able to do justice to its Mission and Vision, the Government of India has few legal instruments at its disposal, some set up much earlier during the colonial period, while others were passed after Independence in 1947. These include, The Treasure Trove Act (1878), The Ancient Monuments Preservation Act (1904), The Ancient Monuments and Archaeological Sites Remains Act (1958), The Ancient Monuments and Archaeological Sites Remains Rules (1959), The Indian Museums Act (1961), The Antiquities and Art Treasures Act (1972) and The Antiquities and Art Treasures Rules (1973).

The Treasure Trove Act (amended up to 1949) deals with 'treasure', i.e., anything of any value hidden in the soil, or in anything affixed thereto. The Ancient Monuments Preservation Act (again modified up to 1949) defines 'monuments', 'sites', etc., and provides for the preservation of ancient monuments, for the exercise of control over trafficking in antiquities and over excavations in certain places, and for the protection and acquisition, in certain cases, of ancient monuments and of objects of archaeological, historical or artistic interest. The Ancient Monuments and Archaeological Sites and Remains Act became effective on 29th August 1958. According to the Act, ancient and historical monuments, sculptures and other like objects, and archaeological sites and remains, are protected and preserved. Archaeological excavations are regulated and are of national importance. The Antiquities and Art Treasures Act came into force on 9th September 1972. This Act regulates the export and trade in antiquities and art treasures, and prevents the smuggling of and fraudulent dealings in antiquities and ancient monuments. Moreover the Indian Constitution states that:

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same⁴, ...

and defines that,

It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture.⁵

Above all, being an active member of UNESCO, India is a signatory to all of the Conventions, including the important Hague Convention (1953), in addition to other major ones. Sarkar⁶ elaborately discusses these instruments under the heading of 'Protection of Movable Cultural Property'.

Interestingly enough, all the legal instruments referred to here essentially deal with the acquisition of antiquities and art objects, address illicit trafficking, but are almost silent on the issues of the return of cultural heritage. It may be presumed that the issues of repatriation, restitution, cultural patrimony, etc. did not come up while these were being

⁴ Article 29 of the Indian Constitution.

⁵ idem

⁶ Haripada Sarkar, *Museums and Protection of Monuments & Antiquities in India*, Delhi, Sandeep Prakashan, 1981, pp. 63 – 81.

enacted. But it would be unfair not to admit that the Indian Constitution could foresee long ago (in 1950) the importance of preserving individual cultural heritage and incorporate provisions (two cited above) to maintain social and cultural harmony.

It might be quite clear from the above discussion that Indian Museums remain so far grossly unperturbed by the recent global stir on the issue of the return of cultural heritage. What could be the reasons? Are Indian museums oblivious to the major concerns that rock the museum community at large? Are they not giving proper cognizance to the provisions in the ICOM Code of Ethics⁷ for the disposal of collections? The answers are very simple, as enumerated at the very beginning in the quotation from Tagore. India believes in so-called cultural internationalism, not in narrow cultural nationalism (Claire Blakey⁸ discussed these terms, along many other important related issues). Indian museums understand the ethos of the cultural identity of certain ethnic groups entwined with particular objects and related other sensibilities. Indian museologists agree with the concept of universal heritage and do not believe in cultural parochialism and cultural hegemony.

It is true that de-accessioning is not on the priority list of Indian museums, except in unavoidable circumstances. It is also true that the museums in India are fully aware of the complexities relating to restitution, establishing patrimony, the de-contextualisation that occurs during the musealisation process, the changing socio-political situations, and the efforts needed to pursue cultural diplomacy. For example, the Indian Museum, Kolkata, possesses a number of Gandhar artefacts; if restituted, where these would be placed? Ancient Gandhar, placed on the border of Afghanistan and Pakistan, no longer exists. Probably these artefacts would not evoke any emotional response in the present inhabitants. Can the original contexts, complete with the intangibilities, be returned? If not, the whole exercise would be futile. Ethically, it is not justified to reconstitute, at least in the Indian context. One cannot rewind the clock of history.

⁷ *Removing Collections*, ICOM Code of Ethics for Museums, Paris, ICOM, 2006, pp. 4 – 5,

⁸ Clare Blakey, *A Cultural Homecoming? Restitution Demands from the Italian Ministry of Culture to Two American Museums*, *Museological Review*, School of Museum Studies, University of Leicester, Issue 14, March 2010, pp. 1 – 15.

ON THE ISSUES OF DEACCESSIONING AND REPATRIATION OF MUSEUM COLLECTIONS

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ABSTRACT

Museums should be living organisms which feed as well as reject. The removal of objects from museum collections, a highly professional action, is “deaccession”. Accession (acquisition) and deaccession are two communicating vessels at both end of the concept, a vision that includes the entire collection. Objects can be removed from collections for the following reasons: 1) it has no use, it is irreversibly damaged or physically dead. 2) The object is in excess of the collection, it does not fit into the system of the collection and lowers the collection’s value. Sometimes the object is removed for reasons of restitution or return to rightful owners, but although this issue is marginal among the reasons for deaccessioning, it is a sensitive one. Many conditions exist that oppose removing collections from a museum, such as restrictions in museum legislation, and the universal value of collections. From a museological standpoint we can ask: 1. What are universal values, and 2. How was the collection built, since in a perfectly coherent collection each object fulfils a need, and as such its removal can degrade the collection as a whole.

RÉSUMÉ

Sur le problème de l’aliénation et de la restitution des collections de musée

Le musée doit être un organisme vivant qui en s’alimentant doit aussi expulser. Pour désigner l’élimination des objets des collections, une action hautement professionnelle, j’emploie le terme “désacquisition”. L’acquisition et la désacquisition sont des vases communicants, les deux extrémités du processus de la conceptualisation. La création des collections par des musées n’est pas seulement une activité de collectionneur. Il s’agit-là d’une création artistique dont la valeur spécifique est dépendante de l’ensemble de la collection sur l’évolution de la nature ou la société, et de sa capacité d’en faire passer le message. On élimine les objets de collection notamment pour des raisons suivantes : 1) L’objet est sans utilité, s’il est irréversiblement abîmé ou physiquement mort. 2) L’objet est en surplus, s’il ne correspond pas au caractère de la collection et la dévalorise. Une bonne partie d’objets de collection détenus par les musées sont inutiles. Leur impact sur la sensibilisation culturelle est minimal, leurs frais d’entretien non-négligeables. Parfois, on élimine pour des raisons des restitutions et rapatriements, c’est-à-dire à base d’une décision de justice ou des lois passées. Au fait, la question des restitutions des collections est, de point de vue quantitatif, marginale, mais il s’agit d’un problème extrêmement sensible. Le rapatriement, c’est le retour de l’objet à son pays d’origine, la restitution, c’est le retour de l’objet capturé à leur ancien propriétaire (à ses héritiers). Les musées entrent dans les relations

extrêmement compliquées qui sont, de point de vue de la muséologie, insolubles. Les solutions apportées ne devraient pas provoquer de nouvelles injustices. En ce qui concerne le rapatriement, on doit quitter l'idée d'une limite temporelle communément reconnue. On entend de plus en plus fréquemment les voix encourageantes les restitutions. À quoi s'oppose clairement la "Declaration on the Importance and Value of Universal Museum".

Approche muséologique :

1. La mise en question des termes comme par exemple "valeurs universelles". Si l'humanité avait certaines valeurs culturelles universelles, peu importerait le lieu de dépôt de leurs porteurs.
2. L'examen notamment des questions de la création des collections. Dans une collection parfaitement composée, chaque objet concret devrait être irremplaçable. Son rapatriement potentiel priverait alors la collection non seulement de l'objet en soi, mais elle devrait, en fait, endommager toute la capacité de la collection à faire passer le message, c'est-à-dire en quelque sorte "abîmer" aussi les autres objets faisant partie de la collection.

RESUMEN

Acerca del problema de la alienación y la repatriación de las colecciones de museos

Cada museo tiene que ser como un organismo vivo; si algo recibe algo tiene que eliminar. Para efectuar bajas de objetos de las colecciones, una actividad sumamente profesional, utilizo aquí el término de "cesión" (deaccession). La adquisición y la cesión son como dos vasos comunicantes; los lados opuestos de un proceso de concepción. La formación de colecciones que se realiza en museos no es simplemente una recogida de objetos. Es ante todo la creación de un valor específico que es el valor declarativo de toda la colección sobre la evolución de la naturaleza o la sociedad. Los objetos de colecciones son dados de baja ante todo por los siguientes motivos: 1) Un objeto es inútil si está dañado irreparablemente o llegó al fin de su vida física. 2) Un objeto es redundante cuando no corresponde a la naturaleza de la colección y no la valoriza. Muchos objetos de colecciones se encuentran en los museos inútilmente. Su influencia en la creación de cultura es mínimo y los costes de su mantenimiento no son bajos. De vez en cuando damos de baja objetos por motivos de restituciones o repatriaciones, o sea, sobre la base de una decisión jurídica o conforme a las leyes vigentes. El problema de restituciones de colecciones es en realidad marginal en cuanto a la cantidad de colecciones devueltas, sin embargo se trata de un problema muy delicado. La "repatriación" es devolver un objeto al país de su origen; la "restitución" es devolver los objetos obtenidos como botín a su antiguo propietario (o a sus herederos). Los museos se encuentran en una situación muy complicada e insoluble desde el punto de vista de la museología. La solución de cualquier problema no debería provocar otras injusticias. Para la repatriación debemos respetar un límite de tiempo generalmente aceptado. Poco a poco ganan fuerza los clamores para un mayor ánimo a realizar restituciones. En evidente oposición a eso se encuentra la *Declaration on the Importance and Value of Universal Museum*

El enfoque museológico

1. El cuestionamiento de términos como, por ejemplo, "valores universales". Si el género humano tuviera ciertos valores culturales universales, poco importaría el lugar de depósito de sus portadores

2. El examen de las problemáticas para la formación de colecciones. En una colección perfectamente integrada cada objeto concreto debería ser irremplazable. Su repatriación potencial privaría a la colección no sólo del objeto en sí mismo, sino que debería, de hecho, dañar la capacidad de la colección de enviar el mensaje es decir, “estropeando” también otros objetos de la colección.

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Providing a collection is considered one of the principal characteristics of a museum, collection building is one of the most important tasks that typify museum work. Rather than being the objective itself, however, a collection forms the basis for the culture creating action of the museum. Collection building includes a number of thesaurus type processes such as filing, inventorying, depositing, conserving, restoring, preparing, and protecting against theft and against damage caused by different factors, beginning with light and ending with biological pests, etc. All this, however, is preceded by a relatively complex response to a simple question of what should and what, in fact, should not be accepted into the museum as based on a well-thought out primary selection process. This issue is of utmost significance and is far from being handled by the majority of museums. As a matter of fact, careful selection of an object or other documentary material for a museum is not the end of the process at all, contradicting the current practice in many museums. Many a curator behaves as if the collection items acquired for their museums yesterday, ten years ago or a hundred years ago automatically became part of a temple of eternity or, if you like, a lasting cornerstone of cultural heritage. We should keep questioning whether collections or rather, their individual parts belong to a museum or not. Secondary selection is a term that can be used for this activity. A museum must be a living organism and once it takes in, it must also remove. The term I use for removing items from collections, for whatever reasons, is deaccessioning. Whole bibliographies have been compiled on the topic of deaccessioning, but for a few exceptions, unfortunately, all the works have been written in English.¹ Removing an item from a collection may not necessarily mean removing the item from the museum's assets. From the collection building point of view, I do not set up a conflict between the issues of object receiving (accessioning) and object removing (deaccessioning) as if they are two opposite poles. They are communicating vessels; the counterpoints of a homogenous, conceptual process.

Museum collection building activities are not mere collecting, i.e. gathering objects which are valuable or which attract the “collector’s interest”; the activity generates specific value which consists of the information capacity of the **whole** collection with respect to the evolution of nature or society. “The value of a set of collected objects – financial, cultural or scientific – is more or less the sum of the values of the individual objects, whereas building a collection generates a value which is quite new. First, by the fact that the values of the individual objects in the collection are given significance within the collection, having been selected with knowledge of a wide context, second by having been preserved with the accompanying records, which greatly enhances the informative capacity of the collection. The cultural value of the collection is thus increased by the specific activity of the collector – the curator – which is a value in itself. In addition to documenting the “value of creating”, the collection also documents the “creative value”.² Unfortunately, this basic fact is still misunderstood by many museums and a number of museologists.

¹ http://icom.museum/biblio_deaccessioning.html

² Jiří Žalman, *Příručka muzejníková I*, Prague, Asociace muzeí a galerií ČR, 2002.

What are the reasons for excluding objects from a collection? I believe there are two principal reasons: A - uselessness and B – excessiveness.

- A. An object is useless if it is irreversibly damaged or if its physical existence has come to an end. In other words, the museum has cared for the object for so long and so “well” that it has become rotten, totally corroded or destroyed by woodworm. With the assistance of my students writing their BA and MA theses, I have been conducting a survey in the Czech Republic according to which this seems to be the most frequent cause of removing objects from collections. The survey has also made it increasingly clear that the number of objects Czech museums acquire every year is several times greater than the number of objects that have been removed. If this is done in order to increase the quality of the collections, we could hardly object. I am afraid that in many instances this is not the case.
- B. The object is in excess if it does not correspond to the nature of the collection and does not add value to it. Such objects should be exchanged or sold.

Sometimes we exclude objects for other reasons. An object may be found to be non-existent in the museum and there may be no reasonable grounds to believe that it was stolen. For instance, a mistake may have been made in the museum’s records in the past. Unfortunately, the apparently simple question of who should be responsible for deaccessioning has a wide range of insufficient or even quite wrong answers. An exemplary case was the *Disposal?* exhibition set up by the University Museum in London in 2009. The exhibition contained many objects about which the curators questioned their validity of belonging in the museum collections. But it was the visitors to the exhibition who were to decide, with their “qualified” votes, what would remain in the museum and what would not!³ I believe that there should be limits set on getting the museum visitor involved (in new museology or ecomuseums) in the essence of museum work, which the building of collections undoubtedly is. If we generally accepted the active approach of the public to collection building, we would have to resign to any museological or theoretical approaches in our work. What is more, we would question the capability of the curator in his or her original field of expertise, i.e. his or her being a good zoologist, ethnologist, and the like. In contemporary museology, these issues are addressed by many authors using concepts such as participatory collecting, community-led collecting, co-creation, co-curatorship, and social curatorship. All these approaches should be very strictly evaluated as to whether they are mere collecting or a well-thought collection building activity.

I would like to use one example to demonstrate the complexity of the issue of deaccessioning. There is a museum with a large collection of coins in a Czech city which has been associated with coin minting since the Middle Ages. The curator of the collection, a numismatist and museologist in one, has made a qualified estimate in which approximately 2,000 coins in the collection are quite useless. They are damaged, there are too many duplicates, and each of them can be replaced by a number of others in a better shape. In spite of that, those 2,000 coins are still part of the collection. The point being is that the curator is afraid of being blamed for “cultural” barbarism if he came up with a proposal for deaccessioning the coins from the collection... It is here that I see the pitfall of an insufficient theoretical and museological grasping of the given issue. This goes hand in hand with the unsatisfactory training of museum workers. Museum practitioners enrolled in departments of museology or different training courses, often call for a maximum course work focus on practical matters. Yet, I can hardly imagine a better example than this, when a correct

³ <http://www.time.com/time/world/article/0,8599,1936768,00.html?iid=tsmodule>

theoretical grasping of the subject of deaccessioning touches the very essence of the most practical and often the most painful issue of museum practice.

According to the Central Register of Collections kept by the Ministry of Culture of the Czech Republic, there are approximately 18.5 million collection items in Czech museums. However, some of them may consist of more than one object (single items). I mean, cases in which one bag (i.e. one object) may contain a number of fragments from an archaeological site, one herbarium may contain many pressed flowers, one vial may contain a great amount of entomological material, etc. In other words, the number of objects (single items, fragments) may be three times as high, amounting to, say, 60 or 65 million. It has not been and will not be counted in the Czech Republic in the near future. If only 10% of collections in museums were unnecessary, it would equal 1.85 million collection items, i.e. some 6 or 6.5 million objects (single items). Their culture-creating ability is minimal. On the other hand, every year their keeping, inventorying and conserving costs are high and take a great amount of work that could otherwise be spared.

According to some estimates, if the acquisition of museum items for Czech museum collections continues without change, more than one billion objects (single items, fragments⁴) would accumulate over a period of 130 years. This number is so absurd and the keeping of one billion objects so unrealistic that it deserves very deep reflection. Here I mean museologists in the first place, and museum practitioners coming a close second.

If we do not start tackling the problem, it will be settled once and for all in a drastic, immediate and of course, unqualified manner by a single stroke of a clerk's pen. That would be too bad and I do not think that this is something that only threatens Czech museums. Some time ago, I raised the point that we have had quite a number of different political regimes over the last 100 years: the Austro-Hungarian Monarchy up to 1918; an independent Czechoslovakia 1918-1938; the so called Second Republic 1938-1939; the Protectorate of Bohemia and Moravia 1939-1945.⁵ After 1945, there was a three year period of limited yet free development, followed by more than 40 years of rule by a single establishment party. Since 1989, there has been free social and economic development. For all of this time, museums have complained about the lack of means to care for their collections. But was it only those regimes to blame? Or was it the disfavour of top government officials? Or has it been museum practitioners and their impulsive approach to selection and deaccessioning who also share in this? I do not see any new paradigm of museology as a scientific discipline in insufficiently founded selection or deaccessioning. What I see in it is a failure to understand, to apply and often even to accept current museological postulates, and in some extreme examples, a failure to act in accordance with common sense.

Sometimes we deaccession items from collections as a result of restitutions and repatriations, i.e. on the basis of court decisions or other generally binding rules such as the applicable laws. This problem was highly topical in my country, especially in 1989 when museums returned collections which had been, in 1948, confiscated by the state from the so called "class enemies" such as the church. The Prague Jewish museum was denationalised as a whole. Individual items were returned also to Russia (e.g. *Portrait of a Peasant* by Ivan Nikolayevich Kramskoy). What made restitutions difficult for Czech museums was mainly the destruction of a number of important

⁴ Jiří Žalman „Muzea ve 22. století aneb pohled do křišťálové koule“, in: *Věstník Asociace muzeí a galerií ČR*, no. 6, 2008, p. 11.

⁵ Jan Dolák, Jan, "Museums in Modern Era", in: *Museums in Transformation Process*, Brno, Masaryk University, 2004, p. 11-16.

buildings. Museum collections as such were not significantly affected. As a matter of fact, in the long run, the issue of the restitution of collections is marginal from the point of view of quantity. In the vast majority of cases, the reasons for deaccessioning are quite different.

On the other hand, we must admit that repatriation (restitution) is an extraordinarily sensitive issue, closely observed by the public and the media. Repatriation (from Late Latin *repatriare*) is the process of returning a person back to their place of origin or citizenship. This includes the process of returning refugees or soldiers to their place of origin after a war. Cultural repatriation is the return of cultural objects to their country of origin.

Hence the word is associated only with returning to the homeland, fatherland (or perhaps we can say motherland), but generally, to some place with a country, with a space, with a land. Therefore, the Elgin Marbles can be repatriated.

Restitution means returning something to original state (condition or situation). After 1989, the Czech museums undertook the restitution of objects and other materials which had been stolen by the Communist regime during the period 1948 to 1989. I am now talking about things which have never left my country (homeland).

If an original object cannot be returned (for instance because it does not exist anymore), then we speak of reparation (war reparations) or of reimbursement (refund). Many articles have been written about restitution and repatriation and even whole monographs have been published on the topic.⁶ This brings about the issue of the extremely complex relations which were generated in the past by wars, treaties, agreements, animosity among nations, misunderstandings between majorities and minorities, tension between former colonies and the imperialist powers, etc. Museology has no means to tackle such issues. Let us be clear about the fact that there will never be a time when all cases of injustice have been settled and that compensating an old injustice should never result in a new one.

Questions related to the restitution of ecclesiastical property (church buildings, orthodox icons) is today a frequent topic of discussion in both the Czech Republic and the Russian Federation and responding to these exceeds the scope of this paper. In my opinion, icons were not primarily made to be museum exhibits like almost all of those objects that are kept in museums. They were made for religious purposes, for being used, and this included their potential exposure to danger, such as the light of the candles of the believers. Drastic and anti-religious measures at the time of the Soviet regime can hardly be interpreted as a premeditated collecting activity. From this point of view, the claims of the church are justified. On the other hand, more attention should be given to the question why the church wants these objects at all? Bearing in mind that they form a part of the Russian national heritage, culture, and memory, extremely strict restrictions should be imposed on the sale of icons abroad in the case of their restitution.

Does the church want to sell the returned objects on the domestic market or use them for religious purposes? Psychology and also the theory of management recommends that any conflict should be resolved from the point of view of attitudes rather than that of interests. That is to say, not insisting on one's attitudes (I want to get something back and the other party refuses to return it to me), but examining the interests of both

⁶ Beat Schönenberger, *Restitution von Kulturgut: Anspruchsgrundlagen - Restitutionshindernisse - Entwicklung*, Bern, Stämpfli Verlag, 2009.

the parties, i.e. why one party claims something and the other refuses to satisfy the claim.

This means that we will probably have to be resigned to any generally recognized time limit for repatriation. There is the Greek claim for the restitution of the Elgin Marbles brought to Great Britain in 1803. But we can also look at 19th century central Europe. Until 1918, my nation lived within the Austro-Hungarian Monarchy and museums in Vienna are full of archaeological finds, for instance, from Moravia. Yet, I have never heard any claims for them to be returned from Austria to the Czech Republic. As for the Czechs, the time limit coinciding with the period of Thirty Years' War when Prague Castle was plundered by Swedish troops could be acceptable, but only so long as nobody raises the issue of almost 100 German museums, a number of castles and chateaus and other property expropriated from the Germans in 1945. In this respect, the year 1945 is absolutely unchangeable in my country, the reason why issue of Elgin Marbles and the year 1803 appear like remote antiquity to us.

What is the situation in the museum world? As far as restitution is concerned, there is a growing call that this be seen as an act of "courage and modesty".⁷ There are also other available resources that allow for the drawing of conclusions that most authors, even though often somewhat warily, are rather in favour than against (reference the ICOM CODE of Ethics for Museums). In clear opposition is the Declaration on the Importance and Value of Universal Museums⁸ signed in 2002 by twenty directors of some major museums worldwide. The Declaration stipulated that earlier acquired objects "have become part of the heritage of the nations which house them", with which we cannot fully disagree. It also stipulates that "the sculpture of classical Greece, to take but one example, is an excellent illustration of the importance of public collecting". The authors rightly note that "each case has to be judged individually", but claim further that the "museum mission is to foster knowledge by a continuous process of reinterpretation" and that "each object contributes to that process". I believe that the museological view on collection building is somewhat different.

The above Declaration provoked a number of polemic reactions including that of the former Chairman of the ICOM Ethics Commission, Geoffrey Lewis,⁹ which I would like to try to grasp from the museological point of view. First of all, I believe, like the former director of the National Museum of Kenya, George Abundu, that the term Universal Museum itself is not bullet proof. If it is based on a structure of collections which transcends a specific country or a nation, then there are, in fact, lots of universal museums. The uninformed reader might be surprised by the great number of non European objects forming part of collections in, say, Czech museums, which have been systematically built for more than a hundred years in spite of the fact that Czechs have never conquered any foreign country or had any colonies. In such cases, the National Museum in Prague and many other similar museums would also fall in the category of a universal museum.

How to tackle the questions related to repatriation, though? The best compromise in my view is the approach of the State Museum in Berlin which has maintained possession of claimed objects, but has lent them to the places of their origin on a long-term basis. Perhaps this example should be followed in the case of the Elgin Marbles so often mentioned in the media. I appreciate that a solution like that may not always

⁷ Tereza Scheiner, "Museums, Museology and the Restitution of Cultural Heritage at the Dawn of a New Global Ethics", in: 33rd ICOFOM Annual Simposium, Shanghai, 2010, in press.

⁸ <http://icom.museum/universal.html>.

⁹ Geoffrey Lewis, "The 'Universal Museum': a case of special pleading?" in: Hoffman, Barbara (ed), *Art and Cultural Heritage: Law, Policy and Practice*, New York, Cambridge, 2006, p. 379-385.

be easy. Where should and could museology help in opening (or perhaps closing, in some cases) the Pandora's box of repatriations?

1. The frequently used terms of "universal values" or "cultural heritage of humanity" show their weak points in confronting the issues of repatriation. If humanity had any universal cultural values, then the place for keeping their bearers would be irrelevant. Yet this is not the case. I believe that, for instance, objects from an African country kept in the Louvre for a hundred, two hundred or more years represent the cultural memory of that African country and, apparently, of France too. An interesting debate took place between a representative of a big museum in a major European country and a representative of an African country at a major museological conference. The European suggested that the original African object should be kept in Europe and "returned" to the place of origin on CDs and by means of the Internet. The African rightly objected that "returning a picture" is not the same as returning an object of cultural heritage, not speaking of the extremely limited access of African households to the Internet and CD players.

2. From the museological point of view, we should primarily study the issues of collection building. As a matter of fact, a specific object should be irreplaceable in a perfectly designed collection. Apart from impoverishing a collection as such, its eventual repatriation would diminish the value of the collection as a whole, that is, cause "damage" even to the objects that the collection still contains. Repatriation should not be the option in such case. If the object is just one of the many documents of a specific place, period, etc., no matter how valuable it is, its eventual repatriation will not damage the collection. In such a case, however, the question should be raised whether the object will also play an homogeneous role in the "new" collection or whether it will become a mere solitaire, irrespective of the value it has.

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OUT OF NEVERLAND: TOWARDS CONSEQUENTIALIST ETHICS OF ALIENATION¹

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ABSTRACT

One of the main problems in the discussion on the disposal of collection objects is that ethical conduct is understood only in terms of deontological “ethics of conviction”, i.e. in the sense of adherence to clearly defined and unconditionally valid rules. From this perspective, any deviation from the principle of inalienability must automatically appear to be a concession to economic or pragmatic, in any case, to non-ethical demands.

The following paper pleads in favour of tackling the problem of deaccessioning not solely from the perspective of deontological ethics, but also from that of “ethics of responsibility”. From this point of view, there can indeed be cases where the disposal of collection items is regarded as an ethically sensible conduct. With regard to the preservation of cultural goods for future generations, it can possibly be more ethical to alienate insignificant items than not to even acquire important objects due to lack of resources. In particular, this has to be considered against the background that almost the whole material world today has the potential for musealisation.

However, it has to be granted that the consequentialist approach to alienation is less clear-cut than the deontological view. But, as a basis for action, which should produce the best possible results for future generations, a stronger regard for ethics of responsibility promises to be more consistent and more effective.

RÉSUMÉ

Sortir du pays du Plus jamais: vers une éthique conséquentialiste de l'aliénation

Un des problèmes majeurs dans le débat sur la cession d'objets de collection a trait au fait que la notion de comportement éthique est comprise uniquement au sens d'une “éthique de conviction” déontologique, c'est-à-dire: dans l'acceptation de l'observation stricte de règles clairement définies et valables de manière inconditionnelle. De ce point de vue, toute divergence d'une de ces règles doit passer automatiquement pour une concession à des exigences économiques ou pragmatiques – en tout cas à des exigences non-éthiques.

Le présent article plaide pour que le problème de la cession ne soit pas considéré uniquement sous l'aspect d'une “éthique de conviction” mais aussi sous celui d'une “éthique de responsabilité”. De ce point de vue, il peut y avoir

¹ The author uses the word “alienation” in the legal sense of the transfer of property, whether voluntary or involuntary, from one entity to another [editor's note].

² Until the end of August, 2010: Museum zu Allerheiligen Schaffhausen, Switzerland.

des cas dans lesquels la cession de biens de collection doit être estimée comme un comportement correct sur le plan éthique. Dans l'optique de la préservation de biens culturels pour les générations futures, il peut dans certaines circonstances être plus moral d'aliéner des objets d'importance mineure que de ne pas acquérir des objets importants par manque de ressources. En particulier, il convient de réfléchir à cela en tenant compte du fait que, de nos jours, la quasi-totalité du monde matériel a le potentiel d'être placée dans un musée. Il faut certes admettre qu'une éthique conséquentialiste de l'aliénation est définie moins nettement qu'une éthique déontologique. Néanmoins, en tant que fondement d'une manière d'agir qui doit induire des suites aussi positives que possible pour les générations futures, une prise en compte de réflexions axées sur une éthique de responsabilité promet d'être plus conséquente et plus efficace.

RESUMEN

Más allá del país de Nunca jamás: hacia una ética racional de la alienación

Uno de los problemas principales en el debate sobre la cesión de objetos de colección es que la noción de comportamiento ético se entiende únicamente como una "ética de convicción" deontológica, es decir, como el estricto cumplimiento de reglas claramente definidas y de vigencia incondicional. Desde este punto de vista, toda digresión de una regla debe automáticamente parecer una concesión a exigencias económicas o pragmáticas, en cualquier caso nunca de tipo ético.

El presente artículo aboga por que el problema de la cesión no sea considerado únicamente desde la perspectiva de la "ética de convicción", sino asimismo desde el punto de vista de una "ética de la responsabilidad". Desde esta óptica pueden darse casos en los que la cesión de bienes de colección deba ser considerada como un comportamiento correcto en sentido ético. Con vistas a la conservación de bienes culturales para las generaciones venideras puede ser, en ciertas circunstancias, más moral desprenderse de objetos de escasa importancia que no adquirir otros relevantes por falta de recursos. Conviene reflexionar al respecto, considerando sobre todo que en la actualidad casi la totalidad del mundo material tiene el potencial de ser exhibido en un museo. No obstante, hay que admitir que la ética consecuencialista de la cesión está menos claramente definida que la ética deontológica. Aun así, como base de actuación que conlleve las consecuencias más positivas posibles para futuras generaciones, conceder una mayor importancia a las reflexiones de una ética de la responsabilidad promete ser una actitud más consecuente y eficaz.

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Discussing the problem of deaccessioning in terms of ethics of responsibility leads to the conclusion that the disposal of museum objects can be a sensible option in dealing with museum collections – this is the thesis of the following paper.

In the controversy about alienating museum objects, one of the misconceptions lies in locating the reasons for disposing of collection objects *a priori* in the area of economic or pragmatic considerations. According to this view, alienation is basically motivated by financial or practical concerns: valuable works of art are sold to reduce museum deficits, less attractive exhibits are sold off to acquire exhibition pieces more appealing to the public. While alienating museum objects is regarded as simply adapting to the

dictates of the economy, the postulate of inalienability gains, in return, the status of ethical exclusiveness: only the commitment to the everlasting retention of collection objects can claim to live up to the essential spirit of the museum. Any renunciation of the principle of inalienability must, on the other hand, be regarded as a concession to demands external to the institution. Under these preconditions, the question which the 33rd symposium of ICOFOM has selected as an issue for discussion – “Do museums have the right to deaccession?” – could be quickly answered. For, based on simple dualism “ethical constancy” versus “economic profit seeking” or, as it is called in a paper by François Mairesse, “worship of relics” versus “cult for money”³, there appears to be no other choice for the museum employee of moral integrity but the decision to care for the “eternal life” of collection objects.

Euphemisms

In relation to the “depositing”⁴ function of the modern museum as one of its essential tasks, alienating objects from a museum, needless to say, creates a conflict. Hermann Lübke's description of the museum as “a rescue institution for cultural remains from the process of destruction”⁵ not only paraphrases the role of the museum as home for those objects which have become functionless due to the process of modernisation, but also refers to the specific ethos distinctive of such a “rescue act”. The museum opposes the perishing of things, it saves objects from “death” by use and deterioration. Or, as it says in a statement paper of the ICOM National Committee of Germany concerning the disposing of collection items: “Objects in museum collections are purposely and permanently withdrawn from economic circulation in order to make them accessible to the public and preserve them for future generations.”⁶ Based on such an understanding of museum collecting, it will be difficult, if not impossible, to get rid of objects once acquired.

The extent of embarrassment of experts on the issue of alienation is manifested in certain linguistic terms relating to the procedure. The peculiar word “deaccessioning”⁷, in German “Deakzession” or “Entsammeln” (again literally translated “to de-collect”), will astound anyone who is not desensitised by the regular use of professional terminology. The negative procedure of alienation becomes in “deaccessioning” a positive action with merely a negative prefix. The term “de-ac-cessioning”, which literally means “away-to-going”, is a euphemism which describes the disappearing of museum objects not as a “leaving” but as a special form of adding. The same applies to the term “Entsammeln”, used in the German-speaking world. With it, the removal of museum pieces is very peculiarly formulated as a certain kind of collecting (which in a more abstract understanding even makes sense, as we will see later). The formation of such a paradox wording as “Entsammeln” is all the more remarkable as there is no lack of terms to describe the procedure in a factually correct way, as in German, words such as “Aussonderung”, “Abgabe”, “Entfernung” or “Veräusserung”, in English, words such

³ François Mairesse, The issue of deaccession: Five lines of thought to reflect upon, paper to the 33rd ICOFOM Symposium “A New Global Ethics for Deaccession and Return to Cultural Heritage”, Shanghai, China, 7th to 12th November, 2010, p. 5.

⁴ Gottfried Korff, “Zum Verhältnis von Deponieren und Exponieren“, in: Museumsdinge, deponieren – exponieren, Cologne, Weimar, Vienna, Böhlau, 2002, p. 170.

⁵ Herman Lübke, “Der Fortschritt und das Museum“, in: Auer, Hermann (ed.), Bewahren und Ausstellen, Die Forderung des kulturellen Erbes in Museen, report on an international symposium, organised by the ICOM National Committees of the Federal Republic of Germany, Austria and Switzerland from 13th to 15th May, 1982, Munich, New York, London, Paris, K. G. Saur, 1984, p. 237.

⁶ Positionspapier zur Problematik der Abgabe von Sammlungsgut, adopted by the board of the German ICOM National Committee on 20th September, 2004, preamble (without pagination).

⁷ ICOM code of ethics for museums, Paris, 2006, § 2.13 - 2.17.

as “removal” or “disposal” – terms which can also be found in ICOM code of ethics or used in the associations’ recommendations. (Without the prefixes “de-“ and “ac-“, French with the word “cession”, Spanish with the same word “cesión” have a term which precisely expresses the action of “going” or “moving” in describing the procedure of withdrawing collection pieces; the similar mundane term “alienazione”⁸ is used in Italian).

A euphemism such as “Entsammeln” therefore indicates how much the procedure itself is perceived as a threatening questioning of inalienable values. François Mairesse correctly points out that the discussion on the legitimacy of “deaccessioning” reminds us of the irreconcilable disputes between religious parties.⁹ To make a more current and perhaps more factual reference: similarly, it reminds us of the current debate about euthanasia and its moral validation which results in vehement approval as well as fierce opposition – a comparison to be considered again later.

Limits to growth

The above-mentioned perception of the museum as a “rescue institution” for cultural remains emphasises that museum collecting is closely connected to the process of modernisation, i.e. the permanent substitution of old for new and the consequent accumulation of progress-related antiquated material. Every new invention, every improvement in existing techniques and devices, every new cultural trend makes sure that what now exists becomes obsolete. “Only in progress does obsolescence ensue and gains in importunity, complementary to the dynamics of progress”¹⁰ – an interrelation for which the Italian author Italo Calvino found a wonderful depiction in his novel “Invisible Cities”:

The city of Leonia refashions itself every day: every morning the people wake between fresh sheets, wash with just-unwrapped cakes of soap, wear brand-new clothing, take from the latest model refrigerator still unopened tins, listening to the last-minute jingles from the most up-to-date radio.¹¹

As a consequence, however, the town depicts itself every day entirely in its refuse, which begins to spread in concentric circles like mountain chains around the town.

This is the result: the more Leonia expels goods, the more it accumulates them; the scales of its past are soldered into a cuirass that cannot be removed. As the city is renewed each day, it preserves all of it-self in its only definitive form: yesterday’s sweepings piled up on the sweeping of the day before yesterday and of all its days and years and decades.¹²

Relics, which ensue during the process of renewal, have to be dealt with in one way or the other – either we dispose of them as waste or we transfer them to the status of something worth preserving, by upgrading them to antiques or, even more radically, by converting them into museum objects. The museum protects waste-to-be just in time

⁸ Codice etico dell’ICOM per i musei, Milan, Zurich, 2009, § 2.12 - 2.17.

⁹ Cf. fn. 2.

¹⁰ Hermann Lübke, *Im Zug der Zeit, Verkürzter Aufenthalt in der Gegenwart*, Berlin, Heidelberg, Springer, 1984, p. 94.

¹¹ Italo Calvino, *Invisible Cities*, translated by William Weaver, London, Vintage, 1997 (Turin, Einaudi, 1972), p. 114.

¹² *Ibid.*, p. 115.

before its final depreciation and transfers it to that zone in which relics, as mentioned above, are “permanently withdrawn from economic circulation”¹³. The problem resulting from this interrelation is obvious: with each year our civilisation becomes older, we produce more relics which would be worthy of conservation. The progressive dynamics in development, as well as its global proliferation, exponentially increases the amount of potential museum objects. This phenomenon is reinforced by a modified understanding since the 19th century of what qualifies as being worthy of a museum. Since the Baroque idea of the valuable and exceptional collection object was replaced by the view that the museum's task is to give a reflection of the whole cultural and natural reality, all areas of life somehow suited for collection come into the focus of acquisition. And so now there is no object which basically could not be regarded as being worthy of a museum: milking chairs, party flyers, sockets, farmhouses, surfboards, snail shells, wigs ... – the whole material world has the potential for museum collection. Confronted with this explosion of potentially museum-worthy objects, real possibilities of collecting are being drastically undercut – despite a remarkable global increase in the number of museums in the 20th century. Only a small part of that which could enter a museum is actually elevated to the status of a collection object. “Collection depots are full to overfull; younger objects also need to be conserved to prevent deterioration or ruin” said Claudia Hermann in the introduction to her paper on the procedure of alienation. “After years of ‘object hunting’ in the area of collection, planning, arranging and conserving are now called for.”¹⁴ In other words: the resource museum is limited, and in consideration of this very fact, the discussion on the disposal of collection items should be conducted.

It might be tempting to put into perspective the problem of limited resources by referring to more museum founding, possible gains in depot facilities and better utilisation of existing infrastructure. And it might appear preferable to grant the issue merely pragmatic, but not ethical relevance. However, as Dennis L. Meadows, one of the protagonists in the controversy about the global “limits to growth” remarks in reference to the ethical dimension of the debate, “does it not only appear closer to reality but also borne with a more social sense of responsibility and furthermore, more useful, to investigate the possibilities of a social adaptation to earthly limits instead of simply not accepting such limits.”¹⁵

Is removal more reprehensible than non-acceptance?

Although it is not possible to state how long it will last until collections as a whole will reach the limits of their intake capacity, we must still assume that they will not continue to grow to the same extent as the amount of potentially museum-worthy objects will increase through scientific progress, technological innovation and human creativity. This means, however, that less and less future human works (and probably less and less natural scientific findings and documents) can find entry into a museum. To put it somewhat crudely: the older the world becomes, the larger is the number of human creations, the fuller are the collections and the smaller are the remaining resources. Those things which are already in a museum collection are “lucky” that they “are in”, while it will be more and more difficult for products of future generations to get hold of a place in the museum. The gap between the amount of potentially museum-worthy objects and the items actually upgraded to a collection piece has, of course, existed

¹³ Cf. fn. 5.

¹⁴ Claudia Hermann, “Sammeln und Entsammeln, Sammlungspolitik und Deakzession“, in: Im Museum, Sammeln will überlegt sein, Mitteilungen der Thurgauischen Museumsgesellschaft, no. 33, 2008, p. 104.

¹⁵ Denis L. Meadows, “Die Grenzen des Wachstums und die Planung für die Zukunft“, in: Meadows, Dennis L.; von Nussbaum, Heinrich; Rihaczek, Karl and Senghaas, Dieter, *Wachstum bis zur Katastrophe? Pro und Kontra zum Weltmodell*, Stuttgart, Deutsche Verlags-Anstalt, 1974, p. 15.

since the beginnings of the museum. However, the gap will inevitably increase as long as creative human beings continue to work and their ever-existing desire for conservation encounters a stagnating expansion of collections.

Looking at this reality makes us think whether it is correct to hold on to the strict inalienability of collection objects and therefore accept that desirable entries cannot be realised, or whether it would not be more correct to weigh up the museum value of existing and of potential objects and in certain cases, to part with existing items. The issue here, to stress it again, is not about the pragmatic, but about the ethical dimension of the problem. This becomes even clearer if we formulate the question in the following way: is the alienation of an existing collection piece always more reprehensible than the non-acceptance of a potentially new one?

In the way the question is put now, it corresponds to a much graver question, which Peter Singer focuses on as one of the core problems in his "Practical Ethics". Briefly quoted: is killing always worse than allowing someone to die by denying help?

It goes without saying that Singer's approach can only be mentioned here in a very brief manner and I am also just doing this in so far as it promises to contribute to the discussion on our problem. Singer's interest in the question is driven by his irritation about the fact that it seems natural, on the one hand, to regard killing a human being as reprehensible (up to the denial of the right to abortion or euthanasia), but at the same time, allowing death by denying to help is considered to be a tolerable conduct in many cases. However, is it in fact less terrible to let a child die from hunger although help could be given, as to kill a terminally ill human being who himself wants to die? Singer concludes:

Reflecting on these cases leads us to the conclusion that there is no intrinsic moral difference between killing and allowing to die. That is, there is no difference which depends solely on the distinction between an act and an omission. (This does not mean that all cases of allowing to die are morally equivalent to killing. Other factors – extrinsic factors – will sometimes be relevant. [...]).¹⁶

In order to evaluate legitimacy, other criteria are much more relevant, such as a human being's ability to suffer, his degree of self-awareness, the prospects of a liveable life or his own will. That means that the person who is responsible for the decision cannot orient himself to strict moral rules, which permit certain things and forbid others (rules like, "a human being may, under no circumstances, ever be killed" or "there is no obligation to help"); each single case merits an assessment of the situation and a subtly differentiated judgement orientated towards the consequences of the act.

Singer's argument that denying help is not always less terrible than destroying seems to be also relevant concerning the conservation of pending relics. Not admitting testimonies of a certain epoch or region, of a certain cultural tradition or style into a collection is, possibly, not less reprehensible than alienating certain objects or groups of objects from it. If we understand the museum as being, in the above-mentioned sense, a "rescue institution" for cultural relics, then judging what should be admitted into its limited storage space, what should remain and what should, if necessary, be

¹⁶ Peter Singer, *Practical ethics*, Cambridge, New York, Cambridge University Press, 2nd ed., 1993, p. 209.

removed in favour of new entries is also part of an ethically understood awareness of its obligations.

It could be argued that the individual does not have the right to make such judgements or its practice would probably lead to unethical conduct. However, in reality the curator already exerts this right, for he judges what is admitted into the collection and what is not eligible for it. It would not be consistent if he had the competence and the legitimacy to judge in this case, whereas he would not be entitled to it in the case of already existing objects (which, nota bene, are mostly better documented and therefore easier to be judged). The risk of errors of judgement, which is often cited in this context against the alienation of collection stocks, exists no less when judging potential new entries. "Collecting also means always looking for the significant artefact, the most representative and the most meaningful object. In the process, mistakes have to be taken into account".¹⁷ In recapitulation of the above-cited argument, it must be added that it is not always necessarily worse to judge wrongly, when alienating an object, than to decide wrongly when rejecting a work.

Ethics of responsibility

An ethical, responsible awareness of collecting is not then given when evaluating and possibly, alienating museum objects is apodictically foregone (and thereby also all the resulting errors of judgement when acquiring things are endorsed) but, on the contrary, when curators face up to the demanding task of responsibly evaluating collection objects and their possible alienation. With regard to judgement criteria as well as their realisation, comprehensive discussions on the subject took place in the past, resulting in various carefully formulated papers.¹⁸

Not only are criteria formulated in them, which could be relevant when evaluating objects – for example, the cultural and historical significance of the object for the museum, society or the field of science, the possible role of documents or the extent of contextualisation – but also cultural and political aspects are referred to, as for example, the donors' trust or the intervention in the market. These external factors are of relevance, even if they have nothing to do with the worthiness or significance of an object per se. Conversely, external factors can also speak in favour of disposal. Therefore, it is conceivable that a work of art belonging to the unimportant items of the museum's collection can find greater appreciation within a setting outside the museum – for example, in the artist's local community – and for the cultural context in which it is newly located, it can be an important enrichment.

Perhaps the difference between an approach, as put forward here, and a strict denial of alienation can be understood as the difference between two ethical attitudes: between

¹⁷ Thomas Kosche, "Schrott oder Kulturschatz? Sammeln und bewahren im Landesmuseum für Technik und Arbeit in Mannheim", in: Siebenmorgen, Harald (ed.), *Überlieferungskultur, Wie viel Vergangenheit braucht die Gegenwart? Wie viel Gegenwart braucht die Zukunft?* Karlsruhe, Info, 2010, p. 54.

¹⁸ Cf. fn. 5, see further Dirk Heisig, *Ent-Sammeln, Neue Wege in der Sammlungspolitik von Museen, Verschenken, Tauschen, Verkaufen, Verbrauchen, Entsorgen*, Aurich, Ostfriesische Landschaft, 2007; Deutscher Museumsbund (ed.), *Nachhaltiges Sammeln, Ein Positionspapier zum Sammeln und Abgeben von Museumsgut*, Berlin, 2010. Several museums discussed their alienation criteria and procedures and published their policy, for example Indianapolis Museum of Art:

http://www.imamuseum.org/sites/default/files/Final_IMA_Deaccession_policy.pdf (Final February 2008, download: 27th May, 2010). In the past, libraries and archives also intensively dealt with the problem of evaluating items and arrived at differentiated practices. Cf. Kretzschmar, Robert, "Multiperspektivische Überlieferungsbildung in Archiven, Ziele und Methoden", in: Siebenmorgen, Harald (ed.), *Überlieferungskultur, Wie viel Vergangenheit braucht die Gegenwart? Wie viel Gegenwart braucht die Zukunft?* Karlsruhe, Info, 2010, p. 123-141, especially p. 134-137.

consequentialist ethics, which measures the rightness of an action on its consequences and deontological ethics, which makes the adherence to certain rules its principle. (This would also explain why an inclination towards alienation is more present in the culture of the English-speaking world, the motherland of utilitarianism). Guidelines for professionals naturally tend towards deontological “ethics of conviction”. This paper would like to encourage an adoption of a perspective closer to “ethics of responsibility”.¹⁹ If the task of museum curators is to orient their actions for the benefit of future generations, this approach promises to be more consistent and therefore, more effective than an approach which defines ethical conduct as a strict adherence to certain rules. The gain in consistency and effectiveness, however, comes at a price: consequentialist ethics of alienation will always be less clear-cut compared to deontological ethics. This we would have to accept if we consider consequentialist ethics of responsibility as appropriate for the problem of alienation – as well as the fact that the museum will not be a Neverland which can guarantee eternal youth to everything, that has ever come into this world. This may be sad, but at the same time, consoling.

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¹⁹ The dualistic terminology of “ethics of responsibility” and “ethics of conviction” was introduced by Max Weber in: *Politik als Beruf*, lecture notes with an afterword by Rolf Dahrendorf, Stuttgart, Reclam 1992.

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THE PRINCIPLE OF THE INDIVISIBILITY OF MUSEUM COLLECTIONS AS PART OF MUSEOLOGICAL THEORY AND RUSSIAN REALITY

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ABSTRACT

Russian museum practice is based on the principle of the “indivisibility of a museum collection” as set out in the law on *Museum Fonds and museums of the Russian Federation*. The principle is the key theoretical and legal basis for museum practice in Russia; however it has faced many challenges throughout the 20th century. These varied from the division of collections owned by museums destined to be closed and thus shared among other museums, to belligerent claims for restitution of looted or unfairly seized pieces in Soviet times. Currently, the most vulnerable point for the policy is the possible “creeping restitution” of sacred pieces from museum holdings that are being granted to churches within a return process of “religious property”. This would violate the principle of indivisibility and create a disharmony between state and society, which is reflected in the disputes between museum professionals and church representatives. If the museum community does not influence the state of affairs, “creeping restitution” may be approved and deaccession policies and procedures will become less rigorous as a result. The greatest challenge is the misuse of museological terminology, full of notion substitutions, that represents a disinformation tool for society at a whole. This problem has become acute and vital in 2010. This paper reviews its history and suggests solutions.

RESUMEN

El principio de inalienabilidad de las colecciones de los museos como parte de la teoría museológica y la realidad en Rusia.

La práctica museal de Rusia está basada en el principio de la “indivisibilidad de la colección museal” declarada en la ley de *Fondo Museal y museos de la Federación Rusa*. Este principio es la clave teórica y la base legal para la práctica museal en Rusia, sin embargo ha afrontado muchos desafíos en el siglo XX. Estos desafíos variaron desde la división de las colecciones pertenecientes a los museos que tenían que dejar ser clausurados y ser distribuidos entre otros museos hasta reclamaciones beligerantes por restitución de piezas saqueadas o sustraídas perversamente durante la época soviética. Actualmente, el punto más vulnerable para la política es la “restitución latente” de pedazos sagrados de los fondos de museo que están siendo concedidos a iglesias dentro del ámbito de un proceso de devolución “de la propiedad religiosa”. Este violaría el principio de indivisibilidad y crearía una desarmonía entre estado y sociedad, que es reflejada en las disputas entre museólogos profesionales y representantes eclesiásticos. Si la comunidad museológica no logra influir en la situación, “restitución latente” puede ser aprobada y las políticas y procedimientos de enajenación serán menos rigurosos. El desafío mayor es la utilización errónea de los términos

museísticos, llena de substituciones de ideas que representa una herramienta de desinformación para la sociedad en general. Este problema se ha hecho extremadamente agudo y vital en 2010, y este artículo representa su historia y propone la solución.


* * *

The principle: Theory and History

Theory: The principle itself was fixed legally in 1996 in the Law on *Museum Fonds*¹ and museums of the Russian Federation. Notwithstanding, the principle was maturing in the course of museum practice and was considered unanimously as an basic tenet of museum work. Throughout Russian museum practice this principle had been referred to in certain cases, which we can divide into two main groups: *legal* and *cultural*. Thus, we may distinguish between two aspects, or levels, of the principle.

Legal aspect: At this level the principle states that an artifact, once acquired by a museum, becomes of museum quality and loses its utilitarian function². According to museological theory, a museum artifact cannot get its "primary context" back after its conceptual and sometimes physical transfer to the "museological context". This concept is reflected legally in the Law on Museum Fonds, which recognizes that "museum collections are indivisible"³ (article 15). This is an especially sensitive subject as throughout Russian history there have been many examples when museum collections were divided and distributed among museums, still being part of a national Museum Fonds. Sometimes one can read or hear: "the Museum Fonds is indivisible", which evidently is not the same as stated in the Law, because the concept of "museum collections" can be attributed both to collections of a certain museum and of all the museum collections of all the Russian museums. Thus it is not really clear from the law what is meant by the principle of indivisibility, which is a problem because it seems to be one of the few legal grounds that museum society can refer to in conflict situations.

	Object of museum quality	Museum object
Possesses	Utilitarian function	Recognized social, historical and cultural significance
does not possess	Recognized social, historical and cultural significance	Utilitarian function

One-way process 

¹ Museum Fonds of the Russian federation is defined as "a totality of museum items and collections permanently existing in the territory of the Russian Federation", it does not exist as a certain place but as a catalogue of about 80 000 000 museum items that are kept in Russian museums.

² Шляхтина Людмила М. Основы музейного дела. Москва, 2005. (Shlyakhtina L.M. The fundamentals of Museum studies, Moscow, 2005), p. 12

³ Федеральный закон РФ от 26 мая 1996 г. N 54-ФЗ "О Музейном фонде Российской Федерации и музеях в Российской Федерации" (Federal Law №54-FZ of May 26, 1996 on *Museum Fonds of Russian Federation* and Museums in the *Russian Federation*). Accessed from http://www.museum.ru/prof/mat/law/Закон_о_музеях.htm

An artifact that potentially can become part of museum collection is traditionally called an “object of museum quality” in Russian museology. Therefore, legally an artifact has only one way in, and it must not have a way out:

Museums are sometimes accused of being “the cemeteries of art” after a notorious aphorism of Alphonse de Lamartine’s; some people remember this idea when talking of museum items restitution, saying that plenty of treasures are hidden in museum holdings and hence inaccessible. But the accusers do not always take into account the fact that an artifact attains its social and cultural significance after having been studied in museum research rooms. Museum collections storage has become not just a place to safeguard an artifact but also to give it social sense and significance to an artifact. The situation that will be described in the last part of this article concerns the misunderstanding that can lead to legal changes. People who are responsible for the legal aspects do not pay attention to the fundamental fact that the objects that are part of museum collection can never be used according to their original purpose.

Deaccession from a museum, which is equivalent to deaccessioning from a National Museum Fonds of the Russian Federation is regulated by the “Instruction for the inventory and storage of museum treasures in state museums in the USSR” that was published and approved by the Minister of Culture in 1985. As for valid reasons for deaccessioning, they are loss, theft and destruction. The Instruction also “prohibits issuance of museum objects from the museum for permanent use and their exclusion from the inventory”⁴. The only way to do so is with permission from the Minister of Culture. Thus the status of some objects can depend on the Ministry, and also the extent to which he may be influenced by other authorities.

Cultural aspect: At this level the process of collecting artifacts is seen as a cultural practice. Collecting is not just a spontaneous acquiring of any valuable items. It has formed as systematic practice and has its own cultural history. For instance, the Renaissance man was collecting artifacts to form a *teatrum mundi*. When John Sloane’s universal collection was bequeathed to King for the nation in 1753, among the conditions was that it was “not to be separated”. If we look back to Russian history, Pavel Tretyakov (1832 -1898) famously donated his and his deceased brother’s collections to the City of Moscow in 1892, which is now the core of the Tretyakov Gallery. In accordance with his will the collection could not be increased after his death. A collection, thus, becomes a form of cultural practice and is perceived as an entire *indivisible* entity. It is collected within the same historical and geographical environment. Many museum collections are built up from private ones, when the latter are recognized as museum-worthy. And many museums follow the collecting practice within certain rules, accessioning new items systematically. Private collecting practices, as well as the museum ones, are part of a cultural process and both are interested in preserving the integrity of the collection.

History: The examples of collector’s wills, in which the successors are asked not to divide or enlarge collections, exemplified the idea of indivisibility. It was not respected in many cases, however.

⁴ Инструкция по учету и хранению музейных ценностей, находящихся в государственных музеях СССР (Instruction for the inventory and storage of museum treasures in state museums in the USSR). Accessed from http://goskatalog.ru/intro_manual~instruction.asp

In Russia the principle of a museum collection was first applied in Soviet times. In the first post-revolutionary years the Government collaborated with the intellectual elite. Thus, in 1917 the Historical and Arts committees were created in order to make the nationalization of valuable artifacts more organized and civilized. The committees had their first joint session in November 1917. They were to decide on issues concerning restitution of Ukrainian historical artifacts, which were brought to Russia after the abolishment of Cossack autonomous region by Catherine the Great (1764). The document signed on that occasion recognized as illicit the deaccession of “museum treasures”, even for political reasons⁵.

This is how the *legal aspect* of the principle in question came into being. It has become a credo of museum practice in subsequent decades. Nonetheless, this legal aspect was not concerned with the integrity of each and every museum collection (*cultural aspect*). On the contrary, the idea of social equality promoted by the Soviet regime meant many collections were reorganized. This process was launched by a so called “Moscow declaration” signed at the *First All-Russian museum conference* that took place from the 11th to 17th of February 1919. It stated:

All the existent museums must be regarded as a National Museum Fonds, e.g. all its contents serve as material for regrouping among museums⁶.

After that many museums were inaugurated in many cities and towns, where these collections were not natural *cultural products*. The collections from Moscow and Saint Petersburg museums were divided and sent to other museums so that all over Russia people had the opportunity to have access to treasures.

That declaration had a direct influence on the creation of a Museum Fonds of the whole country. The first years of the Soviet period were very prolific in the museum area and they should not be underestimated. The nationalization of private property led to creation of new museums and those people that were caring for preservation of the nationalized masterpieces created committees that took the responsibility for planning the future development of museum formation.

The private and state collections were very often divided and distributed all over the Russian territory. The Soviet regime is attacked when talking about cultural strategy, but if we pay attention to its museum policy it was not all bad. For example, Stalin signed the resolution on the inauguration of a Museum in the name of the icon-painter Andrey Rublev in 1947, although he was also destroying churches and monasteries. The emerging museums were becoming shelters for ecclesiastic art.

A very famous example of how museum collections were redistributed in Soviet times is the fate of two Impressionist art collections in the Museum of New Western Art collected by S. Shchukin and I. Morozov. The museum that was created in Soviet times had to be closed in 1948 and all the collections found shelter in Saint Petersburg's Hermitage Museum and partly in the Pushkin museum in Moscow. Irina Antonova, the director of the Pushkin, is now trying to recreate the museum of New Western Art and

⁵ Кузина Галина А. Государственная политика в области музейного дела в 1917-1945 гг. в кн.: Музей и Власть, Ч. 1, Москва (Kuzina Galina A. State policy in museum field, in: Museum and the Power. Volume 1, Moscow), 1991, p. 101.

⁶ Сундиева Аннэта А. История одной декларации, Вестник Томского государственного университета, (Sundieva Anneta A. “The history of one declaration”, Tomsk State University Herald, Tomsk), no. 300 (1), 2007, p. 76.

unite the collections that were divided, referring to the principle of indivisibility of museum collections.

When we look back and see what happened to museum collections in Soviet times we should not forget that all that happened was under the influence of ideological circumstances. Nationalization, which began in June 1918, increased museum holdings and in this process many museums appeared. Museums have become a shelter for nationalized pieces. The conflict that is described in the next part of the article has its roots in those distant times.

The principle of indivisibility as conflict resolution tool

Museum vs. Church conflict: In the last two decades the second – cultural – level of the principle of indivisibility has prevailed. The cultural aspect has been reflected in the sensitive issue of “ecclesiastical property”, which led to tensions between the Museum and the Church. The conflict has been increasing for some years and peaked when the Russian Orthodox Church in the first days of the year 2010 received an official promise in the Prime Minister’s speech on the Eve of Orthodox Christmas. The Prime Minister publicly promised to ease and complete the process of returning the Church’s property. This news has provoked heated debates on the topic in museum community and in the society at large.

A so-called “process of return of church property” refers to the property taken away by the Bolshevik government. It is held under the slogan of “restoration of historical fairness”. It should be taken into account that the process itself has many such cases. Mass media speculations led the public opinion to the idea that the Church had possessed property that was illegally removed after the October Revolution and it would be fair to return it. The State and the Church were the only *concerned parties* in this process, while it involves a great deal of national heritage. The third party, the Society, reacted *post factum*, when it had already been decided to launch the process.

The process in question has started in the 1990s and these days it is speeded up with the upcoming Law “About assigning property of religious propose to religious organizations”. According to the draft law both movable and immovable property will be returned to the religious organizations. As for the immovable property, it is agreed that 20 religious buildings, which are listed by UNESCO as heritage sites, cannot be returned to the Church. Among them there are Saint Basil Cathedral, the Moscow Kremlin churches and some others.

The elaboration of the Law has been a long process in which a principle of returning prevailed over the readiness of the legal framework and society's opinion. The experts insist on the necessity of critical review of the Law that is being elaborated, as it has loopholes and ambiguous wordings, which could lead to misuse of heritage. Officials involved in its elaboration are not those that are keen to safeguard matters. The Ministry for Finance which is working on the law has not been really collaborating with the Ministry of Culture, so the emphasis has been laid on the *property* and not the *sacred heritage*.

The legal framework was not ready when the Prime Minister gave a precious present to the Church, promising to return 12,000 objects of immovable property. The Law also concerns “movable property”, most of which is currently held in museum holdings. As part of his promise the Prime Minister confirmed that the Novodevichy Convent (the Convent of the Maidens), which has been functioning as a museum since 1926, was to become Church’s property in 2010. It should be taken into account that not only

museum items but also frescos, iconostas, and the exterior of the churches and the walls of the Novodevichy Convent have been the concern of the museum. The Convent, which restarted its service in 1994, has long been living in harmony with the branch of State Historical Museum. It was surprising news for both the nuns and the museum workers of the Novodevichy Convent.

Soon after the Prime Minister's promise to complete the process of return, politicians and church defenders gave broadcast talks, in which they defended the Prime Minister's decision, explaining in general terms that there was no conflict, and the society should not underestimate the state of affairs. Such terms as "religious heritage" or "spiritual heritage", were used in these talks. These terms do not exist and are not recognized by the scientific community as it divides the culture into sacred and non-sacred. This terminological creation and its application is an example of "double standard" usage of terms, when officials attach non-existent concepts to old or unaccepted terms. This substitution of notions can be noticed by the experts, while the rest of society is misinformed.

If we look back, the expression "restoration of historical fairness" and a very similar "double standard" usage of terms as a disinformation tool can be seen in the process that started in 2006 when the conflict between the Church and a museum was raised in the City of Ryazan. The Church stated that the territory of the museum-preserve at the "Ryazan Kremlin" was being used irrationally by a museum and it would be fair to return the territory of the Kremlin to the Church. If we look carefully at documents and letters concerning that issue the church officials tend to contrast the cultural heritage sites and their religious function as if they could not coincide, while:

Functional purpose for religion of a cultural heritage site does not annul its historical and cultural significance, inevitably supposing some other forms of functioning besides uniquely religious⁷

During TV debates the church authorities accepted that the Museum has been a place that revealed the real beauty of Orthodox Church icons a century ago⁸ and attached to them social and cultural significance, and they suggest the Museum has been a "step-mother" for ecclesiastic masterpieces and it's high time to return them to their real "mother". The actual state of affairs is far more complex, as the church does not respect museums, especially in distant towns, and we can state that the *museum exile process* has been launched.

In 2010 the church authorities presented contradictory facts, when being asked by museum society about the process. Some authorities made assurances that museum items would not be taken from museums, while other representatives stated that icons and apparently other Orthodox sacred relics that are part of museum collections won't be permanently removed from the Museum Fonds; they will be removed only physically. The concept is still vague.

⁷ Никитин А. О. "Патриарх - Президенту (22.02.2006 г.). Текст и комментарии», в: Общественный комитет в защиту историко-архитектурного музея-заповедника "Рязанский кремль".

Информационный бюллетень 3. Рязань. с. 4 (Nikitin A.O. "The Patriarch to The President (22.02.2006), the Text and Comments", in: The Social committee in defense of historical and cultural museum-reserve "The Ryazan Kremlin", Ryazan, 2007. p. 4)

⁸ In Eastern Orthodoxy, icons are representations of sacred persons or events in murals, mosaics, or paintings on wood. They were not considered art till the olifa varnish, which has a tendency to darken, was removed in the beginning of the 20th century.

The principle of indivisibility in debates

The first to react were museum professionals, who appeared on TV shows and debated the subject with Church representatives in January, February and March 2010. The whole museum community is in agreement that moving the museum pieces into churches is unjustified. The following arguments could be heard and read most frequently:

The church representatives:

- The Church lost its property in the first years of the Soviet times, it was acquired illegally by the bolsheviks.
- Museums are not showing most of the sacred masterpieces to the public, these treasures are guarded in museum storage, and they are not meant only for eyes of a few museum restorers. They can be viewed by thousands of believers and worshiped
- Most of the icons are famous for miracles. Believers are losing contact with the sacred.
- Museum workers are biased as they cannot be objective about defending the masterpieces they safeguard.

The museum professionals:

- Legally the museum collections are indivisible and cannot get their “primary context” functions back.
- The churches are not ready to protect and restore the icons. Legal mechanisms of return are vague. It is not clear who will be responsible for security, maintenance of climate control, etc.
- When separating icons from the rest of the heritage guarded in museums a border between material and spiritual culture is established. That is nonsense, because icons are at the same time part of history and culture, they are not only sacred paintings.
- Museum professionals see icons as a kind of art in the first place; the Orthodox believers usually see it as a symbolic means of communication with saints. Church icons have been repainted and changed frequently, so the collection of ancient icons at the church won't be restoration of a tradition, but the creation of a new one. Thus, the icons should be guarded as a common heritage regardless of religion, and it is logical to guard them in museums as it has been done traditionally.
- The Church asks for the best masterpieces that were restored, investigated and became famous because of museum professionals; it is not asking for the icons that are less precious historically (the 18th and 19th centuries). The Church is apparently interested, fundamentally, in having the most valuable part.
- The problem concerns all the inhabitants of Russia and the draft law should be discussed on national scale. Dialogue and detailed discussion of each and every sacred piece is needed, as it concerns old relics and monuments.
- The withdrawal of the property in this case is seen and emphasized as Bolsheviks' plunder. In fact, the museums in Soviet Russia were the places that salvaged the heritage from being sold by auction. The withdrawal of the most valuable pieces from liturgical service is a natural process in most civilized countries.
- The Church and the Museum have been living in peace for many years until some Church authorities decided not to be leaseholders but the owners. As the State supports this idea, offering benefits and tax immunity, many strong conflicts have emerged in recent years between museums and churches.

When the Church states that it is able to create the necessary conditions, the museum professionals find plenty of examples when the churches could not do so and we have lost and are currently losing many sacred masterpieces. Even an icon put into a special

capsule, already designed for that purpose, turned out to be vulnerable. The churches claim that they can create new museums. It is not clear to the museum community why the churches will start new museums if they can go on collaborating with existing museums. The churches will have to train personnel while there are many restorers and curators.

If we look beyond the property interest it is clear that museum workers worry not about the place these sacred pieces are situated, but the conditions they are in and the ability and readiness of the church workers to create the necessary conditions. In the world, there are plenty of examples when the Orthodox churches give their icons to museums (Thessaloniki, Macedonia, etc.) in order to protect them as not only spiritual but also material treasures. When we look for the examples of good church conditions abroad, we could pay attention to the fact that there are no icon lamps nor church chandeliers. They are substituted with electric lamps that are not damaging to the icons, and the funeral candles are located outside the church (as for example, in Greece). In Russia the candles are very close to iconostasis and separate icons that creates a layer of soot on the icon.

The more the Museum and the Church argue, the more it becomes clear that the conflict is not between them, but between the State and Society. That is reflected in the article written by the Director of the State Hermitage Museum in St. Petersburg Mikhail Piotrovsky, who is also a president of the Union of museums of Russia. He claims that bitter public conflict is being raised out of nothing:

When the church de facto could not exist in our country, the religious knowledge was transmitted through museums [...] All the time we hear the words “assets” and “property”, far less the word “sacred object” [...] [...] Now the law is to appear that must make the procedure of return easier. I do not understand why? Each and every transfer into the ownership must become more complicated in order that no mistake could occur. [...] The value of an object is created within a museum and scientific context [...] As a matter of fact, the church is being used for a new attack against the public cultural heritage in order to withdraw it from common use [...] Museum collection is inviolable. Nothing must be deaccessioned from it [...] The greatest injustice is to atone the State’s sins at the expense of museums and culture. [...] The icon is a medium between a person and another world, its art features are not important there. In the end of the 19th century they were cleared by the restorers, and were displayed naked in museums, thus they became part of the world art [...] The icon does not lose the communication with a believer within a museum space. It does not communicate with a secular person in a temple. [...] Monastery belongings were handed over to museums so that they preserved. Once they were within a museum, they became part of museum entity.⁹

M. Piotrovsky underlines the State policy:

⁹ Пиотровский Михаил Б., “Атаки на музейный фонд”, Санкт-Петербургские Ведомости. Вып. №014 от 28.01.2010 (Piotrovsky Mikhail B. “Museum Fonds being attacked”, Saint Petersburg bulletin. Iss., no. 014, 28.01.2010). Accessed from: http://www.spbvedomosti.ru/article.htm?id=10264099@SV_Articles

Museums are repository of cultural memory of the nation. They should not be treated as storehouses, out of which the state apparatus can withdraw anything, anytime¹⁰

Terminological confusion and disinformation as a tool for social harmony

While the museum workers see that the state is not on their side and the process of “creeping restitution” has already started, they also see other disinformation circulating in the mass media. They notice a number of terms used in a way that does not reflect the real situation and the real meanings of the terms. The official point of view is that the Church “is being returned the assets that were alienated by the Bolsheviks”. Actually the Church had almost no property from the beginning of the 18th century, as Peter the Great reforms in curtailing secular influence led to state control of sacred property. While it’s common to see the fact that by 1918 the Bolshevik government had nationalized all church property, it was not really so.

The term “property” has been changing and had a different meaning in the tsarist epoch. The researchers of church’s property, who have appeared recently and seem to be politically motivated, are referring to old resources. For instance, they wrongly claim that the changes of state policy towards the church’s property in the 18th and 19th centuries were:

... from the establishment of totalitarian control in Peter the Great’s era and entire secularization under Catherine the Second to the next steps in the first half of the 19th century and the gradual recovery of Church’s land ownership, but already in incomparably smaller scale¹¹

Historians state that just finding the word “property” in old resources/books does not mean that it had the same concept. In the 19th century this term meant simply the right to exclusive *occupation* of the land, not to own it. The State could have taken this object or land back at any time. So it cannot be considered the “church’s property”, as churches were state institutions, in other words it was “state property”. What is happening now is that the churches refer to never existing practice and ask for property they never possessed to be returned.

The processes before the Revolution were quite clear, as for example, we know that in the last years of Tsarist regime Nicholas II ordered the icons from the town of Suzdal to be placed in the State depositories to protect them.

Another disinformation tool used to silence the conflict is church authorities’ refusal to use the word “restitution” for the launched process. *De facto* “creeping restitution” has already started in many Russian towns and cities, while *de jure* it is fixed as a “temporary custody”. To conceal it the authorities say that those pieces that are already part of the national Museum Fonds will still be considered national heritage and legally they won’t stop being museum objects. That upsets museum professionals, as apparently museum workers will not have influence over the display of these pieces, but will still be responsible for their safety.

¹⁰ Ibid.

¹¹ Попов В.П., Ершов Б.А., “Земельная собственность церквей и монастырей в XIX веке”, Вестник ВГУ. Сер. История, политология, социология. (Popov V.P., Ershov B.A., “Land ownership of the churches and monasteries in the nineteenth century”, Herald of VGU. Series: *History, political science, sociology*), no. 2, 2007 p. 108.

Also a new expression has appeared during the debates: "religious heritage", while heritage is traditionally perceived either as "common" (generally "cultural and natural") or divided into material and non-material. A new-brand term "religious heritage" tends to distinguish from "cultural heritage", which is considered absurd by the museum community. Russian art and culture was intermingled with religion up until the reforms of Peter the Great at the beginning of the 18th century. Thus, technically all museum pieces that date back to previous centuries would automatically become "religious heritage".

Conclusion

The principle of "indivisibility of museum collections" is an especially sensitive subject as it is one of the few legal supports for museum collections' integrity in today's Russia. The principle has been developing throughout the course of Russian history. Although it was not legally recognized until 1996, it was already an accepted underpinning tenet of museum practice by that time. At first the legal aspect prevailed, and in the last decades the cultural one has emerged.

The principle is fixed in the Law on Museum Fonds, nonetheless when the museum community attempts to apply it to conflict situations, such as the acute problem of property return to the Orthodox Church, the Russian authorities act as if this principle did not exist. This issue is at the intersection of economic, political and social relationships. Economic and political aspects prevailed, so museums were not welcome to participate in the process that concerns the heritage, the storage of which the society historically assigned to museums. The museum community is obliged to resort to various strategies to slow down the process, leading to some losses of national heritage and access to it. Unfortunately, museum professionals seem to be listened to but not heard.

The creeping restitution of a so-called "property of religious purpose" risks growing into real large-scale restitution of museum treasures all over Russia. The more such precedents are established, the more opportunities there are for governmental regulations that could change the legal criteria for the museum items to be deaccessioned. More importantly, museums holdings could potentially be open to the recovering of "primary context" of some museum objects, giving back utilitarian function, which is not natural for a developed society. In this case the museum's safeguarding function would fade away. In the modern world the development of society is directly linked to the development of its culture. As museums are part of the preservation of this heritage, they show whether a society is developed and civilized enough.

In today's situation when the returning process is already launched, the only solutions that guarantee the safeguarding of sacred masterpieces are the following:

- Not to allow arbitrary giving away of museum treasures, by the museum community and the society at large actively attracting attention to the possible damages. The process of returning each and every museum piece must be very accurate and considered.
- The legal mechanisms of return must be discussed openly. An independent group of experts from both church and museum experts must be gathered. Experts from museums, restoration studies, and humanitarian sciences should participate in order to find the most appropriate way out.

In the end, I'd like to quote the State Hermitage Museum director M. Piotrovsky: "the activity of the church needs to be provided at the expense of the State and not at the expense of museums".

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THE DEACCESSION OF CULTURAL AND NATURAL HERITAGE IN THE TRADITIONAL MUSEUM AND THE 'GREAT MUSEUM' – A FINNISH VIEW

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ABSTRACT

This article discusses the concept of passive and active deaccession, of which the former means disappearance or destruction, due to fire, earthquake, flood, war or theft, or as food for pest insects. The latter is an important tool for those in charge of collection management: it is a cure for object bulimia. When deaccession takes place, the documents and other information on the objects should not be deleted. In Finland, the museums of the City of Tampere have developed an evaluation system of objects that produces a tool for deaccession decisions. In one crisis case, also the contexts of object or museum value served as criteria for deaccession. Annual Finnish museum statistics do not include numbers of deaccessioned objects. In the so-called 'Great Museum' context, traditional museums must also be proactive, active and reactive in the accession of the Great Collection and must try to protect these objects of nature and culture against active social or economic deaccession. The question of restitution is marginal in Finnish museums because the nation simply has not had the opportunity to acquire foreign objects that have restitution capacity

RESUMEN

El alienación del patrimonio cultural y natural en el museo tradicional y en el 'grand museo' – una perspectiva finlandesa

El artículo trata sobre el concepto de alienación pasiva y activa, de las cuales la primera significa la desaparición o destrucción de artefactos por causas como fuego, terremoto, inundación, guerra, robo o por ser pasto de insectos dañinos. La segunda es una importante herramienta para los encargados del manejo de las colecciones: es un remedio para la "bulimia de los objetos". Cuando tiene lugar la alienación, no deben ser eliminados ni los documentos ni todo aquello que implique conocimientos asociados con dichos objetos. En Finlandia, los museos de Tampere han desarrollado un sistema de evaluación de objetos, el cual provee de una herramienta para tomar decisiones sobre la alienación. En casos críticos, el contexto del objeto o su valor museal es también usado como un criterio para su alienación. Las estadísticas anuales de los museos finlandeses no incluyen el número de objetos alienados. En el contexto llamado Gran Museo, los museos tradicionales deben ser proactivos, activos y reactivos para acceder a la Gran Colección y deben procurar proteger estos objetos de la naturaleza y la cultura contra la alienación activa social y económica. La problemática de la restitución es marginal en los museos finlandeses porque la nación, simplemente, no ha tenido oportunidad de adquirir objetos extranjeros con capacidad de restitución.

* * *

Deaccession as a cure to object bulimia

In Finnish memory organizations or museums, libraries and archives, the primary deaccession or the weeding of incoming material is a normal procedure of collection management in archives, but not in the free-copy libraries, which according to Finland's Free Copy Act preserve all printed and corresponding material. In Finnish museums, on the other hand, only prehistoric finds and (theoretically) all protected animals found dead should be brought, according to the Antiquities Act and the Nature Conservation Act, to certain museums. The accession of all other objects is due to the decision of either the donator or the museum staff. The deaccession of objects included in the collections is a relatively new procedure, which did not arouse any considerable publicity until the 1990s.¹

The most fatal problem of museums and collections is object bulimia, in other words, the situation where collections have grown so large that the museum process malfunctions: the stores are full, the registration system does not manage the increasing flow of objects etc. In this situation, the memory organization begins to suffer from dementia and it increasingly becomes an organization of forgetting.

There are two solutions or cures to object bulimia, both of which should be used. Firstly, those responsible for the collections must begin to collect actively and not passively. This means that they and not the public or some social authority decide what can be accessed and preserved in the collections with the resources of the museum. For instance in Finland the public quite often brings to museums of natural history accidentally killed male northern bullfinches (*Pyrrhula pyrrhula*) but never female ones! The reason is that the public has the idea that the colourful red-breasted males belong in museums while the grey-breasted females do not. As decision-makers, museum staff also decides what cannot be received and preserved and will thus disappear and be forgotten. These decisions can also be seen as proactive deaccession. This power to choose means that those working in collections and documentation decide very much what the past will be like in the future.

The second solution is secondary deaccession, which can also be both passive and active. Passive deaccession means that the objects have disappeared completely or to a high degree because of fire, earthquake, flood, war or theft, or as food for pest insects. Active deaccession means that the museum staff members decide which object already belonging to the collections is for some reason or other no longer worth preserving.

The ICOM Code of Ethics for Museums cover also deaccession (2.12–2.17), but the view is so far object-centred and not knowledge-centred. The code does not contain advice on what happens to registered facts and other information on the object when it has been passively or actively deaccessioned. If an object disappears accidentally or is deaccessioned actively, related information and documents in registers and files should of course not be deleted. The reason is obvious: the documented facts of the physical object and knowledge of its life-cycle, function, cultural values etc. are just as important as the object itself, and in the case of passive deaccession, these facts and documents are all that remain of it.

¹ See the list of publications in http://icom.museum/biblio_deaccessioning.html

Deaccession is strongly bound to the collecting strategy of a museum. In museums that collect systematically, active deaccession can normally take place only when an object is replaced by another of the same type but in better condition or of better quality. But in museums that collect memories, or according to Susan Pearce, souvenirs of their society, the concept of museality or museum value must be the main measure for accessing or deaccessing. Museality correlates mainly with the context knowledge of the object, which means that the accession process is not object but phenomenon-centred. Old collections should be evaluated in terms of their museum value, after which objects wasting the resources of the museum (personnel, storage space, technical conservation etc.) should be deaccessioned.

Some Finnish cases

In Finland the museums of the City of Tampere developed and began to use in 1994 an evaluation system for their collections. It consists of seven different criteria producing five classes of which the fifth is the deaccession class.² As the Tampere museums are now moving to a new Collection Centre the collections have to be reduced and the evaluation system provides the only firm criteria for active deaccession. The automobile and road museum Mobilia, a national specialist museum, has adopted and slightly revised the Tampere museums system for its own use.

When the collections of the Finnish Data Processing Museum Association became endangered in 2007 because of lack of resources, sponsors promised to help only if the annual costs could be almost halved. This was done by finding a new storage facility and by deaccessing a considerable number of objects. The only way to evaluate the objects quickly was to apply the concept of museality. Briefly put, objects that had significant contexts were left in the collections, while those with little or no context were deaccessioned.³

The first annual museums statistics were drawn up in Finland for the years 1971–1993 by the Finnish Museums Association, and subsequently by the National Board of Antiquities. The statistics, however, do not reveal the annual number of deaccessioned objects. Previously, the main reason for this and the topic as a whole was that deaccession was regarded as a manifestation of failure of the museum profession. In response to the risk of object bulimia, active deaccession became a serious action, but it was still not statistically measured. In the statistics for 2006, it was noticed that despite the annual growth of collections the total number of the collections in all types of museums had decreased. The explanation was given that this was a sign of progress in collection management. But the trend has not continued. On the contrary, growth continues and the only way to sustainable development includes deaccession – action that the generation that has accessed the bulimiac collections is not eager to mobilize.

So far, we do not know very much about why and how the deaccession process is carried out in our museums, but research has come under way in this respect. An advanced study in museology has recently been launched on how and why Finnish art museums deaccess art works. Other museum sectors are awaiting their own analyses.

The Great Museum and the Great Deaccession

² Ritva Palo-oja & Leena Willberg, "How to Manage Collections?" *Nordisk Museologi* 1998:2, p. 51-68.

³ Emmi Tittonen, "The Crisis of the Finnish Data Processing Museum Association – A Practical Use of Museality". *Nordisk Museologi* 2008.1-2, p. 169-182.

In 1993, the late Kenneth Hudson (1916–1999) gave a lecture at an international museological conference in Copenhagen with the title "The Great European Museum". He defined his concept of environmental education and its relation to traditional museums as follows:

Europe is one large museum, where every building, every field and every river and railway contains clues to the past and present of the country concerned, provided the onlooker has the information to understand what he is looking at. Scattered across the Great Museum are the institutions which we call museums. Their main function is to help people to understand the Great Museum. They justify themselves by looking outwards, not inwards.

The idea of the Great Museum was immediately imported to Finland, being included, for example, in the museum policy report of the Museum 2000 Committee in 1999 (Report 1999:31).

For practical purposes, the Great Museum had already been realized for a long while in Finland in terms of decentralized objects and collections in the environment through legislative acts and other decrees. But the idea that they jointly form a decentralized collection and exhibition of the Great Museum was something new.

Examples of Great Collections and Exhibitions (= G C & E) of the Great Finnish Museum:

G C & E of:	Objects:
Prehistory	Prehistoric sites protected by the Antiquities Act (1883, amended 1963)
History	Historic monuments, built environments and landscapes protected by the Building Protection Act (1964, amended 1985 and currently under revision)
Traffic	Museum roads and bridges, channels and locks, private owned (officially examined and approved) traditional ships, museum cars and motorcycles
Living Nature	National Parks and all other nature reserves

In 1979 the Finnish Government decided to provide state subsidies to regional museums of cultural history and art museums owned by municipalities or foundations. This decision created a network of regional museums and it evolved into the Museums Act of 1988 (amended in 1992 and 2005). Today, Finland has 21 regional museums of cultural history and 16 regional art museums. The goal of the decision was not only state subsidies but also to give the museums state resources in order to produce reciprocally useful social-centred services for a larger area or region than their own municipality. The central authority of cultural heritage, the National Board of Antiquities, also delegated some of its official tasks to regional museums of cultural history. In this way, regional museums started to act in a more society-oriented manner, and began, for example, to prepare inventories of objects in local museums, cemeteries, prehistoric sites and buildings of cultural-historical significance. The two last-mentioned categories

were especially linked to regional planning work in which the task of museums was also to produce official expert statements.

In the World Heritage Site process in Finland, the National Board of Antiquities and the Ministry of Education and Culture are the authorities that propose cultural sites, while the Ministry of the Environment proposes sites of the natural environment.

Owing to cultural and natural reasons, society and both the cultural environment and the culturally defined natural environment are changing rapidly. This means that many cultural and natural objects of the Great Museum are endangered, from the point of view of the museums, by both passive and active deaccession from the Great Collection. These deaccessions, however, are rarely carried out actively by the museums because they do not make the decisions to delete, which is done by other public authorities or business enterprises.

Museums can and should be both proactive, active and reactive in these preservation cases and argue in terms of museality. In these cases a better concept could perhaps be heritology or heritage value. Dag Myklebust of Norway has clearly stressed the nature of this process: "Cultural heritage management is the management of change".

The state makes cultural protection decisions in a highly selective manner because of economic consequences. In 2009 some 250 buildings were protected under the Building Protection Act, some 800 under the Church Act, and some 800 buildings and 200 areas owned by the state by separate decree. The main instruments of protection are municipal building plans and their provisions. Buildings are estimated with reference to architectural and/or cultural historical values to be nationally, regionally or locally valuable. Although tens of thousands of buildings have been protected in this way, no related national statistics exist for the time being. The building plans are flexible and in the case of buildings of only local value they can easily be updated according to new political or commercial ambitions, which mean that their protective capability is not necessarily of long duration.

The built heritage of Finland is relatively young: only a few percent of the total number of existing buildings predate the First World War. In the case of older buildings, the natural selection of time has aided conservation, but the case is different with regard to buildings from after the Second World War which are the majority of all buildings in Finland. The criteria for the protection and on the other hand the deaccession potential of these buildings are more complicated. Over the past decades the ideas that other than solely architectural or aesthetic values are important has become widespread. Therefore, different layers of time are not evaluated but instead appreciated as equal. Also a building or a group of buildings can be protected only if they are typical of their period despite their outward appearance.

The question of the protection and preservation of natural environments is at least theoretically more straightforward because no one species is more valuable than another when natural diversity is the prime value. In this situation, the degree of **endangeredness** correlates directly with the value or rather the protective actions aimed at the species in question.

The marginal issue of restitution

Finns are no more honest than any other nation and accordingly the only reason that Finnish museums have not received demands of restitution is that this nation, which gained independence from Russia in 1917, has rarely had the opportunity to take part

in cultural actions that would have led to such demands at a later stage. The only restitution cases have so far been domestic, when a few human remains have been transformed from scientific research material or museum objects to individuals and reburied.⁴ Some non-European ethnographic collections from the 19th century and some European art collections from the 1930s may theoretically include objects of restitution capacity, but so far no demands have been presented.

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III

Do museums have the duty to restitute?

Les musées, ont-ils le devoir de restituer?

¿Tienen los museos el deber de restituir?

LE MUSÉE ET LA QUESTION DE LA RESTITUTION – ÉTUDE DE DEUX CAS CONCERNANT LE PATRIMOINE CULTUREL BRÉSILIEN

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RÉSUMÉ

La question de la restitution d'œuvres par les musées concerne plus des aspects éthiques et politiques que juridiques et techniques. Au Brésil, deux cas controversés concernant des collections ethnographiques indiennes ont fait l'objet d'actions de restitution: l'un en 1986 concernant une hache de pierre Kraho, l'autre en 2000 à propos d'un mantelet Tupinambá. Un processus de restitution d'œuvres bien conduit peut éviter des problèmes d'identité et de préservation du patrimoine culturel. Il faut donc que les musées soient préparés à faire face à ces situations, surtout quand il s'agit de reconnaître la légitimité d'une propriété. Les musées, notamment ethnographiques, occupent une place primordiale car ils sont en contact direct avec différentes cultures

ABSTRACT

Museums and the question of returning art works – two case studies about Brazilian cultural heritage

The question of returning art works by museums raises more ethical and political aspects than legal or technical ones. Brazilian museums experienced two controversial cases about returning works from Indian ethnographical collections: one in 1986 for a Kraho stone axe, another one in 2000 about a Tupinambá ritual coat. A well managed returning process can avoid many identity or cultural heritage preservation problems. Therefore, museums must be prepared to handle such situations, especially how to recognize the legitimacy of an ownership. Museums, especially the ethnographical ones, are particularly exposed to such cases as they have direct contacts with different cultures.

RESUMEN

Los museos y el problema del retorno de obras de arte – Dos casos de estudio sobre el patrimonio cultural brasileño

La restitución de obras por parte de los museos está más relacionada con los aspectos éticos y políticos que con los jurídicos y técnicos. En Brasil, dos casos polémicos, relacionados con colecciones etnográficas indígenas, han sido objeto de acciones de restitución: uno, en 1986, referida a un hacha de piedra Kraho y el otro en el año 2000, a propósito de un mantelete Tupinambá.

Un proceso de restitución de obras conducido correctamente puede evitar problemas de identidad y de preservación del patrimonio cultural. Es necesario que los museos estén preparados para enfrentar esas situaciones, sobre todo cuanto

se trata de reconocer la legitimidad de la propiedad. Los museos etnográficos, en particular, ocupan un lugar primordial porque están en contacto directo con diferentes culturas.

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1. Introduction

Les noyaux d'importantes collections de musées - en particulier des musées Européens - ont été constitués à partir de dépouilles (aussi bien accumulés lors de la domination coloniale que celles provenant de butins de guerre). Des donations, legs, dations ou achat de collections (notamment des artefacts ethnographiques et des spécimens botaniques, zoologiques et minéraux) provenant d'expéditions scientifiques (officielles ou privées) ou individuelles ont aussi contribué à ces collections. Curt Nimuendaju, l'un des plus grands ethnographes du Brésil, a commencé sa carrière en tant qu'organisateur de collections, vendues aux musées allemands.

Les musées, de leur côté, sont une partie intégrante de la structure des états et des sociétés qui les instituent et permettent leur fonctionnement. De cette façon, outre l'important rôle qu'ils jouent dans la reproduction de l'*ethos* d'un certain modèle de la société, les musées sont aussi des héritiers et des dépositaires fidèles de patrimoines acquis par des conquêtes, appropriations, donations ou achats. Dans les arguments et les exemples qui seront traités dans cette étude de cas sur la restitution, il ne sera pas question de la légalité des moyens d'acquisition.

Toutefois, le point central de notre argumentation est la question de la légitimité actuelle des revendications des pays ou des peuples qui s'estiment spoliés dans leur patrimoine. C'est le cas notamment des pays comme l'Égypte ou la Grèce qui, depuis des années, réclament des œuvres de l'Angleterre, de la France et des États-Unis. Ces pays souhaitent alors le retour des objets de leurs patrimoines archéologique et artistique qui leur ont été enlevés et qui se trouvent actuellement dans maintes institutions muséographiques étrangères. Il est de même des sociétés indiennes dont les descendants et/ou représentants légaux ont pris conscience de leurs droits (reconnus ou pas ; appropriés ou pas) de demander que les biens de leur patrimoine leur soit rendus.

Le problème des collections de musées face aux réclamations de restitution recouvre évidemment une grande variété de problématiques et de questions. Quelques-unes sont d'ordre technique : la conservation et la préservation de ces biens. D'autres sont d'origine juridique : aliénation patrimoniale, statut juridique des revendications ou la procédure de restitution. D'autres concernent directement la reconnaissance de la légitimité des propriétaires de ces biens patrimoniaux. Cette dernière question est particulièrement importante quand il s'agit notamment d'objets appartenant à des groupes d'indiens disparus. Quelque soit la manière, la question dont on la comprend, la question de la restitution concerne plus des aspects éthiques et politiques que juridiques et techniques.

D'un autre point de vue, il est normal que l'exposition d'objets indiens au Brésil puisse susciter quelques tensions entre les indiens par rapport à leurs objets et entre leurs conceptions et nos visions. En effet, pour les indiens, ces productions sont le reflet d'un univers mythique et métaphysique. Elles transmettent des inquiétudes communautaires et identitaires de leur quotidien ou de leurs activités rituelles complexes. En outre, chaque objet est aussi le reflet d'une gamme de connaissances techniques et de méthodes employées. Les sentiments véhiculés dans et par les artefacts indiens sont inséparables. C'est pour cette raison qu'une présentation de pièces liées à leur culture n'est jamais

anodine car elle les bouleverse et les touche. Lucia Hussak Van Velthem (2000) disait à ce propos que ces objets ne pouvaient être compris à partir de nos propres conceptions. Et que « regarder les objets indiens c'est regarder des choses surprenantes, parce que non prévisibles. Quelques-uns sont déconcertants comme les grands masques, d'autres sont richement colorés, comme les ornements à plumes, ou bien sont imbriqués comme les paniers pourvus de motifs marquetés. Le regard ne doit surtout pas arrêter à la surface mais plonger dans des structures profondes car c'est dans ce domaine-là que ces objets sont plus provocateurs et défiants. »

Pour la plupart des visiteurs ces objets ne sont perçus qu'en tant qu'« artisanat » comme des œuvres anonymes et par conséquent, leur jugement de valeur est basé par rapport à l'art/artisanat. Or, nous ne pouvons pas les comprendre seulement en tant qu'un enchaînement de formes et couleurs mais comme des mécanismes cognitifs. Pour les sociétés indiennes, l'art sert aux individus qui l'ont créé à « voir et à être vus ». Les arts indiens sont avant tout une forme de dépôt et de diffusion d'informations visuelles. C'est une chose à être partagée car les éléments esthétiques ont un sens et une logique qui est comprise par l'artiste et par le groupe auquel il appartient. Les manifestations plastiques indiennes sont toujours marquées par un cumul d'impressions denses (culturelles, techniques, communautaires) reconnues et partagées par tous les membres de la société. Elles ne sont jamais produites par le résultat d'un jet ou d'un instinct créateur spontané. Leurs objets sont compris alors comme des « êtres corporifiés » et pas forcément humains. Ils ne cherchent pas à représenter la nature telle quelle mais l'image plastique des conceptions intrinsèques à chaque élément présent dans la nature y compris le surnaturel. Ils représentent leur synthèse d'une vision du monde.

Au Brésil nous connaissons deux cas polémiques concernant les collections ethnographiques indiennes, qui ont fait l'objet d'actions de restitution. Le premier a eu lieu en 1986, lorsque les indiens Kraho ont demandé au Musée Paulista que celui-ci leur restitue une hache cérémoniale en pierre. Suite à un procès, les Kraho ont gagné et la hache de pierre en demi-lune a été restituée à cette tribu. En 1989, a eu lieu la séparation des collections du Musée Paulista. Cette division a servi de noyau dur pour la fondation de deux autres musées dans cette même ville de Sao Paulo : le Musée d'Archéologie et Ethnographie (MAE) et le Musée de Zoologie (MZ). Ces trois musées appartiennent à l'Université de Sao Paulo.

Le second cas s'est passé en l'an 2000, pendant *l'Exposition de la Redécouverte : Brésil 500 Ans et plus*¹ à Sao Paulo. A cette occasion, certains représentants d'indiens ont réclamé avec force la dévolution d'un objet historique et ethnographique présenté à l'exposition : le mantelet cérémonial des indiens *Tupinambás* qui était conservé au Musée National du Danemark à Copenhague.

Les cas de restitution de pièces de musées à ses propriétaires originels sont plutôt rares au Brésil mais toujours accompagnés de polémiques, notamment quand il s'agit d'objets conservés dans des musées publics. Juridiquement, ces demandes ont besoin d'être étayées. Toutefois, quand il s'agit d'objets ethnographiques – ou plus particulièrement des objets ethnographiques historiques –, la question pertinente est : qui seraient actuellement les propriétaires légitimes ?

¹ Série d'événements et une grande exposition commémorative des 500 ans de découverte du Brésil qui a eu lieu à Sao Paulo.

En ce qui concerne les objets ethnographiques plus rares et fragiles : la conservation adéquate d'une pièce aussi précieuse et qui a traversé les siècles, est-elle possible en dehors de l'enceinte d'un musée ?

Des problèmes d'identité et de préservation du patrimoine culturel sont les conséquences du procédé de restitution de collections muséographiques. Dans une certaine mesure, les musées (particulièrement ethnographiques) sont capables de faire le point sur la question ; mais dans d'autres cas, ces questions se révèlent incontournables lorsqu'il s'agit d'une cession. Il faut que les musées soient préparés à jouer ce rôle notamment en ce qui concerne la reconnaissance de la légitimité puisqu'ils sont une interface privilégiée au contact entre les cultures. La définition des politiques précises est nécessaire afin de faire face à toutes ces actions.

Dans notre étude nous verrons les cas des objets de ces deux groupes d'indiens brésiliens. Dans le premier cas, nous avons un peuple qui décide de reprendre la possession d'un objet face au musée qui conservait ce bien. Suite à un procès et à une décision judiciaire, ce musée rend l'objet culturel aux indiens. Dans le second cas, étant donné toutes les complexités de la situation, l'objet reste dans le musée où il était conservé tout en préservant la mémoire d'un peuple disparu : les Tupinambá. Ces deux cas sont emblématiques et nous chercherons à comprendre le processus de revendication et, le résultat final : la création d'un précédent juridique, politique et éthique.

2. Objets de musée et problème identitaire

Il y a certainement une relation tendue entre les musées ethnographiques – en tant que dépositaires fidèles du patrimoine culturel de divers peuples – et les peuples chez qui ces objets ont été recueillis ou obtenus. Cette tension débute par le fait que ces objets ont souffert d'être sortis de leur contexte. Quand ils quittent le village, c'est-à-dire quand ils sortent du domaine territorial et symbolique qui leur garantissait un certain sens et qu'ils sont placés dans une ambiance de musée (où ils sont classés, conservés, présentés et intégrés dans des collections), ils intègrent de nouveaux réseaux de sens. Il se produit alors une sensation de méconnaissance, d'étrangeté par rapport à ces objets pour les groupes ethniques qui les ont produits et qu'ils perçoivent dorénavant comme connus mais, en même temps, dépourvus d'identité.

D'un autre côté, maintes fois ces objets conservés dans les musées sont la seule source que certains groupes ont pour connaître une partie importante de leur histoire culturelle. Cela arrive souvent lorsque quelques groupes d'indiens arrêtent de produire un certain artefact et qu'ils cessent de transmettre aux nouvelles générations, l'art et le sens de ces objets. Certains cas sont encore plus extrêmes : lorsque les collections ethnographiques sont le seul vestige de populations disparues². C'est le cas, par exemple, du mantelet Tupinamba que nous traiterons plus loin.

En ce qui concerne les collections ethnographiques et leur rôle de mémoire, nous sommes d'accord l'anthropologue Régina Abreu : «... les patrimoines ethnographiques n'expriment pas les cultures comme si c'était des portraits ou des reproductions de la réalité. Au contraire, (...) ils expriment des interprétations produites par les chercheurs sur des sens

² Au Brésil, il existe actuellement 460.000 indiens, distribués parmi 225 groupes ethniques. Ils parlent environ 180 langues, dans un total de 0,25% du total de la population brésilienne. Outre ces indiens, on a un registre d'environ 190.000 indiens vivant en dehors des terres indiennes. On a repéré des groupes encore non contactés. La Funai étudie la demande de reconnaissance de la condition d'indianité de plusieurs groupes ou des rémanents qui sont parsemés dans le territoire brésilien (cf. www.funai.gov.br).

possibles à propos des aspects retrouvés dans systèmes culturels complexes » (ABREU, 2008, p. 52). Si cette affirmation constitue une évidence pour les professionnels et les théoriciens de musées, pour le grand public elle est beaucoup moins nette. Moins encore pour les représentants des sociétés indiennes qui - lors de leurs visites au musée - regardent ces objets, d'un point de vue ethnique et les trouvent déplacés. Convaincus alors qu'ils devaient avoir un contrôle juridique et symbolique sur des collections ethnographiques, certains groupes d'indiens brésiliens ont bâti des musées dans leurs villages. C'est le cas du Musée *Máguta* qui appartient aux indiens *Ticuna*, habitants de l'état de l'Acre. Ce musée a aussi pour mission renforcer l'identité ethnique de ces indiens auprès de la population non-indienne et par rapport à d'autres indiens. Il renforce et expose l'indianité des *Ticuna*. Le Musée de l'Indien à Rio de Janeiro est un autre exemple de la participation directe et active des populations indiennes lors de l'organisation des expositions d'objets ethnographiques. C'est une institution du gouvernement fédéral liée à la Fondation Nationale de l'Indien (FUNAI) liée au Ministère de la Justice. Les expositions, qui y ont lieu, sont organisées avec la participation des membres de la tribu qui est sujet de l'exposition. Il n'est pas rare que ces expositions soient réalisées par les indiens eux-mêmes, comme celle sur les Wayami, indiens de l'Etat de l'Amapá (cf. ABREU, 2007).

Nous voyons donc que la collaboration et l'intervention de divers groupes d'indiens est possible. Dans le cas du Musée de l'Indien, la nature des relations entre les indiens et les musées a été de nature complémentaire. Ce ne sera qu'à partir des années 1980 que les peuples indiens prendront conscience de leur importance et de leur rôle à jouer dans la société brésilienne. Petit à petit, ils ont laissé de côté leur passivité et leur méfiance vis-à-vis de la prise en charge de leur propre indianité.

2.1. Les Kraho et le Musée Paulista

L'une des raisons principales, qui mènent des groupes d'indiens à revendiquer auprès des institutions muséographiques la dévolution d'artefacts qu'ils considèrent comme leurs est leur prise de conscience en tant que sujets sociaux et historiques. Par conséquent, ils se sentent capables d'entamer des actions afin de réclamer la possession des biens qui intègrent leur patrimoine culturel. Une autre raison serait la conscience de leur identité culturelle, des valeurs symboliques et historiques de ces groupes. Elles vont agir de concert avec leur imaginaire et leur mémoire collective.

Cette dernière est directement liée à des objets car ils jouent un rôle rituel important responsable pour la reproduction et conservation identitaire de ces groupes. La mémoire collective est la plus en relation avec l'imaginaire social environnant. Elle établit les traits fondamentaux de la notion d'identité. Elle est aussi responsable de la continuité culturelle d'une société à travers l'histoire.

Ce sont les deux principales raisons pour lesquelles les Kraho ont demandé au Musée Paulista la restitution de la hache de pierre en demi-lune. Cette hache représente une partie importante de l'ethos Kraho.

Mais qui sont les Kraho ? Quelle est l'importance pour la vie tribale de cet artefact lithique ? Les Kraho appartiennent à la famille linguistique Jê, du Tronc Macro-Jê. Ils parlent la langue Timbira de même que certaines ethnies apparentées. Actuellement, il y a environ 2.000 personnes habitant dans les seize hameaux du Pays Indien Kraolande. Considéré comme le plus vaste territoire continu de savane, ce Pays a une superficie d'environ 320.000 hectares. Leur pays comprend les communes de Goiatim et Itacajá. Il se situe entre les rivières Manoel Alves Grande et Manoel Alves Pequeno, deux affluents de

la rive droite de la rivière Tocantins (Etat du Tocantins). Les contacts avec la population environnante ont commencé à être enregistrés dès le XIX^{ème} siècle. Il existe toute une histoire de conflits et de transfert de territoires jusqu'à ce que les Kraho se fixent là où ils se trouvent aujourd'hui. Leur pays n'a été homologué qu'en 1990 par le gouvernement fédéral.

En ce qui concerne la dénomination Kraho, il existe de controverses. En 1930, lorsqu'ils ont été contactés par Curt Nimuendaju, celui-ci les avait interpellés à propos du sens de ce nom. Les Kraho ont répondu que cela signifiait « poil de paca³ » (de 'cra' = paca et hô = poil). Toutefois, quelque temps après, d'autres Kraho ont affirmé que cette dénomination leur a été donnée par les « blancs ». Même s'ils se reconnaissent dans ce nom et quoiqu'ils soient connus sous ce nom dans toute la littérature anthropologique, ils préfèrent s'auto-désigner de « mehin ». Curieusement, certains Kraho s'auto-désignent aussi comme « Makrare » ou « enfants d'ema⁴ » (de 'mã' = ema, 'kra' = enfant et 're' = diminutif). Ce terme apparaissait déjà dans les textes du XIX^{ème} siècle ce qui renforce l'hypothèse que le terme 'kraho' signifie vraiment « poil de paca ».

Pendant quelque temps, un dépeuplement entre les hameaux Kraho a eu lieu en même temps qu'un processus de mélange de races avec la population environnante. Ces indiens donnaient l'impression qu'ils tendaient à la disparition culturelle. D'autre part, ils baignaient aussi dans une sorte de mouvement messianique qui prêchait l'abandon de leur identité d'indiens. Toutefois, en 1986, un événement majeur a changé l'histoire des Kraho : la revendication auprès du Musée Paulista de la dévolution de leur hache de pierre en demi-lune qui se trouvait conservée dans ce musée. En effet, pendant tout le procès administratif, il n'était pas tout à fait clair comment cette pièce était entrée dans les collections du musée. Ce fait a certainement pesé en faveur des Kraho. Cette action de restitution est directement liée à la nouvelle affirmation ethnique de ces indiens. Plus qu'un caprice ou un changement d'avis, cette revendication représentait une étape importante dans l'affirmation de leur indianité, de leurs traditions et de leurs valeurs mythiques et socio-culturelles. A leur exemple, d'autres peuples indiens iront aussi demander, par la suite, la dévolution de leurs objets mais tous n'ont pas connu le même sort⁵.

Quand finalement les Kraho ont eu le gain de cause⁶, ils ont pu rapporter à leur société cet objet rituel au pouvoir symbolique élevé. De retour dans la société Kraho, cette hache ne ressemblait peu d'autres haches. Quand les Kraho retrouvaient des objets archéologiques, ils mettaient de nouveaux manches afin de les réutiliser en tant qu'objet du quotidien. Mais la hache récupérée avait gagné un statut de hache par excellence, c'est-à-dire celle qui

³ La paca (*Cuniculus paca*) est une espèce de rongeur de la famille Cuniculidae. Elle est trouvée en Amérique du Sud, depuis le bassin de l'Orinoco jusqu'au Paraguaï.

⁴ L'*ema*, aussi appelée de 'nandu' et 'nhandu' (*Rhea americana*) est un oiseau de la famille Rheidae dont l'habitat se limite à l'Amérique du Sud.

⁵ Encore un autre refus était arrivé auparavant en 1997, lorsqu'une précieuse collection d'art indien du XVIII^{ème} siècle conservée au Musée de Coïmbra et à l'Académie des Sciences de Lisbonne a été exposée pour une seule et unique fois au Brésil, à la ville de Manaus. A cette occasion elle a suscité un débat parmi les communautés indiennes locales. Les indiens Ticuna avaient vu dans les masques présentés, ceux mêmes qu'ils produisaient et qu'ils utilisaient dans leurs rites, alors qu'ils figuraient dans les cartels comme appartenant aux indiens Jurupixuna. Ces derniers, déjà disparus, avaient autrefois habité dans le même territoire que les Ticuna. Ils ont alors demandé la restitution des objets présentés. Cette possibilité a été débattue par le commissaire de l'exposition l'anthropologue portugais José Antonio Braga Fernandes Dias.

⁶ Malheureusement, nous n'avons pas pu consulter les archives du Musée d'Archéologie et Ethnologie qui conserve actuellement tout le procès de restitution aux Kraho. Nous manquons de détails sur la façon dont ce passage du musée à la communauté indienne a eu lieu et sur l'état actuel de conservation de cet objet.

représentait la mémoire mythique des Kraho et par cela même, constituait un symbole de leur tradition cosmologique. Cette hache était celle qui avait été utilisée pour tuer le chef des Cokãmkiera, un peuple particulièrement haï des Kraho, selon leur légende mythique. De cette façon, cette hache lithique représente non seulement l'histoire immémoriale des Kraho mais d'une certaine façon par la mort de ce chef indien, elle est aussi le symbole de l'affirmation Kraho en tant que peuple

(cf. <http://www.eumed.net/libros/2010a/667/0s%20Kraho%20sua%20hi>; MELATTI, 2007; <http://pib.socioambiental.org/pt/povo/kraho>).

2.2. Le mantelet Tupinamba et son rapatriement

Au contraire des Kraho, les Tupinamba ne peuvent plus parler par eux-mêmes actuellement. Ce sont des indiens de la famille linguistique Tupi-Guarani, du Tronc Tupi. Ils ont habité en majorité la côte brésilienne du nord de Sao Paulo jusqu'au littoral du Para pendant la période coloniale (1500-1808). La langue et la culture de ces indiens ont été très diffusées par les missionnaires et voyageurs du XVIème au XVIIIème siècle, date de leur disparition. Leur présence marque la culture brésilienne : dans le langage (plusieurs mots portugais sont d'origine Tupinamba : noms de villes, plantes, animaux et singularités géographiques), dans les habitudes alimentaires (l'utilisation du manioc, de l'igname et d'autres aliments) ou l'utilisation du hamac.

Habitant un vaste territoire, ces indiens se partageaient en villages qui formaient « des groupes de tribus distincts, séparés dans l'espace et diversifiés solidairement » (FERNANDES, 1989, p. 17). Cependant ils formaient une unité linguistique et culturelle même s'ils étaient appelés par divers noms (*Tupi, Tamoio, Caeté, Tupiniquim, Tupinamba, Potiguar, Tabajara*) et s'ils vivaient dans un état permanent de compétition et de guerre rituelle entre eux. De ces guerres, résultaient la conquête territoriale et des actes de cannibalisme mais aussi des associations éventuelles entre les villages, en une sorte « d'ensembles multicommunautaires » (FAUSTO, 1998). Ces ensembles pouvaient être défaits à mesure que de nouveaux accords « diplomatiques » étaient conclus. Il n'est pas possible de savoir exactement combien les Tupinamba étaient sur un territoire mais on croit qu'il y avait un million d'indiens au début de contacts avec les Européens. Chaque village Tupinamba était bien fortifié et peuplé d'environ trois mille personnes. Ces indiens se sont d'abord déplacés du Sud de Rondônia vers le Sud-Est. Ensuite, ils ont avancé par la côte vers le Nord, environ 3.000 ans avant l'arrivée du portugais Pedro Alvares Cabral en 1500. Pendant le XVIème et XVIIème siècles ils représentaient la nation indienne hégémonique du pays. Leur disparition en tant que groupe ethnique vers la moitié du XVIIIème siècle a été relativement rapide. Quoique considéré comme un peuple disparu, il reste encore quelques descendants des Tupinamba au Brésil : les Tupiniquim à Bahia et à l'Espírito Santo ou encore les actuels Caeté en Alagoas. Généralement, ces descendants parlent le portugais en conséquence du processus historique de dispersion, de déculturation et de croisement de races différentes. Bien évidemment, cette perte de la langue indienne ne leur enlève pas leurs lettres de créance en tant qu'indiens. L'indianité ne se définit pas par tel ou tel trait culturel (tangibles ou intangibles) mais par un ensemble d'éléments parmi lesquels la mémoire d'une histoire commune. L'héritage mythique est un facteur déterminant dans ce processus d'auto et d'alter identification, en sus de l'auto-affirmation.

De retour en Hollande en 1644, Maurice de Nassau⁷ a rapporté un mantelet à plumes qu'il avait reçu comme cadeau. L'usage de ce mantelet était réservé aux chefs religieux (les « *pajés* ») Tupinamba. Il est probable qu'il s'agissait d'un mantelet reçu ou récupéré des indiens Caeté qui à cette époque habitaient sur le littoral de l'état du Pernambouc. En arrivant en Europe, Nassau a offert ce mantelet au Musée National du Danemark à Copenhague où il est actuellement conservé.

Par rapport à la hache des Kraho, le cas du mantelet Tupinamba présente un plus grand degré de complexité. D'abord parce qu'il s'agit non seulement d'une restitution mais aussi d'un rapatriement. Ensuite, par la nature même de l'objet et de sa propriété. Enfin, par rapport aux acteurs qui sont concernés dans cette affaire et que l'on pourrait diviser en principaux, secondaires et adjoints. Les acteurs principaux sont les représentants des indiens, le Musée National du Danemark et les gouvernements brésilien et danois. Les acteurs secondaires sont les entités de la société civile (associations indiennes, organisations non-gouvernementales, associations de professionnels liés au sujet), les institutions publiques et la presse. Les adjoints sont la population en général.

Mais il reste encore – et prioritairement - deux problèmes techniques à résoudre. D'abord, qui doit être le bénéficiaire de cette restitution ? Il y a certes déjà eu des manifestations revendiquant le rapatriement du mantelet Tupinamba mais c'est seulement pendant les commémorations autour des 500 ans de découverte du Brésil (2000) que les représentants indiens ont interpellé les chefs d'Etat et les dirigeants du Musée à Copenhague dans ce sens. Ils ont revendiqué la dévolution de cet objet à ses propriétaires légitimes avec l'aide de la presse et des médias. Voilà le cœur de la question.

Pouvons-nous considérer les actuels Tupiniquim et Caeté comme les descendants et héritiers légitimes des anciens Tupinamba et donc du patrimoine culturel de ces indiens ? La réponse est partiellement « oui » et partiellement « non ». Oui parce qu'en dépit de cette autonomie des hameaux et de la rivalité belliqueuse entre elles, les Tupinamba ont formé un seul groupe culturel et linguistique. Partiellement non pour les mêmes raisons ethniques et historiques. Ces groupes actuels ne forment pas non plus une unité tribale. Qui serait alors les légitimes héritiers du patrimoine culturel Tupinamba ? Les Tupiniquim de Bahia ou de l'Espírito-Santo ? Ou bien les Caeté d'Alagoas ? Ou alors une entité générique et supra-ethnique « indiens brésiliens » ?

D'autre part, nous ne savons pas comment ce mantelet est-il arrivé aux mains de Nassau. Serait-il une offrande de la part du chef tribal ? Une dépouille de guerre, un échange rituel ou une expropriation ? Nous savons que le mantelet ainsi que plusieurs autres objets ethnographiques et naturels (spécimens végétales, animales et minérales) appartenaient légalement à Maurice de Nassau. Nous savons aussi qu'il a offert le mantelet au Musée du Danemark comme un monument/document (voir Le Goff, 1994) afin d'être exposé et préservé. Car à part sa valeur symbolique et historique, il possédait également une inégalable valeur esthétique. L'Occident a toujours privilégié ce genre d'objets visuels d'impact, principalement les ornements à plumes d'oiseaux ou les objets rituels. Ce long manteau sans manches couvrait son utilisateur du cou au pied et le transformait en une sorte d'homme-oiseau. Ils ont souvent été objet de légendes comme celui conservé à Bruxelles et que l'on croyait appartenant à Montezuma, l'empereur des Aztèques. A l'époque ces rarissimes et précieux vêtements constitués par des plumages d'oiseaux brésiliens étaient présentés comme l'un des objets merveilleux du Nouveau Monde. Il

⁷ Gouverneur de la Cie. Néerlandaise des Indes Occidentales au Brésil. La présence hollandaise au pays a perduré de 1630 (lors de la conquête de Olinda et Recife) jusqu'à 1661 avec la signature du Traité de la Haye. A partir de ce moment, la Hollande reconnaît la souveraineté portugaise sur l'état de Pernambouc.

existe d'autres exemplaires de ce mantelet : conservés à Paris, Bruxelles, Bâle et Milan. Celui de Copenhague est le meilleur conservé. Pour ces raisons, nous sommes emmenés à déduire que Nassau aurait offert cet objet à un musée et non pas à une personne ou à une institution quelconque.

Outre cette question sur la légitimité de la propriété, il faudrait savoir à qui, parmi les possibles héritiers, retomberait la possession et la conservation de ce bien ? Car le Musée de Copenhague est chargé de ces fonctions depuis plus de 300 ans. Ou bien, il serait restitué au gouvernement brésilien, car il s'agit d'un bien patrimonial de tout le peuple brésilien, un objet de mémoire qui nous rappelle une partie de l'histoire du Brésil. C'est l'héritage d'un peuple dont l'importance ethnographique et historique est inégalable.

Si par hasard cet objet venait à être rapatrié, il resterait encore à savoir qui serait chargé de sa conservation ? Probablement pas les Tupiniquim ni les Caeté, parce qu'il leur manque la compétence et les moyens techniques dans ce domaine⁸. La conservation adéquate des objets exige un contrôle permanent de la température⁹ et de l'humidité. Sans ces conditions, il y a un grand risque pour l'avenir d'un patrimoine culturel. Plus certainement, ce serait l'un des musées ethnographiques du Brésil, capables de prendre en charge cet objet si rare comme le Musée National, le Musée d'Archéologie et Ethnologie ou le Musée Paraense Emilio Goeldi. Toutefois, aucun accord n'a jamais été réalisé jusqu'à présent entre le gouvernement brésilien, les indiens descendants des Tupinamba et le Musée à Copenhague. Le fait que cet objet ait été offert par quelqu'un qui à l'époque était le propriétaire, lié au temps déroulé de conservation de ce bien au musée, ainsi que la disparition du groupe local d'où cet objet revenait contribuent certainement à poser des difficultés éthiques et juridiques à toute action de revendication pour la dévolution de ce bien patrimonial au Brésil.

⁸ C'est d'ailleurs en grande partie pour cette raison que nous ne connaissons que quelques rares pièces des arts indiens du début de la colonisation brésilienne au XVI^e siècle. Car à cette époque, les terres et les peuples que les européens découvraient révélaient en même temps des objets méconnus. Ces objets étaient des artefacts de toute sorte et ils attiraient la curiosité des étrangers. Envoyés en Europe en tant qu'ensemble de choses « rares, exceptionnelles, extraordinaires, exotiques et monstrueuses » (Krzysztof Pomian), ils ont été intégrés – et protégés - dans des collections alors disposées dans le *Wunderkammer* et dans les cabinets de curiosités. C'est grâce à ces systèmes de collection qui ont proliférés dans tout le continent depuis le XVI^e siècle jusqu'au XVIII^e que les européens ont pu découvrir des parties d'une réalité lointaine et bizarre. Par la suite ces objets iront fournir les collections des premiers musées modernes. Les mantelets des Tupinambás en sont un exemple, recueillis pendant le XVI^e et le XVII^e siècle en Amérique du Sud. Au XIX^e siècle apparaîtront les disciplines de l'ethnographie et le musée ethnographique, inséparables à ses débuts de l'anthropologie. Avec ces disciplines est née la notion d' « objet ethnographique », en opposition à d'autres objets : aux naturels, aux archéologiques et aux œuvres d'art.

⁹ Comme nous le raconte le prêtre français Constant Tastevin (1880-1958) dans ses mémoires sur le climat de l'Amazonie : « la saison sèche n'est jamais complètement sèche, et il est rare qu'il se passe quinze jours sans un torrent d'eau. Les pluies d'été sont brèves, tandis que celles d'hiver, qui durent normalement entre cinq à six heures tombent pratiquement tous les jours. (...) C'est le moment où les rivières de cette région débordent jusqu'au niveau des rameaux, à quatre ou cinq mètres de haut et toute la terre ramollit excessivement. (...) Pendant le jour et en été, la température en Amazonie se trouve entre le 27°C ou le 28°C, n'atteignant que rarement au-dessus de 33°C. En hiver, pendant la journée la température arrive au maximum jusqu'à 24°C. »



Sous-titre 1: Mantelet (Cape) à plumes. Tupinambá. Pernambuco (?). Nationalmuseet – Musée National du Danemark. Département d'Ethnographie. Copenhague.

3. Conclusion

La restitution d'objets muséographiques est avant tout une question éthique et politique, très liée à la légitimité de la propriété. Les musées doivent être préparés à faire face à des actions de la part de gouvernements, d'organisations civiles ou de particuliers qui revendiquent la dévolution de leurs objets. Il faut élaborer un processus à la fois technique, juridique et éthique et une politique à suivre par les musées. D'un autre côté, il est impossible d'ignorer qu'à l'origine, ces objets ont fait partie historiquement du patrimoine culturel d'un peuple et qu'à un moment donné, ils lui ont été pris. Même si l'acquisition de ces objets a été réalisée de façon légale et si les musées les conservent depuis longtemps.

En ce qui concerne le patrimoine culturel brésilien, le Musée Paulista – et tous ceux qui ont jugé l'action interjetée par les Kraho – a été ethnographiquement sensible au point d'accepter la restitution de la hache de pierre. Par rapport au mantelet Tupinambá, la question s'avère beaucoup plus complexe et plus large, ayant des considérations tant dans les domaines techniques et éthiques qu'ethnographiques et historiques. Les deux côtés pourraient évoquer des arguments solides aussi bien sur le plan de l'histoire que du droit. Dans toutes les situations, c'est le bon sens qui devrait toujours prévaloir. Le dialogue entre les parties concernées est certainement le meilleur chemin pour trouver des solutions face à une situation d'impasse. Dans certains cas, les indiens préfèrent que l'objet reste au musée. En effet, si l'objet réclamé est d'une grande rareté voire d'une extrême fragilité, il risque de disparaître définitivement sans l'action du musée. C'est bien le cas des objets produits par les cultures indiennes car souvent ils sont créés avec des matières périssables, d'origine animale ou végétale. Les musées protègent ces objets des dangers de destruction dus au climat tropical. Aussi bien en région amazonienne qu'ailleurs dans le pays, les températures sont souvent très élevées et l'humidité relative est toujours en hausse. Il faut, dans certains cas, persuader les indiens que la meilleure solution consiste en le maintien de l'objet dans le musée. Ce genre de situations ne fait

que renforcer la nécessité du dialogue entre les musées ethnographiques et les sociétés indiennes : une vraie ouverture de portes du musée aux indiens à travers un dialogue transculturel.

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HARMONY AND DISSONANCE: CULTURAL TRANSACTIONS IN THE MUSEUM OF VIOLENCE

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*"Is it impossible for you to let something go and let it go whole?"
Sylvia Plath – "A birthday present"*

ABSTRACT

This paper approaches the museums' dilemmas concerning cultural transactions and the manipulation of the values of objects. The museum is understood as an agent in the frames of heritage disputes, and, thus, it constitutes part of the social life of things, acting on social exchanges. Heritage, indeed, is studied as the things in transition. For that matter, the terms deaccession and restitution challenge the idea of a museum founded on much solidified paradigms. As a result of its own action, the museum is itself a social thing. And the distinctions between the things we sell, the things we give and those that we keep as sacred objects are what define the social order in which museums act by creating and destroying the sensible bounds between things and people.

Keywords: Museum. Museology. Heritage. Deaccession. Restitution.

RESUMÉ

Harmonie et dissonance : transactions culturelles dans le musée de la violence

Dans cet article sont présentés les dilemmes que rencontrent les musées concernant les transactions culturelles et la manipulation de la valeur des objets. Le Musée est compris comme un agent dans le cadre des disputes patrimoniales, et il est alors partie de la vie sociale des choses, agissant dans les échanges sociaux. Le patrimoine, notamment, est ici étudié en tant que chose en transformation. En effet les termes aliénation et restitution sont un défi à l'idée d'un musée fondé sur des paradigmes très solides. En tant que résultat de leur action, le Musée est aussi une chose sociale. Et il faut distinguer entre les choses que l'on vend, celles que l'on donne, et celles qui sont gardées comme objets sacrés, définis par l'ordre social dans lequel le musée accomplit ses actions, en créant et dissipant les liens sensibles constitués entre les choses et les personnes.

Mots-clé: Musée, muséologie. Patrimoine, aliénation, restitution.

RESUMEN

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Armonía y disonancia: gestiones culturales en el museo de la violencia.

En este documento se presentan los dilemas que enfrentan los museos en relación con las transacciones culturales y la manipulación del valor de los objetos. El museo es considerado un agente en el cuadro de las disputas patrimoniales; por lo tanto, forma parte de la vida de las cosas como actor de los intercambios sociales. El patrimonio es estudiado aquí en forma especial como algo en transformación. En efecto, los términos alienación y restitución constituyen un desafío ante la idea de un museo fundado sobre paradigmas sólidos. Como resultado de su acción, el museo es también una cosa social, pero es necesario distinguir entre las que se venden, las que se dan y las cosas que se guardan como objetos sagrados definidos por el orden social, en el cual el museo lleva a cabo sus acciones creando y destruyendo los lazos sensibles que se constituyen entre las cosas y las personas.

Palabras clave: museología, patrimonio, alienación, restitución.

* * *

1. Building concepts for a museum of deconstruction

Throughout all modernity, museums have been agents of transactions in many cultural scenarios and in different societies. Generally taking the form of prestigious institutions, functioning in the core of social life, they act directly on exchange relations. Museums present the world through a selective eye over heritage; they ponder, compare, choose and elect the things that are going to be seen. Museality, in that sense, is not simply found, it is a museal attribution that is responsible for musealization. The museum, in the process of attributing value to things, is a mean and not an end. It is the *agent* that deliberately extracts something from its previous context, and places it in a different one, where it takes new meanings and illuminates new experiences. In the same way, the museum can give back something that has been taken in another time, removing it from its collection and altering once again its meanings and values. *Deaccession* and *restitution* – common words in the museums' recent vocabulary – place the museum in the commonly refuted position of an agent of exchange and transformation.

Historically, museums went through two main eras of existence defined essentially by the social implications of their actions. In a first phase the museums acted like 'predators' or aggressive collectors of the culture of 'Others'. This behavior was, at first, justified in the name of curiosity and prestige, and, later, based upon a 'civilized' notion of how to accumulate knowledge of all things and peoples that had been, so far, left out of sight. Although these first museal experiences have taken many different forms throughout history, it is with the colonialist approach that it was perpetuated a particular way to 'collect' the Other.

In the colonial encounter, in which the European collectors established a relation of subordination with the 'cultures' they studied, a history of abuse of the Other moved by a colonialist based premise of exploration for objectification was put into practice. The historical scene of colonialism between the XVIth and the XIXth century is a topic in the study of many authors². For instance, in Talal Asad's analysis, colonialism is marked by the

² Among them, Asad, 1973; Fabian, 2001; Sayd, 2007.

power relationship between dominating (European) and dominated (non-European) cultures³. For this author, the reason for this asymmetry is the dialectic of world power. And despite the claim from anthropologists from this time to have contributed to the cultural heritage of the societies studied “by a sympathetic recording of indigenous forms of life that would otherwise be lost for posterity”⁴, they have also contributed towards maintaining the structure of power represented by the instated system.

At one end of the colonial transactions, the museums were placed at a distance from those who they studied and who they transformed into a subject of study for modern sciences. It was only with time that these institutions – and the people that have been making them – learned other ways to gain knowledge of others through communicative practices that, according to Johannes Fabian, require that both sides are able to “transcend the confines of their cultures by reaching a common ground, or by traveling, as it were, back and forth between the grounds on which they stand”⁵. The second phase of the museums approach to people and their cultures is defined by a more democratic view of the appropriation of the Other, based on an attempt at communication and an urge of recognition.

It concerns a change – still in process today – that took form during the 19th and 20th centuries and had its climax in the 1970s and 1980s with the New Museology (*Muséologie nouvelle*) movement and the dissemination of community museums, which gave a global dimension to the social theories that were driving the actions of some museums in the world⁶. The novelty is that now museums are devoted to recognizing those who were earlier objectified for studies purposes as coeval participants in communicative exchanges. *Recognition* is now seen as a condition that makes communication possible, but, as Fabian puts it, “it is an agonistic relationship”⁷, it involves participants in confrontation and struggle. According to the author, recognition is not something that one party can simply grant to the other. In most situations it is achieved through exchanges that have startling, upsetting, sometimes profoundly disturbing consequences for all participants.

The supposedly new practical concepts of deaccession and restitution, that were brought to life by the social needs the museums finally decided to listen to, open the door to a whole new world of interrogations. The preoccupation with things and what things represent is now translated to a commitment with the restitution of feelings, beliefs, pride and all kinds of symbolic capital that are in dispute. Through the transactions they’ve been responsible for, museums have had to deal with the most conflictual cultural entanglements. When attributing value to objects a given museum is inventing a culture through representation. And it is, thus, unequivocal that what really is in dispute are the meanings and the power of representation, and so it is mandatory for museum professionals to have in mind how these power relations are historically constructed in a unequal and hierarchized way.

The museum is a flux of things, and this may seem as a difficult affirmative because it denotes the transitory nature of our own social reality. And differently from *concepts* which usually make prescriptions, *things* involve actions. The museum – by itself, a *social thing* – can be deconstructed in many different ways, through different arrangements. And it is

³ Talai Asad, “Introduction”; in: Asad, Talai (ed.), *Anthropology and The Colonial Encounter*, New York: Humanities, 1973, p.17.

⁴ Ibidem, loc. cit.

⁵ Johannes Fabian, “Remembering the other: knowledge and recognition”; in: Fabian, Johannes, *Anthropology with an Attitude*. Critical essays, Stanford, California: Stanford University Press, 2001, p.176.

⁶ B. C. Brulon Soares, *Quando o Museu abre portas e janelas*. O reencontro com o humano no Museu contemporâneo, 2008, Dissertation (Master) – Post-graduate Program of Museology and Heritage, UNIRIO/MAST, Rio de Janeiro, 2008.

⁷ Fabian, op. cit., p.175.

usually not a simple task to accomplish. Here it has been chosen to take on this invigorating challenge by an attempt to understand the museum according to its actions and not just the illusionary representation that we, sometimes, make of it.

2. The things we give and the things we sell

Museums are historical products from the multiple relations between persons and things. It is, then, only through *exchange* that a museum can exist; in other words, exchange has always been a reality for museums, yet the criteria for its practice is what is still in discussion today. Exchange can be perceived, in the first instance, as being always a political process, in which wider relationships are expressed and negotiated⁸. The moment of a transaction, as Nicholas Thomas notes, is when evaluations of entities, people, groups and relationships emerge. The things we receive, in general, are never completely alienated from where or from whom they came from. In the analogous way, the things we give embody some of our personal context or the context of the gift itself. It's important, then, in order to understand how things are indeed connected to people, to go back to Marcel Mauss' famous study called "*The Gift*".

A gift, for Mauss, is not just a thing, but also an act that establishes a double relation between the person who gives and the person who receives. According to his theory, the gift has a *force* that makes the giver reciprocate⁹. What the author observes in "archaic societies", in which retribution is an obligation, is that to refuse to give, as much as to receive, is the same as declaring war to the other part¹⁰. In this context where gifts and meanings are exchanged generating all kinds of different bounds among people, things comes and goes as if a spiritual matter that included things and persons was being itself exchanged between clans and individuals. The thing given has a soul, which creates a necessary bound with its original owner. To give is to share something you have, and something you are. As Maurice Godelier explains, a forced gift is not a gift¹¹. The voluntary gift brings together the person who gives and the person who receives; in the same way, though, the gift creates, in the person who accepts it, the obligation to give back. It, then, instates a dissymmetry, a hierarchy between both parts. And in that sense, the exchange of gifts – or any sort of exchange, for that matter – is a manifestation of power.

In the industrialized societies of the West we are constantly confronted with the idea of a world of commodities which 'sell' the notion of a global circulation of goods deprived from any kind of deep meaning. The tendency to oppose the gift exchange to the exchange of commodities in the anthropological discourses is today a point for discussion. Arjun Appadurai, who analyses the exchange of commodities¹² in social life, sustains the fruitful idea that through exchange these objects acquire value. Furthermore, focusing on the things that are exchanged, rather than simply on the forms or functions of exchange itself, the author argues that what creates the link between exchange and value is politics, which justifies the idea, defended by him, that commodities, like persons, have social lives – as

⁸ Nicholas Thomas, *Entangled Objects*. Exchange, material culture, and colonialism in the Pacific, Cambridge, Massachusetts / London, England: Harvard University Press, 1991, p.7.

⁹ Marcel Mauss, "Ensaio sobre a dádiva. Forma e razão da troca nas sociedades arcaicas"; in: Mauss, Marcel, *Sociologia e Antropologia*, São Paulo: Cosacnaify, 2005, p.188.

¹⁰ Ibidem, p.202.

¹¹ Maurice Godelier, *Au fondement des sociétés humaines*. Ce que nous apprend l'anthropologie. Paris: Bibliothèque Albin Michel. Idées, 2007, p.70.

¹² The author defines the term commodities as "objects of economic value". Arjun Appadurai, "Introduction: commodities and the politics of value"; in: Appadurai, Arjun (ed.), *The Social Life of Things*. Commodities in cultural perspective, Cambridge: Cambridge University Press, 2007, p.3.

much as other kinds of objects that are exchanged. And if value is embodied in commodities that are exchanged, as Appadurai predicted – which means that, in other words, exchange creates value – some parallels can be drawn between the commodity and the gift.

While Marx's considerations on commodities in "*Capital*" were still imprisoned in aspects of the mid-nineteenth-century episteme, according to which the economy could only be seen in reference to the problematic of production, for Appadurai, if we focus on the dynamics of exchange instead of on the production, the product and the producer, it may be possible to see the commodity not as a type of thing, but a thing in a certain situation¹³. According to him, this means *looking at the commodity potential of all things* rather than searching for a magic distinction between commodities and other sorts of things. A commodity, in this view, is a *state* and not a thing or kind of thing. Some things may be seen as moving in and out of the commodity state. And these movements may be slow or fast, reversible or terminal, normative or deviant¹⁴. Anyhow, objects in their social life are as diverse as the cultures that produced them, and it is more productive to perceive them in their movements and idiosyncrasies, than narrowly as objective things.

The superficial opposition between the gift and the commodity lies in the fact that while gifts link things to persons and embed the flow of things in the flow of social relations, commodities are held to represent the drive of goods for one another, being that drive mediated by money and not by sociality¹⁵. The contrast between a theory of reciprocity and market exchange is a legitimate one. It is present not only in the anthropological discourse but also in some levels of our social reality, the museum being one of them. Between the gift and the commodity, the museums, throughout the years of their existence, have been obligated to deal with the multiple and interchangeable variations of states that a thing can incorporate. By taking things from the world and transforming them in something else, they create some kind of objectification of the universes that exist beyond its walls, and by doing so museums produce nothing more than a fiction, a new world found upon magic, that is also real because it has real implications over the social order, and that is composed by the things we think – for specific reasons – that are worth keeping.

3. The things we keep and why we keep them: distance, magic and fiction

Museums make a performance with the value in things and not with the things themselves, and by doing that they demonstrate that value is socially constructed – by social and cultural interactions, as well as by musealization itself. As Appadurai puts it, objects are not difficult to acquire because they are valuable, in the contrary, the objects we call valuable are those that resist our desire to possess them¹⁶. The principle of exchange according to this particular point of view in economic anthropology is intimately related to the conception of *distance*. The "economic objects", in Simmel's terms, exist in the space between pure desire and immediate enjoyment, with some distance between them and the person who desires them, which is, as Appadurai explains it, a distance that can be overcome. As the author notes, "one's desire for an object is fulfilled by the sacrifice of some other object, which is the focus of the desire of another"¹⁷. For that matter, it is the dislocation of things in

¹³ Arjun Appadurai, "Introduction: commodities and the politics of value"; in: Appadurai, Arjun (ed.), *The Social Life of Things*. Commodities in cultural perspective, Cambridge: Cambridge University Press, 2007, p.13.

¹⁴ Simmel (1978, p.138 apud Appadurai, 2007, p.13).

¹⁵ Appadurai, op. cit., p.11.

¹⁶ Simmel (1978, p.67 apud Appadurai, 2007, p.3).

¹⁷ Appadurai, op. cit., p.3.

time and space, along with their symbolic resemantization, that illuminate their human and social contents.

Therefore, as it is pointed out in Appadurai's work, we have to follow things themselves, for their meanings are inscribed in their forms, their uses, their trajectories. And it is only through the analysis of these trajectories that it is possible for us to interpret the human transactions and calculations that enliven these things-in-motion¹⁸. In the context of museums, for instance, in a specific context in which the very trajectories become objects of value, the value of the object is constructed in a great way by the 'invention' or the emphasis in the *distances*. When it generates distances between people and the objects, the museum creates authenticity – or the sense of authenticity by the artificial production of a distance that, sometimes, doesn't even exist.

By drawing lines and limits – real or imaginary – between the observer and the 'thing' in the performance, the museum places the object outside of the domain of common people. And putting the practice of deaccession in a hidden box, or creating a taboo in that matter, the museum turns the musealized object into an unobtainable object of desire. There is no sacrifice capable of making it exchangeable, considering it doesn't constitute a commodity anymore. The paradox lies in the fact that when deaccession is a reality – or, in some cases, when it's just a remote possibility –, the object in the museum may lose its value of use, but it does not lose its exchange value. There will always be an increasing estimated value for the possibility of a future 're-commoditization'. For that, value is created by exchange as well as by its suppression.

Godelier, in his analysis of the differences between the things we give, the things we sell, and the other things that we don't give or sell, but we decide to keep for ourselves¹⁹, constructs a rich understanding of the social life based on these three human movements. In the author's view, the things that cross these phases of existence acquire value, and they possess the power of acting on people's lives. The things that we keep are thought as analogous to sacred objects, presented like "gifts from the gods", in the sense that they must be kept by present humans as a precious heritage from an ancient past. These sacred objects, thus, are experienced as an essential part of the peoples' identity, hence their value lies in the power they possess in society and over it.

By embedding objects in a particular kind of magic, also known as museality, museums create a sort of fiction, based on the fact that feelings and emotions are more important in the production of authenticity than the materiality of things. A relic, for example, as an object commonly musealized today, according to Annabel J. Wharton, is a sign of previous power, real or imagined. As a "fragment that evokes a lost fullness"²⁰, a relic constitutes a part that allows the embrace of an absent whole. It gains life by evoking an object that is dead. Its value is, in fact, in the uniqueness of its survivor, and a relic, commonly, avoids intrinsically valuable materials. The value of a relic is changeable through time. While in the early Middle Ages relics were considered gifts, as properties that changed hands emphasizing the importance of both the gift and the giver²¹, working as a "noncirculating

¹⁸ Ibidem, p.5.

¹⁹ Maurice Godelier, *Au fondement des sociétés humaines*. Ce que nous apprend l'anthropologie, Paris: Bibliothèque Albin Michel, Idées, 2007, p.67.

²⁰ Annabel Jane Wharton, *Selling Jerusalem*. Relics, replicas, theme parks. Chicago: The University of Chicago Press, 2006, p.11.

²¹ Patrick Geary, "Chapter 6. Sacred commodities: the circulation of medieval relics"; in: Appadurai, Arjun (ed.), *The Social Life of Things*. Commodities in cultural perspective, Cambridge: Cambridge University Press, 2007, p.173.

fortune” which resisted commodification, in the contrary, today relics do not fit comfortably in the Western economy²². Usually, the power of relics nowadays depends on its uniquely intimate relationship with its originating source, and when a real relic enters the modern market it struggles to retain its identity as something other than an economic good. It can be pointed out that the object gives something up when treated like a commodity; according to Wharton, this something is part of its authenticity. And in this point of view, the authentic is produced through artificial, fictional methods – and if so it can also be recreated.

Museums act as if they were not part of the process of making things valuable. They play their role as if they simply collected and exposed the things that already possessed value, and they tend to ignore that their action is a crucial one in how precious an object may become. On the other hand, deaccession cannot be seen as mere degradation, it is a way to interrupt the magic and to give away what was before kept as heritage. It means a rupture of the multiple ties that constitute musealization, and being it a violation of the objects integrity, deaccession should be done in the name of keeping heritage as flux, as a symbolic force, uninterrupted.

4. For a rhythm in harmony: the museum has a social life

In the attempt to denaturalize the museum’s objectivity, this social institution must be seen in terms of its authority, as a speaker, an author. The paradigms that sustain the museum’s truths and its authority must be relativized in order to allow it to reconcile with ‘other truths’ and to incorporate new social realities. As a social thing, the museum works in a flux of experience, connections, knowledge and also of other social things that can make sense to its speech today but not tomorrow. That’s how heritage is constituted in its core: in a constant process of continuities, ruptures and transitions. As all social things, heritage is never stationary. It is moving, dialoguing and always evolving from one transition to another. As in memory, remembering is only possible when we can forget (which doesn’t necessarily mean abandoning something completely, but putting it somewhere else).

The process of rupture, though, is never a harmonic and peaceful one; in the contrary, it tends to be conflictive and belligerent. If museums have the right to deaccession – as it should be, considering heritage is constantly in dispute inside or out of the museums domain – they must see it indeed as a responsibility and an invitation to a broader conscience over the things in their possession. But restitution is what makes deaccession even more complicated. Through restitution, a museum chooses and stipulates to whom something is addressed; it decides who the ‘*original*’ owner is, as if things didn’t have complex trajectories, but only senders and receivers in a unilateral way. In this process history is simplified and the identities are suppressed in the false hope that culture is singularized, turning the museums’ job much easier. Despite all the effort by some museums to elaborate harmonic solutions for the social reality instead of embracing its instability, becoming aware of the differentiation and dissonance that constitutes it in the first place, it is more and more obvious in the politics of heritage that this strategy will only produce frustrating outcomes. The claim for harmony is intrinsically related to the “gratuitous celebration of ‘multivocality’” of the postmodern escapism²³. What is needed, otherwise, is to unveil the real dynamics of culture and society, and to acknowledge that there is no harmony without rhythm.

²² Wharton, op. cit., p.45.

²³ Johannes Fabian, “Remembering the other: knowledge and recognition”; in: Fabian, Johannes, *Anthropology with an Attitude*. Critical essays, Stanford, California: Stanford University Press, 2001, p.175.

Although harmony and rhythm are both considered key elements of music, they possess some considerable differentiation. Musically speaking, it can be said that harmony is extrinsic and universal, while rhythm is intrinsic and relative. In samba, for instance, harmony can be objectively judged; rhythm, otherwise, differs in each case and constitutes a specific feature of the song. Harmony means cohesion. Rhythm has something to do with the dynamics of melody. It embodies time in its flow, while harmony is timeless. In that sense, one needs the other so that harmony can incorporate the dimension of time. For the song, rhythm *is* time. And time gives music its pulse. Time – or rhythm – gives life to the song. Harmony alone is simply the patterns of the notes, the lifeless relation of notes to each other.

Rhythm is the element that characterizes a song. It differentiates samba from jazz. And the differences do not constitute mistakes because rhythm authorizes dissonance. On the contrary, harmony depends on consonance, as a stable chord or interval, as opposed to dissonance, which is the very soul of instability. Finally, instability means that things are in transition, and maybe there is no better word to define how cultures behave.

4.1 The things we give back: being inclusive or ambiguous?

Museums have to deal with the difficulty of representing and formulating integrated cultures, but the very notion of culture is difficult to be seen today as an integrated whole. No museum is exclusive to a context in which only one culture exists – and what would ‘one culture’ be, anyway? What would it look like? What is wrong is the understanding of cultures as if they really existed in practice in the way they present themselves in discourse, as if there was no subculture or crossed-cultures, and as if there was a pattern way to deal with them as well as to ‘restitute’ them.

Differences are the defining part of what cultures really mean, and it is not simple – if it is, indeed, possible – to frame dissonant parts in any kind of universal ethics. A precise illustration for this matter is the idea of “sound blindness”²⁴ discussed in Franz Boas article “*On alternating sounds*”, which derive from the ‘observation’ that a considerable number of individuals cannot distinguish differences in key and timbre of sounds which are easily discerned by “ordinary ears”²⁵. The phenomenon of sound blindness, according to Boas, denotes a case of lacking faculty to distinguish the key of sounds. But, in the other hand, the author guarantees that it has, indeed, never been observed. In what concerns this supposition of the inability to perceive the essential peculiarities of certain sounds, some researches were made on the faculty of individuals to recognize certain consonants and vowels. And as Boas puts it, it is well known that on hearing for the first time a word of which we do not know the derivation we are liable to misunderstand it. Later on, in his attempt to explain cultural relativism in the perception of sounds by ears that are ‘trained’ by different mother-languages, Boas states that this supposed “lacking faculty” can be explained only by the fact that “each apperceives the unknown sounds by the means of the sounds of his own language”²⁶. The difficulty in understanding the dissonant sounds, though, were not in the speakers/observed, but in the listeners/observers themselves. The wrong apperception, then, is due to the phonetic system of the listener’s native language, and it has more to do with *cultural differentiation* than with a problem in the pronunciation of sounds by those who cannot be understood in the “ordinary ears”. For the author, thus,

²⁴ A reference to the similarity of this phenomenon to color-blindness.

²⁵ Franz Boas, “On alternating sounds”, *American Anthropologist*, Vol. II. p.47-54, Jan. 1889, p.47.

²⁶ *Ibidem*, p.51.

there is no such phenomenon, and the “alternating sounds are in reality alternating apperceptions of one and the same sound”²⁷.

The mistaken idea that the museum could be putting back to place the things that were taken in the past, as if it was taking place a reorganization of the world as it was, is problematic because of its illusionary nature. There is not a unique order to any society we know. And for that reason the museum that is called *inclusive* with a universal pretense runs the risk to become ambiguous. The problem with harmony, sociability and the museum is that the idea of a harmonious museum may presuppose the existence of “ordinary ears” that can set the parameters to how differences are supposed to sound. If the altering sounds do not exist, considering there is not a pattern hearing, all there is to be taken in account is dissonance. And the museums, in the promotion of dialog and mediation, are usually dealing with and causing conflicting hearings.

4.2 Exchanging heritage in the museum of violence

All museums are founded in the ties that bind people and things. Any museum in itself has a social life and is bound to a series of social ties which determine its actions, its cultural transactions, its rights and duties. But museums, in the sake of the transitions they have to manage, are also responsible for breaking some ties and for building new ones. How to do that hurting people as little as possible is a challenge of great proportions. But in the end, the fact that calls our attention is that museums, in order to promote change instead of stagnation, exercise the deconstructing ability to *hurt* people in what designates who they are, and how they represent themselves.

Acknowledging this potential for making war and causing suffering, the contemporary museum is a *museum of violence*, because it has to deal with the constant violation of peoples’ intimate belongings. But violence is more than just violation. As Veena Das describes it, while violation involves recognition of a culture so that something can be taken from it²⁸, violence is blurry and it produces different sorts of silences. Rarely violence can be put into words. It is unable even to manifest conflicting actions which would allow the actors to express their social, cultural or political demands, it simply exists in the very lack of any kind of vocality. Yet violence is present in a determinant part of the social flow and it allows the creation of representation and performance. As Victor Turner points out, when society bends back on itself, doing violence to its own development, it “meanders, inverts, perhaps lies to itself, and puts everything so to speak into the subjunctive mood as well as the reflexive voice”²⁹. By doing that, society works in a state of supposition, desire and possibility, rather than stating actual facts. Like in the subjunctive mood of a verb, this arrangement of things dissolves what were once factual components of reality and instates a more playful spirit.

Not just in the present, but historically, museums have ignored the implications of their transactions between different cultures. Dissonances have been silenced in the name of a more harmonic sound. Rupture is one important face of heritage, and when cultural heritage evolves, so do the identities that are bound to it. Museums deal with movement and transition, which are also characteristics of war. After being for centuries in the dominant side of the power hierarchy established between the ‘West’ and the other

²⁷ Ibidem, p.52.

²⁸ Vena Das, “Fronteiras, violência e o trabalho do tempo: alguns temas wittgensteinianos”, *RBCS*. Vol. 14, n.40, 1999, p.37.

²⁹ Victor Turner, “Images and reflections: ritual, drama, carnival, film, and spectacle in cultural performance”; in: Turner, Victor, *The Anthropology of Performance*. New York: PAJ Publications, 1988. p.25.

cultures, taking side in the epic battle of heritage, the museum now tries to reach a position of mediator. And by doing so it is confronted with the violence in its own history. The only way, then, to become such a mediator of peoples, cultures and contradicted scenarios is by inventing its own relativism. The first step would be to recognize its practice as a violent one, because what is demanded from museums today cannot be accomplished in a peaceful manner.

If we look at the museum as a social thing, and acknowledge its potential for violating others and for silencing cultural identities, we should approach heritage as a sensible field. If heritage is cultural or social, it can also be personal and sensible – and it usually is. The ICOM *Code of Ethics for Museums* considers how collections of “cultural *sensitive* material” should only be acquired if they can be housed securely and cared for respectfully³⁰. But if we look closer to heritage, there is no material that isn’t sensitive, because the heritage material is the matter of identities and of a wide net of social relations.

With restitution – when it means recognition and understanding – the roads to dialog are all wide open in the new ‘global’ museums. But dialogue comes in different forms and in the heritage field it has proven to be, most of the times, a belligerent phenomenon. What, at first, could seem like a harmonic encounter, happens to configure a violent war. Placed in the center, then, and not taking sides anymore, the museum learns that there are no symbolic exchanges that occur without the turbulence of battle. This mediator position aims to the formulation of a new *global* ethics for the museums’ actions. However, these complex social things cannot be the judges in culture. They are, differently, instances in which a multivocality can exist without necessarily having to result in unisound. Because, in fact, – and we know it by now – *there is no harmony in culture, only dissonance*.

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ON THE ETHICS OF MUSEUM COLLECTIONS

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ABSTRACT

The many issues that arise when building museum collections show that during the process the professional team encountered ethical problems and continued to face ethical challenges in the daily running the museum. In recent years, repatriating pieces from collections has become the biggest concern among the ethical issues. Resorting to the law of nations is a necessity as far as looted, stolen and swindled cultural relics are concerned. However, when it comes to repatriating collections, the museums holding the claimed objects advance divergent demands and interests, thus leading to the conclusion that museum ethics have not found their way as yet. Collections are the foundation of the museum's existence, professional activity and development. In accordance with a museum's profile and tasks, each museum should enrich its holdings by sparing no effort to collect. But when answering questions regarding what to collect, where to collect and how to collect, museums face many ethical issues.

With the development of museum activities, cooperation has become more urgent in the international museum world. One level of museum cooperation is the need to cooperate broadly in the fields of inter-museum loan and holding exhibitions that exist because of the demands on museum operations and of the public. Museums should draw up and adhere to a strict system for exchanging exhibits, and establish safeguard mechanisms. Museums may overcome difficulties in respecting the ethical demands of security with the help of technology, but they have a long way to go to resolve the all the ethical problems that arise from their work. Ethics not only relate closely to protection, but are also based on specific cultural values and convictions. The conservation of collections in museums involves the following aspects: evaluating the essential worth and significance of the object, preserving or postponing the ageing phenomenon, and restoring (perfecting some parts of the objects). In some regions museums set a relatively high standard of conservation, but they lack common goals and direction in a unified way. In order to raise the ethics of safeguarding and encourage the staff to greater initiative, the museum, to be credible, should put more effort into the overall practice of conservation and collection management. The fundamental rationale for making a collection policy is to strengthen the supervision of obtaining and managing collections in an ethical manner.

RÉSUMÉ

Sur l'éthique des collections des musées

Les multiples problèmes qui se présentent lorsqu'on bâtit les collections de musée nous démontrent que, pendant ce processus, l'équipe des professionnels du musée a rencontré des questions d'éthique. Elle continue encore à faire face à des défis, toujours éthiques, dans la gestion quotidienne du musée. Récemment la restitution

des objets de collection est devenue la source des préoccupations éthiques les plus intenses des musées. Sans aucun doute, il est nécessaire d'avoir recours aux lois des nations en ce qui concerne les biens culturels qui ont été volés, pillés ou escroqués. Cependant, lorsque le thème s'agit du rapatriement de collections, le domaine muséal place au premier rang des intérêts et des demandes divergents et il arrive à des conclusions éthiques qui n'ont pas encore trouvé de solution. La collection est le fondement de l'existence du musée, son activité professionnelle et son développement. Suivant la ligne tracée par ses caractéristiques éthiques et ses tâches, chaque musée doit enrichir ses biens sans épargner des efforts pour collectionner. Mais quand cette activité pose des questions telles que quoi, comment et où collectionner, nous devons faire face à des problèmes éthiques souvent nombreux. La coopération est devenue un thème brûlant dû au développement des activités muséales dans les cercles internationaux. Les musées ont besoin de hauts niveaux de coopération, telles que des prêts entre les musées, de la présentation d'expositions et leurs activités correspondantes en réponse à leurs demandes opératives. Le cercle des musées élargit constamment ses horizons. Cela demande la coopération de nombreux musées et d'établir un système strict qui comprenne l'emballage, le transport et la réception, l'exposition, la sécurité et, en plus, une gestion efficace face aux difficultés, aux accidents de n'importe quelle nature et de proposer un mécanisme de sauvegarde.

Les collections s'utilisent principalement pour l'exposition, la recherche et la diffusion. Au moment d'utiliser les collections, le plus important c'est protéger les objets, ce qui ne signifie pas que la responsabilité éthique dépasse les autres responsabilités du musée. En s'aidant de certaines technologies, les musées peuvent arriver à briser quelques restrictions éthiques qui concernent la préservation mais ils ont, cependant, un long chemin à parcourir jusqu'à arriver à résoudre justement et totalement ces problèmes. L'éthique se rapproche étroitement de la protection et elle l'établit aussi, se basant sur la pleine conviction de l'importance des valeurs culturelles. La conservation des collections d'un musée comprend les aspects qui suivent: l'évaluation de l'état essentiel des objets, la prévention ou l'ajournement des phénomènes de vieillissement, la restauration (complétant une partie des objets) et ainsi de suite. En certaines régions, les musées maintiennent un niveau relativement haut d'activités pratiques de conservation mais, en fait, ils manquent de buts communs et d'une direction unifiée et intégrale. Afin de développer des niveaux plus hauts dans l'éthique de la conservation et pour atteindre des initiatives de plus grande envergure de la part du personnel, le musée devrait mettre ses efforts sur des pratiques de conservation crédibles et reconnaissables dans l'avenir.

RESUMEN

Acerca de la ética de las colecciones de museos

Durante el proceso de formación del equipo de profesionales de museos, como así también en su trabajo, se observa una gran cantidad de temas relacionados con las colecciones. Las concepciones éticas cobran vida y, definitivamente, encaran mayores desafíos en los altibajos del accionar de los museos. En los últimos años, la repatriación de colecciones se ha convertido en una de las mayores preocupaciones éticas de los museos. Más allá de toda duda, el recurrir a las leyes internacionales es una necesidad cuando se trata de reliquias culturales producto del pillaje, el robo y la estafa. Sin embargo, cuando se trata del tema de la

repatriación de colecciones en el campo museal, se ponen en primer lugar intereses y demandas divergentes basadas en conclusiones éticas que todavía no han encontrado su camino. La colección es el fundamento de la existencia del museo, de su actividad profesional y de su desarrollo. De acuerdo con sus características y tareas, cada museo debe enriquecer su acervo sin ahorrar esfuerzos para coleccionar. Pero cuando se plantean cuestiones como qué, dónde y cómo coleccionar, se ven obligados a enfrentar diversos problemas éticos.

Con el desarrollo de los emprendimientos museales en los círculos internacionales, la colaboración se ha convertido en un tema candente. Los museos necesitan altos niveles de cooperación, tales como los que requieren los préstamos intermuseicos tan necesarios para la presentación de las exhibiciones y de las actividades que se corresponden con sus demandas operativas. El círculo de los museos amplía permanentemente sus horizontes pues para poder cooperar se necesita la concurrencia de numerosas instituciones capaces de establecer un sistema que incluya todas las tareas inherentes (embalaje, transporte, recepción, montaje, seguridad, estableciendo mecanismos de salvaguarda y también un correcto manejo frente a las emergencias y los accidentes de cualquier naturaleza). Las colecciones se usan para la investigación, el estudio, la presentación y la difusión del patrimonio cultural. Durante el proceso de uso de las colecciones, lo más importante es proteger los objetos, lo que significa que la responsabilidad ética se encuentra inmersa en todas las actividades del museo. Con la ayuda de las nuevas tecnologías, los museos pueden llegar a paliar algunas restricciones éticas concernientes a la preservación, sin embargo todavía tienen un largo camino a recorrer hasta resolver los problemas completa y cabalmente. La ética no sólo se relaciona estrechamente con la protección, sino que también establece pautas de conducta basada a los valores culturales. La conservación de las colecciones de un museo incluye diversos siguientes aspectos relacionados con la evaluación del estado de los objetos: preservación preventiva o postergación de los fenómenos de envejecimiento, conservación, preservación curativa como paso previo a la restauración, uno de los principales problemas éticos de las actividades museales... En algunos países, los museos mantienen un *standard* relativamente elevado en lo que respecta a las actividades prácticas de conservación, pero de hecho suelen carecer de metas comunes y de una dirección unificada e integral. A fin de desarrollar niveles éticos en la conservación y lograr iniciativas de mayor envergadura por parte del personal del museo.

* * *

The basic task of a museum is to collect, study and communicate cultural heritage as we perceive it. The logical sequence of these functions is that first the collection should be acquired and then be safeguarded. Its preservation is based on the choices made in collecting and in turn indicates the direction that the collection will take. Collections provide service for study and exhibition and other functions. With the help of the collection (whether cultural or natural heritage), the museum records the truth of the past, the present and even the future; it inherits and accumulates the historical and cultural heritage, and deepens our understanding of the environment and the development of the earth through thematic exhibitions. Thus, it bridges the time gap as well as the emotional gaps among memories, hopes and beliefs, making an important contribution to contemporary culture and exerting influence on the development of the local society and its economy. Collecting is not only the starting point but also the final objective of the museum's every endeavor.

The field of museums has experienced a cognitive process of collecting, from “all specimens of cultural relics” to “antiquities collected according to the museum’s profile and needs”, from “evidence of the development of nature and of human beings’ social and spiritual civilization beyond the traditional definition of cultural relics” to “all material objects or evidence reflecting the historical, artistic and scientific values of human beings and the environment.” Any potential collection should be defined objectively, meet established museum standards, pass the pertinent certification and finally demonstrate its identification as accurate. Since 1990s, the field of museums has produced a new more comprehensive understanding of the term “collection”. Collection is the generic term covering all the exhibits housed in the museum that have a special significance which unequivocally connects material objects with historical, artistic and scientific values of humans and the environment.

The entire staff of the museum is involved in a close work relationship with the collection. Collection polices reflect the entire spectrum of concerns: politics, culture, national and economic interests as well as the relationship between developing and developed countries, between the ex-colonies and their former rulers. Beyond collection management ethical attitudes must also be applied to the environment and to cultural processes, including indigenous peoples and the local cultural heritage, The principle of “to protect is to benefit the collection” should be enforced; any information shared with the audience should be correct, authentic, original, distinctive and oriented to the museum’s social function. Many issues that arise in forming collections in museums show that during the process the professional team encountered ethical problems and continued to face ethical challenges in the daily running the museum. These issues can be categorized as follows:

I. Repatriating Collections

In recent years, repatriating objects has become the biggest ethical concern. Resorting to the law of nations is a necessary as far as looted, stolen and swindled cultural relics are concerned. Since 1960s and 1970s, some newly independent nations have become aware of the significance of cultural relics in enhancing national consciousness, the sense of pride and emotional appeal. Increasingly nations reclaimed their respective looted cultural relics. Several relevant international treaties have been signed. In 1970 UNESCO enacted the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, which for the first time prescribes how to deal with repatriating objects within a broad legal framework and acknowledges a nation’s inalienable right to its cultural heritage. In 1981 the United Nations enacted another convention requesting each museum and individuals to repatriate partially or wholly their collection of cultural relics that were removed from the country of origin illegally to these same countries. Restoring a nation’s cultural heritage by repatriation of its looted cultural relics has become a moral principle accepted by many international organizations. According to these principles, if a country requests repatriation of collections or specimens which belong to its cultural or natural heritage and which have been illegally exported or transferred, the museums concerned should take action to assist in repatriating them immediately and responsibly. Museums should be open and fair in replying the source country’s requests and ready to discuss scientifically and professionally. Moreover, museums holding the objects should seek bilateral or multilateral cooperation with museums of the source country.

Due to various reasons, however, repatriation of cultural relics to their source countries is uneven and difficult. In the beginning of 2003, several museums and research institutes jointly announced the *Declaration on the Importance and Value of Universal Museums*

(hereinafter referred as Declaration)¹. The concept of *Universal Museums* was originally held by Europeans in the 18th century who shared the conviction that museums should be viewed as storehouse for universal study and preservation. They also declared that Universal Museums could be erected at a single site but their cultural objectives should cover all nations and peoples. In the Declaration, those museums, now recognized as international ones with a great deal of looted objects from other nations and peoples, claim that although their collections were acquired illegally in earlier times, they must be viewed in the light of different sensitivities and values of that earlier era. Over time, these acquired objects have become part of the museums that have cared for them, and become an extension of the heritage of the nations which house them. As a result, they insist that each case should be judged individually. Meanwhile they emphasize that this cultural property is a service for the people of every nation instead of just the citizens of one nation. And they also claim that narrowing the focus of museums with diverse and multifaceted collections would result in disservice to all visitors. Moreover, in the Declaration, the international museum community shares the conviction that illegal traffic in archaeological, artistic, and ethnic objects must be firmly discouraged.

Opponents to the concept of Universal Museums argue that the Declaration is in conflict with the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* by UNESCO because the former's refusal to repatriate the looted cultural relics acquired illegally during imperialist aggressive wars tramples the feelings of the injustice that was committed against the formerly occupied countries. The Declaration overlooks an important truth, namely, these museums' illegal acquisition of collections were the a result of the invasion by foreign powers. On the other hand, through trading or exchanging legally, exhibiting art treasures in museums all over the world for appreciation and study is another case, which makes the people of source countries gratified and proud.

However, when it comes to repatriating collections, the museums holding the claimed objects advance divergent demands and interests, thus leading to the conclusion that museum ethics have not found their way as yet.

II. Collecting Antiquities

Collections are the basis of the museum's existence, its professional activity and development. In line with their profile and tasks, each museum should enrich their holdings by sparing no effort to collect. But when answering questions as what to collect, where to collect and how to collect, we face many ethic issues.

Collections confirm and represent a nation's history objectively and vividly, offering authentic and accurate information. Therefore, determining authenticity, an exceedingly important and indispensable process in collecting, requires the staff to enhance their skills and level of knowledge with study and practical experience to guarantee the significance and quality of the collection. The principal methods of collecting are:

1. Agreements

Agreements refer to transferring the collection on the basis of consultation with the legal owners. Every effort should be made to ensure that the collection is not collected or exported illegally from source countries or original countries and who is the lawful owner (including the countries where the holding museums are located). Museums should make

¹ Declaration on the importance and value of Universal Museums "Museums Serve Every Nation" by 18 directors of art museums, Wall Street Journal, December 12, 2002.

great effort to confirm the whole history of the collection—from the very beginning of its discovery or its production. During the negotiation of transfer, the museum must avoid any dubious provenance. Illegal dealing in cultural objects encourages damage to historical sites, minority cultures and unique natural sites; they also foster local thefts as well as theft abroad and at home. A museum should not collect objects that have been unscientifically excavated, nor directly or indirectly collect objects that violate its host country's wildlife protection law, or any other countries' local, domestic, regional and international laws of wildlife protection, laws of natural and cultural protection and other protection conventions through collecting, selling or transferring. For a museum, any direct or indirect supporting for the illegal market is considered extremely unethical.

If an object lacks proof of its origin, different professional opinions on it should be sought. But the overwhelming consideration is whether the object's legal ownership can be confirmed.

2. Donation certificates

Donation certificates are awards given by museums as encouragement to the legal owners of the collections who donate them to the museums. When considering issues concerned with the acceptance of the donation or the inheritance of property, collections of unknown origin should be excluded from the museums' acceptance of donations.

There are two examples where donors or their relatives will visit the collections: One is that they are invited to the opening ceremony of the exhibition, during which they will carefully appreciate every item of their donated cultural relics on display. Another is that the donors or their relatives will visit the collections after many years in order to see how the donated collections are protected and displayed.

3. Purchase at auctions

This item includes collections that are lawfully acquired at a legitimate auction house where the sellers can certify the provenance of the objects.

4. Field Collecting

Field collecting refers to collections that are obtained lawfully by field reconnaissance and excavation. Field collecting for each museum should be drawn up according to policies which are in accordance with relevant national laws and international treaties. Before drawing up the plan for field study and collecting, museums should do field surveys and publish the investigation reports. When doing field collecting in another country, museums should negotiate with the appropriate authorities of the country and with any museum or academic institution that is interested in this collection. Such negotiation should determine whether the suggested activities are acceptable, and make arrangements for sharing the information derived from the research with relevant authorities of the country. When the fieldwork relates to a community and its heritage, museums should respect the wishes of the community. Collecting can only be conducted on the basis of exchanging information, mutual consent and not illegally taking advantage of the owner.

5. Collecting through other legal means

The collections acquired by every museum should be closely related to the goals of the museum as well as its activities. Any restrictions that pertain to the objects should be clearly recorded in the acquisition document or other written files. Unless, under special

circumstances, after the administrators of the museum have taken full consideration and judged that the object is meaningful to the country or other cultural heritage and is of unique importance, only then can the museum collect an object that goes beyond the present policies. Each museum should respect other museums' fields of collection.

After defining the goals and approaches for collecting, museums should strictly regulate collecting procedures. First of all, museums should strengthen the management of funds earmarked for collecting, and the museum's collecting committee (or the academic council) should discuss and approve the program for collecting, the annual plan and budget, and state the proposed collecting programme when necessary. Having identified the potential items to be acquired, the museum must have at least two appraisers to evaluate the objects, and confirm that their ownership is not under dispute. The collectors can set the price and negotiate with the owner. A museum can collect objects which meet its standards according to the planned program only by adhering to the agreed procedures. During the process of collecting articles, the use of images and writing is required as a means of recording the documentation of the collections. After the collections are stored in the museum, the museum should record the collections' names, classification, complete registration number, age and measurements. After filing, the museum needs to ensure the preservation of the collections by all the means of modern technology, so that over time they will increase in value and satisfy the needs of exhibitions and display when used in the future.

III. Renting and borrowing collections

With the development of museum activities, cooperation has become more urgent in the international museum world. Cooperation among museums further demonstrates a country's wealth, culture and efficiency in preserving the cultural heritage. One level of museum cooperation is inter-museum loan and holding exhibitions, and carrying out popular activities. The museum world continuously broadens its horizon, increasing the scale and quality of exhibitions. This requires that many museums cooperate, establishing rigorous systems that include receiving exhibits, packing and shipping, exhibiting, security, dealing with the emergencies and accidents, and establishing a safeguarding mechanism. Loans require a series of formalities which cover the selection of the objects, and signing a contract complete with all the attachments, such as photographs, condition of the object, examination and approval.

The loan of the collections is only accepted when the collection and exhibition policies are met, as well as the specific conditions of the loan. If the conditions are judged to be contrary to the long-term interest of the museum and the public, the loan should be refused.

Borrowers should establish that they hold full rights to use a collection or objects that have been lent, which they should treat in the same way as their permanent collections. As the temporary keeper of the borrowed collections, museums must provide all the conditions for the protection of cultural relics, and ensure their return promptly after the exhibition.

IV. Using Collections

Collections are used in exhibitions, research and communication, among which museum activities requiring exhibitions form the major part. The rate of damage and loss of collections that are in frequent use, especially those exhibited in travelling exhibitions and abroad, is high, for they have to go through packaging and shipping which increases the risks. During the exhibition, the most important responsibility is protecting the objects, but

that does not mean that ethical responsibility is any less important. Museums are not only responsible for providing true and elegant works of art to the public, but also for offering a proper space for the viewers to understand and appreciate the collections. However, conflicts exist between the need of preserving the collections and wishes of the viewers to appreciate, touch and use the collections. For instance, dim light and glass are a compromise to protect cultural relics made of paper or silk fabric, but visitors complain that they cannot clearly appreciate the exhibits through the display window under dim light. Museum preservation is increasingly rich and diversified, however if new approaches can partly solve some contradictions between protecting and exhibiting, museums are still far from solving all the problems while respecting their ethical duty to protect the object.

Any doubts about the authenticity and source of a collection should be carefully recorded in the official documents of the museum and reflected on the labels. The museum staff has the ethical obligation to demonstrate the truth and authenticity of the collections. The objective of using collections for research should be broadened, using natural and social science methods. Fundamental research should be integrated into methods that can produce the best results in museum education and development.

V. Preserving collections

The view that “preservation is beneficial to artwork and antiques” is widely held in the field of museums. Therefore, ethics not only relate closely to protection, but are also established on the base of particular cultural values and convictions. The preservation of museum collections involves evaluating the condition of the objects, preserving, preventing or postponing aging phenomena, and restoring (perfecting some parts of objects) and so on.

The first step of evaluation is to examine all the aspects of the object, including all the details, such as accession date (when purchased or donated), the source², and/or donation details³. In a word, learn about what the object is. In terms of the preservation and management of objects, reasonable decisions flow from proper evaluation, which leads to increased protection by adopting the best mode of management. Inaccurate or exaggerated evaluation is ethically not permitted.

The second step is to research and interpret the data, probing its value from the perspective of various potential relationships and interpretations, for example, why the collection should be protected. Because the collection itself cannot speak, the relationship between the collection and man, the collection and regional geography and history and so on can only be demonstrated by comparative and theme studies. Generally speaking, the much closer the former relationship is, the more valuable is its preservation⁴ and eventually we can sort out the most important objects by defining their importance in terms of their originality, uniqueness, scientific and historical significance.

²The source is the core of creating history and scientific meaning. A number of museums no longer accept anonymous collections. It also relates to the status of the objects in society and nature, and the experience of celebrities. It is documented history in terms of its existence, ownership and usage..

³ Donors should be encouraged to annotate and describe their collections in every detail to establish their precise history and affirm their social values adequately.

⁴ History collections possess universality. They are meaningful for their ability to interpret and prove experience, historic themes, people and events. Representativeness refers to typical collections of a particular activity, industry or lifestyle and a typical relationship between collections and personalities, events, places, or themes of universal interest.

The basic information of evaluation and research covers background information, research data, the operation manual, contemporary oral data and materials of similar objects in other museums, specialists and scientists' opinions, raw material, production method and the situation of manufacture, damage caused by the collection itself or the historic reasons.

Considering the scope and dynamics of weeding out collections, protection costs and spatial limit, collections which need to be preserved unnecessarily have to be given up. Revocation means abandoning meaningless collections. In this case, the most common reasons are that they are a copy, in too poor condition or inappropriate to the scientific objectives of the collection. The latter two can be tested by evaluation: what is its significance? Does its condition influence its significance? Is it important to our collection? Answering these questions will give powerful and reasonable factual evidence for the final decision to keep or to deaccession.

Preservation includes "preventive conservation" and "remedial conservation". In principle, remedial conservation may potentially threaten the collections. Compared with preventative conservation, it is usually irreversible. Restoration should only recover the external form of the objects. It can merely be used to repair the damaged part; changing or recreating the object is not permissible.

In some regions museums set relatively high standards for the practical work of conservation, but they lack common goals and direction in a unified and integral way. In order to raise the ethics of conservation and encourage the staff to greater initiative, the museum, to be credible, should put more effort into the overall practice of conservation and collection management.

In terms of ethical issues, the code of professional ethics promulgated by the International Council of Museums clearly states that museum authorities should publish a written description of the collection policy. The policy should refer to the issue of conserving and making use of public collections. The administrative organization should take into consideration the experts' opinions, the collections on display, the specific area of the collection, the interests of country or of other museums. However, even in these circumstances, it is not feasible to collect objects without accredited ownership. Newly acquired collections should be made public.

The ICOM code of professional ethics is systematic and sound, therefore every museum can refer to those sections that are relevant to its collection policy. Based on moral needs, building a collection policy is a progress that gradually matures, and is firmly related to the latest knowledge, organizational development, and relationship to change. The fundamental rationale for making a collection policy is to strengthen the supervision of obtaining and managing collections in an ethical manner.

REPATRIATION OF INDIGENOUS ARTIFACTS AND BEYOND: HOW THE GLENBOW MUSEUM IS ATTEMPTING TO CHANGE COLONIAL ATTITUDES

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ABSTRACT

The restitution of Aboriginal sacred material, what in Canada is called repatriation, is complex. This paper will examine how the Glenbow Museum in Calgary, Canada, has carried out repatriation to Blackfoot people and how this has fundamentally altered the way the museum and First Peoples interact. No longer assuming the position of colonizer, the Glenbow now works with First Nations as equals, rebalancing the power structure and engendering social justice.

RÉSUMÉ

La restitution des objets indigènes et au-delà : comment le Musée Glenbow essaie de modifier les attitudes coloniales

La restitution du matériel sacré des autochtones - ce qu'on appelle au Canada le « rapatriement » - est complexe. Cette contribution va examiner comment le Glenbow Museum de Calgary, au Canada, a effectué des restitutions à la Nation des Blackfoots et comment les rapports entre le musée et les Premières Nations en ont été fondamentalement modifiés. Ne gardant pas plus longtemps l'attitude du colonisateur, le Glenbow travaille maintenant avec les Premières Nations sur un plan d'égalité, équilibrant le système de pouvoir et faisant naître la justice sociale.

RESUMEN

Más allá de la repatriación de artefactos indígenas: de qué manera el Museo Glenbow procura cambiar actitudes colonialistas

La restitución de los objetos sagrados de los aborígenes, lo que en Canadá se llama la "repatriación" es compleja. Este documento examina de la manera en que el Museo Glenbow de Calgary, en Canadá, ha efectuado restituciones a la Nación de los Pies Negros y cómo este hecho ha modificado la interacción entre el museo y los pueblos originarios. Ya sin asumir la posición de colonizador, el Glenbow trabaja ahora con los pueblos originarios en un plano de igualdad, equilibrando el sistema de poder y engendrando la justicia social.

* * *

Introduction

Restitution of Aboriginal artifacts, or what we call in Canada repatriation, is difficult¹. The problem has as much to do with the attitude and philosophy of the repatriator as with the group that is seeking the material. That is not to deny for one minute the very considerable efforts that the receiving group has surely undertaken, for their efforts have probably been prolonged and contentious. The question is a postmodern one of power, privilege and oppression. Interestingly a number of the countries that have advanced solutions in this parade of problems concerning First Peoples are countries that themselves were colonized, that were created as offshoots of a power centre. Some of these countries – particularly Australia, New Zealand and Canada – now actively use native symbols as a part of their national identity. How have the colonies dealt with the psychology of being colonized, on the one hand, and the bald fact of their own subjugation of native peoples, on the other hand? This paper will examine some of these concerns by looking at a case study of how the Glenbow Museum in Calgary, Canada, is currently dealing with the repatriation of native sacred artifacts and how that museum is trying to promote and develop a society more inclusive of First Nations.

Context

Canada, like many colonized countries, is a racially and culturally diverse country, with an important component of First Peoples. French and then British settlers established themselves on territories already occupied by Aboriginals, interacted with them and eventually co-opted them, appropriating their lands and finally imposing socioeconomic domination over them. Consequently, for the past two centuries or more, Canada has defined itself as an English/French nation, but considerable non-European immigration and First Nations' activism in the last decades has prompted attempts to incorporate minorities into the social fabric. The results are mixed. On the one hand many view Canada as standing in the forefront of diversity management. On the other hand many new immigrants and First Peoples in Canada are dissatisfied with their disadvantaged socioeconomic position and are disenchanted with unfulfilled promises of social justice, equality, fairness and self-determination². There is an appreciable disparity between the expected results and the effective outcomes, particularly in terms of social justice. As Daniel Salée notes

In matters of diversity management, in most liberal democracies, the problem lies not with the intentions or the principles, which are almost always morally sound, noble and humanistic, but with the apparent inability of the state to deliver on them in ways that truly redress the historical, socioeconomic and political imbalances between the Eurodescendants and the ethnocultural minority groups³.

These historic Canadian imbalances are the subject of two important recent studies. The first is a 2008 book by a self-styled public intellectual, John Ralston Saul, *A Fair Country: Telling Truths about Canada*⁴. Here Saul subverts the Eurocentric accounts of Canadian

¹ This paper deals only with the question of repatriation of selected indigenous artifacts to First Peoples. It does not consider the further problems of state to state repatriation.

² Daniel Salée, "The Quebec State and the Management of Ethnocultural Diversity : Perspectives on an Ambiguous Record", in Banting, Keith, Courchene, Thomas J., and Seidle, F. Leslie, eds., *The Art of the State III Belonging ? Diversity, Recognition and Shared Citizenship in Canada*, Montreal: The Institute for Research on Public Policy, 2007. See also Green, Joyce and Peach, Ian, "Beyond 'Us' and 'Them': Prescribing Postcolonial Politics and Policy in Saskatchewan," in Banting, Courchene and Seidle, pp. 263 – 284.

³ *Ibid.*, p. 106.

⁴ Toronto: Penguin Canada.

history and tradition by positing that the true nature of Canada is Aboriginal, and that by recognizing this Canadians will finally be able to affirm their true identity.

We are a people of Aboriginal inspiration organized around a concept of peace, fairness and good government. That is what lies at the heart of our story, at the heart of Canadian mythology, whether francophone or anglophone⁵.

The second study, completed in 2008, called in English *Building a Future : A time for Reconciliation*⁶ was written by an historian, Gérard Bouchard, and a philosopher, Charles Taylor. This Québec government study was commissioned as the result of a perceived increase in social discontent among immigrants and minorities, capped by the decision of the village of Hérouville, population 1,300, to promulgate a code of conduct for immigrants which states that women should be able to show their faces in public, drive and write cheques, and should not be killed in public beatings. In their report Bouchard and Taylor concluded that much of the problem is caused by anxiety on the part of Québécois of French-Canadian origin over identity. They noted that French-Canadian identity

can no longer occupy alone the Québec identity space. It must hinge on the other identities present, in a spirit of interculturalism, in order to prevent fragmentation and exclusion⁷.

Do museums have a role to play in the creation and support of identity? How can museums promote interculturalism and prevent fragmentation and exclusion?

Museums and First Nations

Over the past two decades important changes in the relationships between museums and First Peoples have occurred.⁸ The 1990 Native American Graves Protection and Repatriation Act in the United States requires US museums which receive federal funding to inventory their human remains and sacred objects and contact appropriate First Peoples to negotiate repatriation of this material. Three years after the Council of Australian Museum Associations (now called Museums Australia) adopted a position paper, *Previous Possessions, New Obligations*, that detailed the principles and policies of relations between museums and Aboriginal peoples regarding repatriation and reburial of human remains.

At about the same time, in Canada, changes were also afoot as a direct result of the controversy surrounding the 1988 exhibition at the Glenbow Museum, in Calgary, *The Spirit Sings: Artistic Traditions of Canada's First Peoples*, a show mounted as part of the XV Winter Olympics. *The Spirit Sings* aimed to celebrate First Nations' heritage and to educate Canadians and international visitors by bringing together indigenous artifacts that had been dispersed around the world, some having left North America in the seventeenth century. At this time the Lubicon Cree of northern Alberta, who were trying to negotiate a treaty with the government of Canada, recognized that protesting against this exhibition

⁵ *Ibid.*, p. xii.

⁶ The original French title is *Fonder L'Avenir: Le temps de la conciliation*, Québec: Government of Québec.

⁷ *Ibid.*, (English), p. 75.

⁸ For an important examination of many sides of this question see Brown, Micheal F., "Exhibiting Indigenous Heritage in the Age of Cultural Property," in Cuno, James, ed., *Whose Culture? The promise of museums and the debate over antiquities*, Princeton: Princeton University Press, 2009.

would be a good way of drawing global attention to their plight.⁹ A well some items considered sacred were included in the exhibition.

Reacting to these protests, the Canadian Museums Association and the Assembly of First Nations formed the Task Force on Museums and First Peoples, which reported in 1992, detailing suggestions for forming new, positive relationships between museums and First Peoples. One important set of recommendations included the return of objects that had been taken illegally; the transfer of title of sacred material, even when it was obtained legally; and the negotiation of the reburial of human remains. But the recommendations went further, urging a fundamental shift in attitude and control to include First Peoples in all aspects of exhibition preparation and display and to incorporate First Peoples as members of governing structures and staff.¹⁰

The Glenbow Museum and Repatriation

While the task force was meeting, the Glenbow Museum began negotiations to lend a sacred Thunder Medicine Pipe Bundle to a member of Kainai, a First Nation in southern Alberta. At the same time the Glenbow hired a new CEO, Robert R. Janes, and a new Curator of Ethnology, Gerald T. Conaty. Together these two aimed to change the colonial relationship: in 1990, according to Conaty, the “Glenbow was an institution of the dominant society and our exhibits and interpretation programs were developed from the dominant society’s point of view.”¹¹ Artifacts were displayed as *objets d’art*, with little explanation and no context. While there had been some programming efforts, these were not in operation in 1990. Other parts of the museum, including registration, other curatorial areas, and the board of governors were all hesitant about repatriation. There was a concern that objects would be sold and that the Glenbow would be accused of neglecting its fiduciary responsibilities. There was also the sentiment that these objects had been disposed of by their previous owners and that no one had the right to request their return. Hence the museum proceeded with loans, with the agreement being the standard museum loan agreement form, which identified the heavy responsibilities of the borrower, the Weasel Moccasins.¹²

Two important clauses recognized the unique nature of this loan. The first stipulated that the Curator of Ethnology be advised whenever the bundle was altered. The second stated that the bundle would only be loaned for four months each year. Interestingly and unexpectedly, these two clauses had a fundamental influence in changing the Glenbow-Blackfoot relationship from a colonial to a post-colonial one. Conaty, the curator, had assumed that the first clause concerning the notification of changes to the bundle referred to “loss, damage or replacement of objects within the bundle”, but that is not how Dan Weasel Moccasin decided to treat that requirement. Rather he invited Conaty to “all ceremonies undertaken with the bundle,” intending to show the White curator “the

⁹ This controversy has been extensively reviewed. Some of the best sources include Harrison, Julia D., “*The Spirit Sings* and the future of anthropology,” in *Anthropology Today*, December 1988, Vol. 4, n° 6, pp. 6-10 ; Harrison, Julia D., “Completing the circle: ‘The Spirit Sings’ “, in Dyck, N. and Waldram, J.B., *Anthropology, public policy and native people in Canada*, Montreal and Kingston : McGill-Queen’s University Press, 1993, pp. 334-357 ; Ames, Michael, “The liberation of anthropology : A Rejoinder to professor Trigger’s ‘A present of their past’”, *Culture*, Vol. 8, n° 1, 1988, pp. 81-85 ; and Trigger, Bruce, “A present of their past ? Anthropologists, native people and their heritage”, *Culture*, Vol. 8, n° 1, 1988, pp. 71-79.

¹⁰ T. Hill, T. and G. Nicks, eds., Ottawa: Canadian Museums Association, 1992.

¹¹ Gerald T. Conaty, “The effects of repatriation on the relationship between the Glenbow Museum and the Blackfoot people”, in *Museum Management and Curatorship*, Vol. 23, n° 3, 2008, p. 250.

¹² *Ibid.*, pp. 250-251.

importance of these holy things for Niitsitapi¹³.” In this way Conaty’s relationship to Kainai changed. Gradually he became friends with the Weasel Moccasin family and began to understand the significance of holy bundles to individuals, not to a foreign culture. In turn he was increasingly seen as an individual not simply as the representative of some distant institution, one who was trying to understand their culture and their sacred bundles. Eventually Conaty was asked to smudge the bundle daily when it was housed in the museum, to attend various ceremonies and, more and more, to lend religious objects. “This, in turn, personalized the Glenbow and it became regarded less as a custodian of objects and more as a steward of living things¹⁴.”

Repatriation became increasingly important by the mid 1990s. In 1996 members of Kainai formed the Mookaakin Cultural and Heritage Society and soon representatives began contacting museums, including the Glenbow, requesting information about Kainai and Blackfoot material in collections. At this time some Glenbow staff members feared that these discussions with Mookaakin members and any repatriation beyond the existing loans would mean that the museum was abrogating its responsibilities to manage its collections and restrict its abilities to exercise intellectual freedom in developing exhibitions and programs. But, after almost a year of talks a Memorandum of Understanding was signed in March 1998. In this memorandum the Glenbow agreed to help Kainai in their efforts to repatriate sacred material from other museums and to undertake a long-term commitment to return to Kainai spiritually sacred objects held by the Glenbow. As well and most importantly, the Glenbow agreed to include Kainai in the processes of collecting, researching and exhibiting Kainai or Blackfoot material. Kainai, in turn, acknowledged that the final responsibility rests with the Glenbow.

Then came more process, some of which involved the Government of Alberta¹⁵. To advance repatriation the Glenbow invited ceremonialists from each of the four Blackfoot communities to review the collections and determine which items they deemed to be of importance in ceremonies. This system underlined that the authority and knowledge of identification rests with the Blackfoot not with the museum’s curators. The Glenbow’s board was concerned that the whole collection not be repatriated and the Blackfoot, recognizing this fear, focused only on bundles. Then considerable research was done to ensure that objects be returned only to their originating communities. Finally the Glenbow applied to the provincial government to deaccession these items and return them to their appropriate keepers.

Deaccessioning and repatriating to First Nations caused considerable consternation both within the provincial government and the museum. Initially, in fact, the Alberta provincial government refused the Glenbow’s request for restitution on the grounds that the museum was neglecting its fiduciary responsibility and that it would be illegal to give publicly owned property, artifacts, to private individuals. However, after intense discussion and the intervention of the then Premier, whose wife is Métis, legislation – the First Nations Sacred Ceremonial Objects Repatriation Act – was passed in 2000, legislation which permits the return of sacred bundles to Alberta First Nations. Within the Glenbow, lending for active use rather than for relatively passive exhibition was very unusual and provoked concerns about storage conditions, modification of bundles and even their potential sale. As Conaty explained, the “continual adoption of Native-prescribed ways of doing things often

¹³ *Ibid.*, p. 251.

¹⁴ *Ibid.*

¹⁵ For details on the Glenbow’s changing relations with the province see Janes, Robert R., *Museums and the Paradox of Change*, Calgary : Glenbow Museum and University of Calgary Press, 1997.

presented contradictions to traditional museological practices¹⁶.” These contradictions were mitigated internally by the establishment of the Glenbow’s First Nations policy, a First Nations Advisory Council and a broadly based staff committee, the Native Affairs Group, to deal with all issues involving Aboriginals.

The changes in the balance of power and privilege are notable. According to Conaty the attitude of the Glenbow staff has completely softened, such that, now, staff members go out of their way to facilitate repatriation of Glenbow bundles and of sacred material from other museums¹⁷. Repatriation to non-Alberta First Nations in being smoothed by working through Blackfoot societies¹⁸. And Conaty has initiated discussions with a Cree interested in the Glenbow’s Cree collection. At the same time, it is the Blackfoot who have been very dynamic, much more so than other Canadian First Nations.

For the Blackfoot, who have repatriated 60 to 70 bundles from the Glenbow, 34 bundles from the Royal Alberta Museum, and sacred material from the Peabody, the Denver Art Museum, the Smithsonian and the Marischal Museum at the University of Aberdeen, the change is also dynamic and noteworthy¹⁹. One of the speakers at a recent forum on repatriation at the Glenbow, Frank Weaselhead, of the Kainai Nation, noted how much repatriation has impacted his community. “When we bring a bundle back we bring much more than an object”. Weaselhead detailed the importance of this transfer for the support and promotion of Kainai identity, commenting that with the bundles young people are starting to learn our ways, our language. “These things are teaching us that we had a history [T]hese are our written history, our curriculum books, that’s where we learn” through the ceremonies made possible by the bundles²⁰. By repossessing sacred bundles Blackfoot peoples are reestablishing their identity. What a powerful lesson for museums.

Next Steps

Beyond repatriation, the Glenbow has engaged in numerous ways to rebalance the power structure and engender social justice for First Peoples. As early as 1992 the Glenbow partnered with the Plains Indian Cultural Survival School wherein grade 12 students developed an exhibition at the Glenbow. This project was repeated four more times and helped to identify ways Aboriginals confront issues of identity and heritage.

The biggest change in relationship between the Glenbow and Blackfoot occurred in the organization of *Nitsitapiisnni: Our Way of Life*, a permanent exhibition presenting the culture and history of the Blackfoot-speaking people, which opened in November 2001. By the late 1980s many Canadian museums were inviting First Nations’ peoples to advise them on the development of exhibitions and programs²¹, but this advisory position was not one of equality. The problem was two competing models of Canadian society. The one held by the majority community considered all citizens to be equal and that no group should hold special rights. The other held by First Nations posited that they have special Aboriginal rights by virtue of their indigenous presence on the land²². Recognizing the need to develop

¹⁶ Conaty, p. 253.

¹⁷ Conversation with Gerald Conaty, 1 April, 2010.

¹⁸ *Ibid.*, in this way a bundle was returned to the Blackfeet in Montana.

¹⁹ Forum on Repatriation, Glenbow Museum, 29 March, 2010.

²⁰ *Ibid.*

²¹ For example at Head-Smashed-In Buffalo Jump, the Canadian Museum of Civilization and the Museum of Anthropology at the University of British Columbia.

²² Gerald T. Conaty and Beth Carter, “Our Story in Our Words: Diversity and Equality in the Glenbow Museum”, in Janes, Robert R. and Conaty, Gerald T. eds., *Looking Reality in the Eye : Museums and Social Responsibility*, Calgary: University of Calgary Press, 2005.

a new way of working with First Peoples in the organization of this exhibition, the Glenbow undertook to accord community Aboriginal members full participation “in all aspects of the story development, text and artifact selection, design and installation²³” of the show. The results were very successful. First Peoples indicated “a strong pride in finding a museum exhibit expressed in a First Nations voice, and emphasized the importance of this exhibit in developing self-esteem for First Nations youth²⁴.”

In museums, esteem for First Nations is engendered in many ways. Recently I nominated Alex Janvier, from the Dene First Nation in central Alberta, for the highest arts award this country offers, the Governor General’s Award in Visual and Media Art. Of the six winners, two, including Janvier, were Aboriginals. In 2005 Canada sent Rebecca Belmore, Anishinabe, as our representative to the Venice Biennale. And a magnificent exhibition of the work of Kent Monkman, Cree, is currently touring the country. Monkman, tongue very firmly in cheek, spoofs White language and attitudes towards Aboriginals. Gradually First Nations are assuming central staff positions. At The Nickle Arts Museum, Heather Divine, Métis, was the curator responsible for the exhibition of the Kainai *Evertt Soop: Journalist, Cartoonist, Artist*, while at the Art Gallery of Ontario, Gerald McMaster, Plains Cree, is Curator of Canadian Art, and at the Glenbow, Heather John, Cree, is Manager of Visitor Experience. Slowly the recommendations of the 1992 *Task Force on Museums and First Peoples* are being put into effect.

Restitution or repatriation of Aboriginal sacred material is an important step in a bigger, more complex project: learning to live with respect and dignity within a diversified society. As Bouchard and Taylor noted in their report, the ethical reference points are “openness to the Other, reciprocity, mutual respect, the ability to listen, good faith, the ability to reach compromises, and the willingness to rely on discussion to resolve stalemates²⁵.” Through exchanges between citizens we get to learn a to know each other. By acknowledging First Nations’ “claim to special rights and a position of privilege²⁶” the Glenbow forcefully advanced toward John Ralston Saul’s Aboriginal Canadian identity and Bouchard and Taylor’s interculturalism. Repatriation was an important first step.

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²³ *Ibid.*, p. 48.

²⁴ *Ibid.*, p. 55.

²⁵ Bouchard and Taylor, (English), p. 55.

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INSTITUTIONAL IDENTITY, COMMUNITIES AND DEACCESSION

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ABSTRACT

Most questions of ethics and deaccession are concerned with restitution and moral use of funds created by sale of collections. The ethics of deaccession in order to streamline a collection, however, is usually not questioned in relation to the impact on an organisation and its community. Such deaccessions have a fundamental impact on the deaccessioning institution and have an ethical component. This paper argues that deaccession is often used implicitly in order to reveal a truer organisation, one which ideally imagines itself as almost transcending history and at last able to express its identity. The concept of the modern museum arose in the nineteenth century, since then the museum has had to struggle to adapt itself to change and ever growing collections. Enormous collections can seem burdensome to some organisations. The decision to deaccession them offers the chance of remaking the museum, but it has rarely examined significant impacts on the museum community and the institution itself.

RÉSUMÉ

L'identité institutionnelle, les communautés et l'aliénation

La plupart des questions d'éthique de l'aliénation concernent la restitution et l'utilisation éthique des fonds générés par la vente de collections. L'éthique d'une aliénation dont l'objectif est de rationaliser une collection n'est cependant pas examinée en termes de son impact sur une institution et sa communauté. De telles aliénations affectent profondément l'institution aliénante et comportent un élément d'éthique. Cet article fait valoir que l'aliénation est souvent utilisée implicitement dans le but de révéler une organisation plus fidèle à elle-même, qui dans l'idéal s' imagine presque comme transcendant l'histoire, et qui est enfin capable d'exprimer son identité. Le concept moderne du musée est apparu au dix-neuvième siècle, et dès lors, le musée a dû lutter pour s'adapter au changement et à l'importance toujours croissante des collections. Les collections de très grande taille peuvent sembler un lourd fardeau pour certaines institutions. La décision de les aliéner représente certes une opportunité de recréer le musée, mais l'impact significatif sur la communauté du musée et l'institution elle-même n'a été que très rarement examiné.

RESUMEN

La identidad institucional, las comunidades y la alienación

La mayor parte de los cuestionamientos éticos referidos a la alienación conciernen a la restitución y la utilización ética de los fondos generados por la venta de colecciones. La ética de la alienación, cuyo objetivo es racionalizar una colección no se examina, sin embargo, en términos de su impacto sobre una institución y su

comunidad. Tales alienaciones afectan profundamente a la institución alienante e implican un elemento de ética. Este artículo destaca que la alienación es a menudo utilizada con el propósito de revelar una organización más fiel a sí misma, que imagina idealmente a la historia como algo trascendente, capaz de expresar su identidad. El concepto moderno de museo apareció en el siglo XIX y, desde entonces, el museo debió luchar para adaptarse a los cambios y a la importancia siempre creciente de las colecciones. Las colecciones de grandes dimensiones pueden parecer una pesada carga para ciertas instituciones. La decisión de alienarlas representa, por cierto, una oportunidad de recrear el museo, pero el significativo impacto que genera sobre la comunidad y sobre la institución en sí misma no ha sido aún suficientemente examinado.

* * *

From a rarely used tool of collection management to an aspect of museum work around which there is increasing politics and often scandal, understanding of deaccession is changing. Continuous calls for the restitution of Indigenous artefacts to their original owners or descendants of owners has highlighted the powerful political and historical components of all types of deaccession. Repatriation demands have revealed the ethically questionable operations of many Imperial institutions, both in colonised lands and in colonising metropolitan centres such as London and Paris, for example, in relation to the most notorious case of all, the Parthenon Marbles or Elgin Marbles.¹ Discussion of deaccession often halts at this point, limiting deaccession to consideration of justice issues particularly when they arise in the context of violent conquest. Ethical consideration, however, needs to be given to the impact on the deaccessioning institution. What is the impact of deaccessioning on the identity of a museum or heritage body? How might we describe the ethics? What does deaccession mean for the museum community?

When museums and heritage organisations make the very difficult decision to deaccession, the contemplation of deaccession is embedded in questions of morality, ethics and legality. Much of the writing on deaccession can be characterised as anxious about these types of issues.² Current debates on deaccession add to a fluid and contested museum field which reflects changing socio-political contexts as museums respond to mass tourism, changing views about communities, nationalism and the political realities of decolonisation.³ There is not, for example, universal agreement about the rights of original owners in relation to museums. *The Declaration on the Importance and Value of Universal Museums* in 2002 showed that some powerful museums continue to assert their ownership of sensitive artefacts partly by a right associated with the nature of their institutions, in this case an imagined transcendent universality.

Over time, objects so acquired - whether by purchase, gift or partage - have become part of the museums that have cared for them, and by extension part of the heritage of the nations which house them. Today we are especially sensitive to the subject of a work's original context, but we should not lose sight of the fact that

¹ Christopher Hitchens, *The Parthenon Marbles: The Case for Reunification*, London, Verso, 2008 (first published 1997).

² See, for example, Stephen Weil (ed.), *A Deaccession Reader*, Washington DC, American Association of Museums, 1997.

³ See, for example, François Mairesse et André Désvallées (dirs), *Vers une redéfinition du musée?* Paris, L'Harmattan, 2007.

museums too provide a valuable context for objects that were long ago displaced from their original source.⁴

This “different pedigree of museum” is contested by Abungu⁵ but its presence persists in the justification for retention of many sensitive objects, for example the Parthenon Marbles by the British Museum. The declaration also argues implicitly that the museum institution is a living context for objects despite the long history of criticism of the removal of objects from their normal context and their condemnation to a kind of death in the museum.⁶

This paper takes from the declaration the concept of an implied variety of institutional museum natures as its springboard to ask questions about deaccessioning and institutions and to reflect on the potential meanings surrounding them. This paper does not analyse deaccessioning events which aim to repatriate artefacts to legitimate owners although this is the context in which *The Declaration on the Importance and Value of Universal Museums* was written. The statements of the declaration move beyond the issue of repatriation to begin to hint at an imagined, but unarticulated museum nature, a nature which is expressed profoundly through the collection and which seems independent of more mundane institutional elements. Further, this paper does not examine deaccessioning which is designed to generate funds for a financially struggling institution, the ethics of such decisions are dealt with elsewhere.⁷

This paper reflects on a different kind of deaccessioning, the type that aims to streamline the work of a museum or heritage body by paring back the collection in the hope that it will reflect fundamentally the nature of the institution. This type of management decision is consistent with *The Declaration on the Importance and Value of Universal Museums* which asserts that a collection is a context in itself. This paper argues that a paring back deaccessioning must be understood in the context of the overall history of the specific museum or heritage body, consideration of it cannot be limited to contemporary exigencies. It must be analysed as part of the history of the institution which, through disposal of some of its collection, assumes that it makes restitution to itself and of itself, that is, by removing unwanted elements of its collection it seeks to know itself better. The idea that a museum might come to know itself and represent itself more precisely through deaccessioning part of its collection is explored here.

National Trust of Australia (Western Australia)

How might one describe an institution after the artefacts that it once housed are dispersed? Might these issues be considered separately from the day to day aspects of collection management? What is the loss of a legitimately acquired collection to the heritage community? These questions are asked here with reference to the radical deaccessioning of about 7000 artefacts in 2007 by the National Trust of Australia (Western Australia). This large disposal provides an example of the issues surrounding deaccession of legitimately acquired, non-controversial artefacts. Few of the objects were Indigenous, rather, the sideboards, pianos, paintings and decorative objects stated emphatically the arrival and triumph of a European settler society.

⁴ *Declaration on the Importance and Value of Universal Museums* (2002), *ICOM News*, no. 1, 2004, p. 4.

⁵ George Abungu, “The Declaration: a contested issue”, *ICOM News*, no. 1, 2004, p. 5

⁶ One of the earliest critiques of the museal was made during the Napoleonic pillage of Europe, see Antoine Quatremere de Quincy, *Lettres à Miranda sur le déplacement des monuments de l’art de l’Italie* in: Sherman, Daniel and Rogoff, Irit (eds) “Quatremere / Benjamin / Marx: art museums, aura and commodity fetishism”, *Museum Culture: Histories, Discourses, Spectacles*, London, Routledge, 1994.

⁷ For example, see Stephen Wei (ed.), *op. cit.*

The National Trust of Australia (Western Australia) is one of the Australian bodies modelled on the UK National Trust. It was established in 1959 in response to the rapid destruction of nineteenth and early twentieth century architecture in the state of Western Australia. It acquired thousands of largely non-provenanced artefacts over four decades in order to fill its properties, mostly heritage houses, with furniture and objects so that the sites looked lived-in; the aim was to have artefacts support the properties. Its 2007 deaccessioning emptied its warehouse storage and halted the acquisition work of Trust volunteer heritage property groups which had collected for many years. The Trust changed direction and the work of the Trust's most important community was thus undone.

Collections and communities

The character of a collection and its museum community are two elements affected immediately by deaccessioning. Given that permanence is presumed by donors and institutions when an artefact is donated to a museum or heritage institution, a presumption stated by the International Council of Museums⁸, it is not surprising that there are commentators who abhor deaccessioning, for example, Cuno who argues that ancient artefacts have become the cultural property of the world and have mostly been far better cared for in their European and North American metropolitan museum homes than they would have been in their original lands. Indeed, in the case of the Parthenon Marbles, he attacks the Greek argument about their fundamental importance to the Greek national character by saying that they are also important to the "cultural values of modern Britain",⁹ thus suggesting that the fragments now have a new community. Community is thus used partly as the justification for non-restitution.

Deaccession can arouse widespread anger, a sense of broken trust, belief that there is an undermining of museum missions and fear that transitory taste issues are used to determine museum collections. The decision, for example, to repatriate the Indigenous Kow Swamp Collection from the Museum of Victoria was contested on the grounds that the "museum had failed to fulfil its educational obligations and to defend its investment in intellectual freedom. It had abetted another form of racial monopoly".¹⁰ Mares¹¹ argues that collections are threatened by "hapless ignorance, mean spiritedness, arrogance, fiscal meanness, or well meaning ineptness". Genoways complains that public programmes and education are often regarded as more important than collections although it is collections which should be understood as the "core" of a museum.¹²

Looking at the history of the National Trust of Australia (Western Australia) reveals how a powerful and intimate connection can develop between a collection and its community. The volunteer community of the Trust was instrumental in organising the display elements of Trust heritage work. Once the Trust had begun to acquire old buildings in order to conserve them, the issue arose of how they should be displayed. Witcomb and Gregory argue that the "properties... spearheaded the campaign to increase Trust funding and attract membership numbers using the image of gentility... the representation of upper middle-

⁸ International Council of Museums, "Code of professional ethics", in Weil, Stephen (ed), *op cit.* p. 163.

⁹ James Cuno, *Who Owns Antiquity?: Museums and the Battle Over Our Ancient Heritage*, Princeton and Oxford, Princeton University Press, 2008, p. xii.

¹⁰ Tom Griffiths, *Hunters and Collectors: The Antiquarian Imagination in Australia*, Cambridge, Cambridge University Press, 1996, p. 98.

¹¹ Michael Mares, "The moral obligations incumbent upon institutions, administrators, and directors in maintaining and caring for museum collections", in: Genoways, Hugh (ed.), *Museum Philosophy for the Twenty-First Century*, Lanham, Oxfordshire, Altamira Press, 2006, p.85

¹² Hugh Genoways, "To members of the museum profession" in: Genoways, Hugh (ed.), *op.cit.*, p. 223.

class gentility... helped to cement the image of the National Trust in the public imagination".¹³ Each property had its own group of volunteers who worked with the Furniture and Furnishings Committee on furnishing and decorating. The repetitious nature of this style of heritage interpretation has been criticised for many years, for example, Walsh argues that in the UK a pervasive rural and privileged class representation bedevils heritage.¹⁴ In Western Australia, a visit to the Trust properties in the second half of the twentieth century revealed that the unique qualities of each property had been substantially lost. From the metropolitan area of Perth to remote rural homesteads, the pattern of display was the same - a feminised, idealised, materially comfortable pastoral fantasy.

There is no doubt that in Western Australia there was unbridled collecting driven by the need to fill properties that were already owned by the Trust and those that would be acquired in the future. An optimistic belief in the Trust's on-going property acquisition strategy meant that almost anything might be of future value. This kind of voracious collecting was one of the norms of museum and heritage bodies and was the style of several places, for example in Canada at Glenbow¹⁵ and the Western Development Museums.¹⁶ It is easy to understand how these collections became so unwieldy because many of these acquiring bodies had arisen in direct response to community nostalgia and as result of time-space compression and its experience of overwhelming loss of historical and spatial specificity and identity.¹⁷ Rapidly growing collections appeared to function to insulate communities from the spread of the sameness of global culture. Ironically, although the Trust's collection was acquired to protect Western Australia from time-space compression, one of its unwitting effects was to highlight the rise of global culture by producing properties of general sameness - an abundance of crystal, silver, lace and linen with few hints of the brutally hard work of founding a colony. The Furniture and Furnishings Committee was permitted to act independently of the Trust executive and often acquired and purchased artefacts for the various properties on its own initiative. The resulting vast collection was repetitious and substantially unprovenanced. The properties were put on display and the remainder of the collection into storage with little or no documentation.

Despite the easy criticism of this style of collecting, it is essential that the passion and delight in collection is understood; it is this intense aspect of the collection which shows the intimacy it had for the Trust community. Witcomb and Gregory describe the strong feelings of the committee members who "took pride in the houses almost as if they were their own".¹⁸ Such identification with the various properties resulted not only in the problem of the production of sameness but, most positively, produced strong volunteer groups whose lives were enriched by working on a heritage project for the wider community. Small rural towns were invigorated by valuing their history. The *Australia ICOMOS Burra Charter*¹⁹ sets out the ways in which heritage places ought to be valued and assessed; one of the heritage values that it describes is "social value" which was a great part of the early Trust experience. The success of the Trust's work was expressed in the social value associated

¹³ Andrea Witcomb and Kate Gregory, *From the Barracks to the Burrup: The National Trust in Western Australia*, Sydney, University of New South Wales Press, 2010, p. 162.

¹⁴ Kevin Walsh, *The Representation of the Past: Museums and Heritage in the Post-Modern World*, London, Routledge, 1992.

¹⁵ Patricia Ainslie, "The deaccessioning strategy at Glenbow, 1992-97", *Museums and Curatorship*, vol 5, no. 1, 1996, p. 21-35.

¹⁶ Ruth Bitner and David Richeson, "Artifact deaccessioning and disposal at the Saskatchewan Western Development Museums 1984-1988" *Muse*, vol. 8, no. 2, 1990, p. 35-37.

¹⁷ David Harvey, *The Condition of Post-Modernity: An Enquiry Into the Conditions of Cultural Change*, Oxford, Basil Blackwell, 1989.

¹⁸ Andrea Witcomb and Kate Gregory, *op cit.*, p. 162.

¹⁹ Australia ICOMOS, *Australia ICOMOS Burra Charter*, 1999.

with protecting memories of places and in the immense social value people derived from working on heritage sites. Many museum and heritage sites struggle to survive today on a low financial base and little community involvement; they would benefit from the enthusiastic community - collection nexus that the Trust once enjoyed.

The history of a collection is a large part of the history of its institution. Ethically, it is not possible to eliminate part of the collection without historical reflection. Deaccessions that are undertaken solely as professional acts of cleaning up, and with little consideration given to the impact on the history of the collection, are ignoring a core part of the institution's history. Given the sometimes intimate relationship between a heritage institution and its community, to deaccession a collection amassed by the community must necessarily be seen as socially and institutionally impoverishing. When great value is placed on the permanence of a collection and especially the historical motives and historical events which caused the artefacts to be collected, it can provide a solid counter-argument to a collection management argument in favour of deaccession.

Placing a very high value on collections and their histories, and understanding that they reflect the institutions themselves is associated with a desire to allow museums to be open to historical change, but respectful of their pasts. It is associated with sensitivity to the pitfalls of an institution reflecting only its current time in historical and curatorial taste. Hein, for example, praises the "open ended seeking"²⁰ permitted in a museum saying that "a collection stimulates resonance among its pieces... neither objective nor passive, museum collections stir with energy, urgency and intensity".²¹ If the historical reasons for collecting are always valued as an intrinsic part of a collection then deaccession is unlikely because the collection reflects a key aspect of institutional history.

Refining a collection in order to express institutional identity

When the National Trust of Australia (Western Australia) had finished its vast deaccession most of the storage had been emptied out, leaving only the existing displayed collection in the heritage properties. Trust curator, Sarah Murphy told me that the deaccession was designed to save money, produce a manageable, mostly provenanced collection, eliminate the burden of caring for the collection and make the collection management aspects of the organisation consistent with the increasing professionalism elsewhere in the organisation.²² It was a deaccession designed to refine and pare down the collection to a smaller, but more representative sample, or group of higher quality artefacts. Knell expresses this as "distillation".

Increasingly, professionals grow less opposed to the idea that pruning will be needed, and that "distillation" will become a key curatorial skill. While many museum professionals have been brought up to believe they are contributing to the future, and that their efforts are cumulative and enduring, this will not always be the case.²³

Distillation involves producing a small quantity of a very concentrated and pure substance. If this idea is applied to a museum collection, then deaccessioning concerns reducing a collection to a point where it has an emphatic correspondence to the organisation's current

²⁰ Hein in: Genoways, Hugh (ed.), *op.cit.*, p. 8

²¹ *Ibid.*, p. 12.

²² Sarah Murphy, interview, 10 May 2010.

²³ Simon Knell (ed.), *Museums and the Future of Collecting*, Aldershot, UK, Ashgate, 2004, p. 16.

mission statement and current identity. Such a collection, one assumes, would encompass a few key artefacts that were directly related to the main issues of the museum. Gone would be the rich open-ended nature, described by Hein, of a collection acquired across time.²⁴ It would be replaced with one that reflected most strongly the specific era of the deaccession.

When the reasons for deaccessioning are expressed in terms of efficiency and institutional process there is a grave danger that the contemporary decision will not be understood as based in its historical time. Many of the discussions on deaccession, for example the readings in Weil,²⁵ are limited to ethics and efficiency, with the writers apparently unaware that a deaccession is historic and has a meaning impact on the organisation. These ideas are rarely articulated, but implicitly guide many actions. Deaccessioning in order to pare down is used to reveal a museum which is truer to itself, leaner, distilled to a concentrated essence. The deaccession thus refines the collection and, through the collection, the museum. At the end of the deaccession, therefore, the museum is understood to know itself better and to be able to represent itself with a firmer identity. To cut out part of the body of the organisation, however, and to say from that act that the organisation is now truer to itself is strange, how could cutting off a part leave a truer whole? The body must be damaged.

Curators who undertake deaccessioning are not naïve about history. The intense historical politicisation of museum collections and interpretations is now assumed in museum studies. This is particularly intense not only in the context of awareness of restitution demands, but also in the light of the specific histories of the European desire to accumulate objects in order to educate the populace. Foucault argues that the museum is an expression of modernity, a nineteenth century heterotopia.

the idea of accumulating everything... the will to enclose in one place all times, all epochs all forms, all tests, the idea of constituting a place of all times that is itself outside of time and inaccessible to its ravages... this whole idea belongs to our modernity. The museum and the library are heterotopias that are proper to western culture of the nineteenth century.²⁶

Knell also places collecting into historical context, saying that nineteenth century collecting was undertaken with the assumption that there was “a finite world” that could be collected and categorised.²⁷ Both Foucault and Knell thus place the history of the rise of the museum into the historic context of the belief in the possibility of creating a complete classification system. The twentieth century’s explosion of knowledge and technology put great strain on the nineteenth century system which had been assumed to be more or less finite. Vast collections filled museum store rooms as museums scrambled to collect newly created artefacts. While museums of the nineteenth century collected in order to know, classify and educate, twentieth century museums collected both as heirs of the nineteenth century and in order to protect communities from the experience of time-space compression. The desire to amass artefacts of the past on such a great scale and in order to educate the public, therefore, originated in a former time. By comparison, contemporary politicisation of

²⁴ Hein in: Genoways, Hugh (ed.), *op. cit.*, p. 8

²⁵ Stephen Weil (ed.), *op. cit.*

²⁶ Michel Foucault, “Of other spaces”, *Diacritics*, vol 16, no 1, pp. 22-27, 1986 (from a lecture given in 1967), p. 26.

²⁷ Simon Knell (ed.), *op. cit.*, p. 1.

collecting is substantially a response to the late twentieth century politics of post-colonialism. As museums have responded to the New Museology they have rushed to show that the institution is capable of reflecting today, rather than the nineteenth century. By so doing museums hope to show that they are fundamentally true to themselves. Deaccessioning is thus a strategy for streamlining a collection to reveal accurately a core of artefacts and documents which are the true and correct focus of a museum or heritage site. The organisation creates a pared down, refined museum which at last thinks that it knows itself. Ironically, however, it knows itself only in the era of that deaccession, today.

In a time of intense scrutiny and politicisation of past and present actions, exhibitions and collections, the museum institution is haunted by the need to re-find and redefine itself as transparent and ahistorical. Museum and heritage bodies find their core values threatened by scarce public funding which results in necessary commercialisation in order to survive. They are threatened also by mass tourism and the physical and interpretation demands that it creates. Changing museology fashions that downgrade the importance of the object likewise undermine core museum values. *The Declaration on the Importance and Value of Universal Museums* is an example of the need of museums to re-find themselves. Reading deeply into this document one can see that the museum seeks the status of transcendent and transparent institution and looks for a pure identity that might escape politicisation - it suggests this by offering the museum itself as a relevant context for the museum object. The paring down deaccession strategy is an expression of the need for the museum to hope to transcend the politics of today. It appears to offer the institution a method of survival in a hybrid form: the old, bloated institution mixed with the new, lean.

The authority of the old institution is used to explain the need for deaccession to its community while, ironically, it is through the refining process of deaccession that the museum hopes to re-state its authority and identity. The re-finding of itself through deaccession is thus both progressive and reactionary. The museum looks perpetually forwards and backwards in an attempt to stabilise itself. Kratz and Karp describe also the current tension "that may be derived from different spheres of involvement and identity".²⁸ Martinon describes the tension that has resulted from the collapse of the messianic nineteenth century vision of redemption of the masses and its replacement with contemporary "experiences".

In a time when time has ceased to represent something fixed and stable, something reliable pointing to a single direction, the only thing a museum can do is to maintain this promise in a state of radical indecisiveness.²⁹

Martinon argues that the museum is now so unsure of itself that it is "permanently on edge".³⁰ The tension is expressed in reaction to funding cuts, restitution claims, derogatory re-readings of past exhibition and collecting practices and in outcries over entrenched racism and sexism. All these anxieties, of course, stem from the simple evidence that the museum concept was always an historical and cultural product of its era.

This anxiety is found also in more day-to-day museum operations and most certainly in the way that the museum undertakes deaccession. Collection management driven

²⁸ Corinne Kratz and Ivan Karp, "Introduction", in: Kratz, Corinne;Szwaja, Lynn and Ybarra-Frausto, Tomas (eds), *Museum Frictions: Public Cultures / Global Transformations*, Durham and London, Duke University Press, 2006, p. 7.

²⁹ Jean-Paul Martinon, "Museums and restlessness" in: Genoways, Hugh (ed.), *op. cit.*, p. 65.

³⁰ *Ibid.*, p. 66.

deaccessioning is framed by a contemporary need to control museum collecting excesses and to undertake disposal ethically. For example, the Western Development Museums were described by Bitner and Richeson as having a collection that had “vastly outgrown the museum’s capacity to care for it”.³¹ Likewise Ainslie speaks of “mindless collecting”³² at Glenbow in western Canada and Murphy speaks of the lack of professionalism in the National Trust resulting in an out of control collection.

While adequate for their time, these past collecting practice became seriously flawed as professional collections management practice evolved. The subsequent result was the accumulation of substantial unconsidered collections of objects that sat unused, without foreseeable purpose and deteriorating in condition and value.³³

Institutional anxiety can be alleviated by professionalism and also via community responsibility. When planning the deaccession, Murphy argued to the Council of the National Trust that while unable to care for such a large collection, it was “in the unenviable position of being unable to fulfil its obligation to donors and indeed undertakings to the people of Western Australia”.³⁴ Similarly, at the end of her paper, Ainslie suggests that the museum community of Glenbow has changed: “As the demographics of communities change, museums must reconsider and reform their collections”.³⁵ This argument appears apparently as an afterthought and only at the very end of Ainslie’s paper which is dominated by the ethics and efficiency of a vast disposal.

How should we conceptualise the museum community in relation to deaccessioning? Is the museum a reflection of the community? In service to it? Sometimes antagonistic to it? Ainslie concludes the Western Development Museums discussion: “the WMD experience, does not have to be professionally life threatening to either board, staff or museum directors”.³⁶ Through this statement, the museum asserts that it is separate from its community which was the very source of the now dispersed collection and implies that the museum sees itself apart from its community by limiting understanding of deaccession to a simple act of collection management. This statement is in marked contrast to a very different view of community, one which understands community as integral to contemporary museums.³⁷

The National Trust had experienced many strained moments with its community over issues associated with professionalisation in the years leading up to the 2007 deaccession, many of them robustly contested by increasingly marginalised property committees.³⁸ Murphy told me that the 2007 deaccession was the landmark event that definitively stated the professionalisation of the Trust and its transition from a substantially voluntary body. She said that the battle for control of the direction of the Trust took place over several years, at the time of the deaccession there was only one protest which arrived after the sale was finished. Members of the volunteer groups were ageing and there were few new volunteers to carry on their work.

³¹ Ruth Bitner and Davd Richeson, *op.cit.*, p. 35.

³² Patricia Ainslie, *op. cit.*, p. 33.

³³ Sarah Murphy “Deaccessioning and disposal project”, *Trust News Australia*, vol 1, no. 3, p. 7, 2008.

³⁴ Sarah Murphy, “Deaccessioning and disposal proposal” (background briefing paper for the Council of the National Trust of Australia (Western Australia), 2005.

³⁵ Patricia Ainslie, *op. cit.*, p. 34.

³⁶ *Ibid.*, p. 37.

³⁷ For example see Ivan Karp, Christine Mullen Kreamer and Stephen Lavine (eds), *Museums and Communities: The Politics of Public Culture*, Washington and London, Smithsonian Institution Press, 1992.

³⁸ For example see Gregory and Witcomb’s discussion of the 1987 furnishing policy debate, *op. cit.*, p. 202.

The deaccession did not erase the site specific work of the remaining volunteers who still continue to care for the various heritage sites managed by the Trust, but it defined the place of power as resting with the professional management and effectively brought to an end the community-led foundation era of Trust work.

Conclusion

A paring down deaccession requires ethical evaluation. Ethics is not confined to questions concerning the use of money raised by artefact sales or methods of disposal. The refining concept of deaccession must be scrutinised in terms of ethics because through it the museum or heritage organisation asserts implicitly that the dispersed artefacts did not contribute to furthering the mission of the organisation and thus cut had undermined its identity. Crucially, this implied statement is historical and must not be understood as ahistorical. Ethical thinking requires that an organisation think through very carefully what its identity will be after disposing of a large part of its collection. Losing institutional history in any form can be prejudicial to an institution's understanding of itself.

The future of heritage and museum bodies following radical deaccessions suggests a strong break with the past institution, but a break that it is implied will restore an organisation's identity. Although the National Trust undertook a huge deaccessioning, it showed its caution by not deaccessioning the artefacts currently on display in the properties. Murphy told me that it was important to leave some of the old collection - provenanced or not - to a later curator who might have very different ideas about what to do with it. The remaining artefacts constitute a relatively small part of the previous total collection, but is evidence that in attempting to refine and define the institution there remained some historical sense.

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MUSEOLOGÍA, RESTITUCIÓN DEL PATRIMONIO E IDENTIDAD CULTURAL DE LOS PUEBLOS

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RESUMEN:

En la sociedad actual estamos llamados a entendernos unos con otros y a buscar aquellos puntos de encuentro que pueden facilitarnos un diálogo abierto y plural, desde la aceptación de nuestras propias diferencias. El patrimonio cultural constituye un elemento esencial de la identidad nacional de los pueblos y nadie debe ser privado de él sin su consentimiento. Sin embargo, la experiencia nos demuestra que, a lo largo de la historia, muchos pueblos han sido testigos de cómo su patrimonio cultural se ha visto dispersado y fragmentado a consecuencia de las guerras, invasiones, pillaje, ocupación de tierras extranjeras, tráfico ilícito e intereses comerciales, que favorecieron la especulación incontrolada de las obras de arte. A medida que los pueblos colonizados se han ido independizando, como fruto de un nuevo concepto de justicia, equidad y promoción humana, se ha visto la necesidad de que muchos de los bienes culturales que habían sido despojados de sus respectivos países, debían retornar a sus países de origen. Se plantea así el problema de la restitución, repatriación y retorno del patrimonio cultural, cuyas connotaciones particulares y específicas nos hablan del complejo proceso que se ha de seguir a la hora de dar solución a los interrogantes que los museos se hacen cuando se trata de tomar decisiones que afectan a la integridad e inalienabilidad de las colecciones. De ahí la conveniencia de atenerse a un código deontológico que tenga en cuenta los problemas de la alienación y restitución de los bienes culturales, al tiempo que se han de buscar los recursos legales necesarios para que nadie se sienta perjudicado ni desprotegido de sus derechos. La museología y los museos han de estar dispuestos a entrar en la dinámica del diálogo y del encuentro entre las diferentes culturas y los pueblos que las crearon, al tiempo que tendrán que replantearse cuáles han de ser sus funciones en el futuro respecto a las colecciones y obras de arte que conservan. En otras palabras, Museología y museos han de contribuir a que la restitución y la reconciliación sean una realidad capaz de transformar el futuro de nuestro patrimonio, haciendo posible el encuentro entre las diferentes culturas que están llamadas a entenderse y complementarse mutuamente.

Palabras clave: Patrimonio, identidad cultural, dispersión, restitución, responsabilidad ética, apuesta museológica.

ABSTRACT

Museology, restitution of the people's cultural heritage and identity

In modern society, humans seek those social processes that enable them to maintain a plural dialogue for the sake of mutual understanding and accepting their cultural differences. Cultural heritage constitutes an essential element in the identity of people and nobody should be deprived of it without their consent. However,

experience shows that throughout history, many cultures have seen their cultural heritage dispersed and fragmented as a result of warfare, invasion, pilfering and occupation of foreign territories, looting and commercial interests, which enabled the uncontrolled speculation of art. As colonized people have become independent, as a result of a new concept of justice, equity and human promotion, the need for some of the cultural property that was taken from them to return to their homeland has been raised. This creates the problem of restitution, repatriation and return of cultural heritage, whose specific connotations show the complex path to follow when addressing the integrity of heritage collections. Hence, the convenience of using an ethical code that considers the alienation and restitution of cultural heritage. Legal resources need to be created to protect those countries in their rights to get their heritage returned. Museums in general must be willing to enter the dynamics of dialogue among different cultures and must seek a projection for the future regarding their role in dealing with the collections and art pieces that they preserve. In other words, museology and museums must contribute to the reconciliation among cultures, which will transform our concept of cultural heritage itself, in the role of these institutions as a means of making multi-cultural dialogue and mutually understanding one another.

KEY WORDS: Heritage, Cultural identity, dispersion, restitution, ethics, museological role

1. PATRIMONIO E IDENTIDAD

Hoy, más que nunca, estamos llamados a vivir en una sociedad que nos invita a ser abiertos y cosmopolitas, sin olvidar que hemos de valorar también lo local, regional y nacional, evitando caer en un relativismo improductivo o en un nacionalismo exclusivista. Valorar lo propio es el requisito imprescindible si queremos que las personas cuenten con los referentes necesarios para que se sientan seguras de sí mismas y, al mismo tiempo, sean capaces de mirar el mundo desde la pluralidad de culturas y de formas de vida. No estamos solos en el mundo y, en consecuencia, hemos de apreciar aquellos aspectos de nuestra cultura que nos son cercanos y nos dan certezas sin perder de vista que vivimos dentro de un mundo más amplio y más enriquecedor, al que no podemos ignorar.

Inmersos en un mundo donde la comunicación es uno de los elementos fundamentales que constituyen nuestra forma de ser y de vivir, descubrimos la importancia de la multiculturalidad que se nos manifiesta en la existencia de otras personas que son iguales a nosotros, pero que también se muestran diferentes en sus formas y estilos de vida. Nos damos cuenta de que los otros están ahí y hemos de aceptarlos como son, iguales y diferentes a la vez, haciendo un esfuerzo por captar sus diferencias culturales, religiosas, de costumbres y valores. Ahí reside la clave de lo que ha de ser la ética de nuestro tiempo: reconocer la dignidad de la persona del otro en su diferencia. Según Mardones (1999:61),

Este es un problema que, frecuentemente, ha sido mal resuelto en la práctica por la modernidad occidental prepotente. Hemos creído que bastaba afirmar la universalidad desde nosotros para lograrla. Pero era una universalidad provinciana, afirmábamos nuestro particularismo: nuestras costumbres y formas de ver occidentales. En el fondo, defendíamos un provincialismo occidental que imponía la superioridad de nuestra razón ilustrada, de nuestra religión cristiana, de nuestros modos de vivir y de comportarnos occidentales. Lo de los "otros" no era todavía suficientemente

universal ni humano, es decir, no llegaba a ser aceptable porque no se adecuaba según los cánones de nuestros criterios noratlánticos y simplemente europeos o, más concretamente, españoles o sajones.

Y ha sido esta falta de reconocimiento de la diferencia de los otros la que ha dado lugar a que se hayan creado unas relaciones culturales imperialistas con el resto de otros pueblos que no han tenido la suerte de alcanzar un desarrollo económico tan rápido y próspero como el nuestro. En el fondo, hemos de admitir que se ha dado una extralimitación social y cultural y que ésta constituye un serio problema moral y cultural al que hemos de dar respuesta si pretendemos contribuir a la armonía social entre los pueblos.

Todas las obras de arte que constituyen el patrimonio cultural de la humanidad son el testimonio de una historia, de una cultura y de una nación cuyo espíritu se perpetúa y se renueva en ellas (Amadou-Mahtar M'Bow, 1979:18). Por esa razón, podemos afirmar que el patrimonio cultural, tanto material como inmaterial, constituye un elemento esencial de la identidad nacional de todos los pueblos y que, por ello, nadie les debe privar de aquellos objetos, tradiciones o creencias que constituyen el testimonio irremplazable de su forma de ser y de su civilización. Cualquier pueblo tiene derecho a definir su historia, la naturaleza de su propia identidad y, en consecuencia, ha de tener la posibilidad de decidir qué es lo que quiere hacer con sus objetos culturales, con sus tradiciones y relatos, que no siempre tienen por qué ir a los museos. Sólo si somos capaces de asumir la diferencia de los otros, apostando por la inclusión social y cultural frente a la intolerancia y exclusión de aquellos que opinan que sólo lo suyo es lo verdadero, es posible abrirse a nuevas perspectivas y mirar esperanzados el futuro, convencidos de que todos podemos enriquecernos con las aportaciones de los demás. Sólo así las diferencias culturales contribuirían al encuentro y a la armonía entre todos los pueblos.

2. LA DISPERSIÓN DEL PATRIMONIO Y SUS CAUSAS

A medida que profundizamos en la forma en que muchos pueblos van analizando las características culturales que definen su propia identidad, observamos la importancia de estudiar con cierto rigor científico las colecciones de objetos y obras de arte que, por diversos motivos, se han dispersado a lo largo del tiempo y que, en algunos casos, es preciso que sean restituidos a sus legítimos propietarios y devueltos a sus países de origen. El tema es complejo y necesita de un análisis detallado que vaya más allá de meras consideraciones políticas e ideológicas.

Con los descubrimientos geográficos realizados durante los siglos XVII y XVIII los exploradores se dirigieron hacia el norte en la búsqueda de un paso que abriera el Atlántico al Pacífico y hacia el sur en busca de Australia, Nueva Caledonia y el Antártico. Eso significó que los europeos, al ir descubriendo nuevas tierras y culturas, las colonizaron y en dicho proceso también fueron adquiriendo diferentes objetos representativos de las mismas. Consideradas como "curiosidades artificiales" que ofrecían una visión exótica de dichas culturas, los investigadores europeos fueron adquiriéndolas convencidos de que era lógico y legítimo recuperarlas y trasladarlas a Europa para que fueran estudiadas y conservadas ante el riesgo de que pudieran desaparecer (Gathercole, 1986:188). De hecho, la proliferación de museos que tuvo lugar durante el siglo XIX hizo que entraran en sus almacenes numerosos objetos que habían sido recogidos, ya sea a través de la iniciativa de los etnólogos o del tráfico de obras por parte de los coleccionistas particulares que contribuyeron a su dispersión, como sucedió con las colecciones de Oceanía conservadas en Gran Bretaña.

Dicha dispersión y fragmentación del patrimonio cultural de determinados pueblos supuso la toma de conciencia de que era necesario elaborar un inventario sobre los objetos y las colecciones a las que pertenecían dado que, en muchos casos, no habían sido registrados y, por consiguiente, la documentación que sobre ellos se tenía era bastante exigua. De esta manera, a la hora de clasificarlos, no era posible determinar cuál era su procedencia original, qué cantidad de ellos existía y cuál era su tipología. La elaboración de la información de las colecciones ha de ser fruto de la colaboración o del intercambio que se tiene que dar entre los antropólogos occidentales y sus fuentes indígenas. Sólo así se podrá hacer un análisis comparativo de todas ellas y descubrir su verdadero significado. Además, se podrá abrir un debate sobre la restitución de los bienes culturales a sus países de origen, procurando hacer una distribución más racional de las colecciones de Oceanía en todo el mundo.

El desequilibrio social y político, fruto de la época colonial, ha sido la causa de la actual distribución, llegándose al caso que muchos pueblos del Pacífico, si desean acceder a los objetos más significativos de su propio patrimonio cultural, han de dirigirse a las grandes ciudades del Norte que cuentan con importantes museos (Gathercole, 1986, 191). Y esto que se afirma del Pacífico puede aplicarse también a numerosos pueblos de África, Asia y América Latina. Todos ellos han sido víctimas del pillaje secular que les ha despojado de sus obras maestras irremplazables y lo que, es peor aún, han sido desposeídos de una memoria que les hubiera ayudado a conocerse mejor y a hacerse comprender mejor por lo demás (Amadou-Mathar M'Bow, 1979:589).

Es evidente que el patrimonio se ha dispersado por diferentes causas como el botín de guerra, las invasiones, el pillaje, la ocupación de tierras extranjeras, el tráfico ilícito y los intereses comerciales que han favorecido la especulación descontrolada y animado las actividades ilegales de los saqueadores furtivos. Todas ellas han supuesto una amenaza para la integridad del patrimonio cultural de las naciones, que se han visto desposeídas de aquellos elementos fundamentales de su ser como pueblos.

En la antigüedad, los pueblos que entraban en guerra sabían que el vencedor tenía el derecho al botín, que suponía la usurpación de todos aquellos bienes artísticos que poseían los vencidos. Sin embargo, ya desde entonces se alzaron algunas voces en contra de dicha costumbre, destacando entre otros el historiador Polibio y Cicerón, quienes argumentaban que la dignidad de los pueblos se mide por la magnanimidad de sus virtudes y por el respeto de los valores culturales que poseen quienes han sido dominados militarmente. El mismo Carlomagno respetó las obras de arte que poseía Italia, evitando saquearlas para que formaran parte del patrimonio franco germánico. Pero no siempre sucedió así, y el expolio fue una costumbre que algunos países siguieron sistemáticamente, como sucedió con la Revolución francesa y Napoleón, o con la "masacre de Bénin" llevada a cabo en 1897 por Gran Bretaña. Las invasiones de los pueblos indígenas supusieron también la imposición de las nuevas religiones, desechando y prohibiendo las antiguas creencias y, con ellas, la destrucción y el abandono de numerosos objetos religiosos que hasta ese momento gozaban de gran valor simbólico y que pasaron a formar parte de los museos de los países de origen de los misioneros. Otras veces eran fruto de regalos e intercambios entre los pueblos indígenas y los colonizadores, cuyo espíritu de hospitalidad y generosidad de los primeros era aprovechado por los segundos para su enriquecimiento. Incluso, los mismos etnólogos, solían llevarse numerosos objetos con el propósito de analizarlos y estudiarlos y así poderlos dar a conocer al resto del mundo.

3. LA RESTITUCIÓN DE LOS BIENES CULTURALES

A medida que los pueblos colonizados se han ido emancipando, como fruto de un nuevo concepto de justicia, equidad y promoción humana, se ha visto la necesidad de que muchos de los bienes culturales que habían sido despojados de sus respectivos países durante la época colonial, debían retornar a sus países de origen. Para muchos pueblos, la emancipación política no será completa sin la recuperación de los objetos que son el testimonio de su identidad, de su forma de ser y de su civilización. Ha surgido así el convencimiento de que los objetos culturales, que han sido sustraídos por diferentes motivos a los países propietarios, han de ser restituidos a sus países de origen como una forma de reconocimiento de su propia cultura y como un intento de revisar históricamente los procesos que llevaron a tal situación. Si, como ya hemos dicho anteriormente, cada pueblo tiene derecho a representar su propia cultura, como testimonio de su identidad, la restitución de los bienes culturales ha de ser un derecho ético fundamental que debe ser respetado y promovido, en el convencimiento de que con ello estamos contribuyendo al diálogo intercultural y asumiendo que todas las culturas poseen su propia alma y razón de ser y merecen, por ello, el respeto y la consideración más profundos.

Ahora bien, la restitución de los bienes culturales no debe centrarse sólo en los objetos de mayor relevancia artística, sino que ha de abarcar también a todos aquellos objetos de la vida diaria que permiten ilustrar los aspectos económicos que representan o las técnicas que se utilizaban en la elaboración de los diversos patrimonios culturales. Además, se han de tener en cuenta todos aquellos aspectos del patrimonio inmaterial e intangible que se pueden percibir en las creencias, tradiciones, sentimientos relatos, cánticos y lenguas que también forman parte del bagaje cultural de los pueblos, que se han de cultivar y conservar evitando por todos los medios su desaparición.

A la hora de poner en práctica dicha tarea, es necesario clarificar algunos términos que hacen referencia al problema de la restitución. Según Kowalski (2005:105), podemos afirmar que existen tres formas de solicitar la devolución de los bienes culturales: la restitución, la repatriación y el retorno. La *restitución* tiene como fin restablecer la situación que poseían originariamente los bienes culturales antes de ser robados o saqueados en tiempo de guerra. Para ello, los objetos han de ser devueltos a sus legítimos propietarios sin condición alguna o, en su caso, pueden ser restituidos por otros equivalentes o análogos a los robados. La *repatriación* pretende proteger la integridad del patrimonio cultural nacional cuando tenga lugar la cesión de un territorio o la fragmentación de un estado multinacional, partiendo del principio de vinculación territorial del patrimonio. Las normas internacionales se remontan a los comienzos de 1850 cuando tiene lugar el conflicto ítalo-austriaco, que se irán consolidando tras las dos guerras mundiales y que adquirirán todo su sentido con las transformaciones políticas experimentadas en la Europa central y oriental, en la escisión de la Unión Soviética y en los países de lo que fue la antigua Yugoslavia. El *retorno* hace referencia a las demandas que presentan aquellos países que se han visto privados de sus bienes culturales con motivo de las colonizaciones o de su exportación ilícita para que sean devueltos a su lugar de origen.

Según la Conferencia de Dakar, celebrada en 1978, los países que han sido demandados por los países propietarios de los bienes culturales en su origen, suelen exponer varios argumentos en contra de la devolución, entre los que destacan:

El *argumento museológico*, según el cual los objetos suelen conservarse en mejores condiciones dentro de los museos de los países desarrollados que en los que se encuentran en vías de desarrollo. Hace algunas décadas en la mayoría de los países, desarrollados o no, el patrimonio mobiliario se encontraba en estado embrionario y no se habían realizado los inventarios ni sus estudios correspondientes. Afortunadamente, hoy la mayoría de los museos han llevado a cabo una labor de inventariado, catalogación e informatización de sus colecciones y podemos constatar que se encuentran mejor dotados

de personal especializado para llevar a cabo su labor de conservación y difusión. Además, hoy los museos poseen unas medidas muy estrictas de conservación, por lo que no debería haber inconveniente alguno en que algunos objetos puedan ser restituidos a sus países de origen o incluso intercambiados con otros países.

El *argumento universalista* se apoya en la idea de que los objetos de arte pueden ser mejor apreciados y por un gran número de personas en los grandes museos de Europa y América. Está claro que, según afirma la UNESCO, urge promover el conocimiento del patrimonio cultural con el propósito de facilitar el entendimiento y la armonía entre los pueblos. Restituir a los países propietarios las obras de arte que les han sido confiscadas es una labor que contribuye a la recuperación de la memoria y de la identidad, en la convicción de que, cuando se da el respeto mutuo entre las naciones, es posible el diálogo entre las diferentes civilizaciones y, en consecuencia, se está facilitando el conocimiento, por parte de toda la humanidad, de las obras de arte que se han creado a lo largo de los siglos. Es evidente que todos los museos que poseen colecciones significativas están en condiciones de ofrecer a toda la humanidad la posibilidad de contemplarlas, al tiempo que les hace tomar conciencia de la universalidad y pluralidad de la cultura.

El *argumento jurídico* sostiene que los museos, sobre todo aquellos que son nacionales, se ven en la imposibilidad de enajenar los objetos que forman parte indisoluble de sus colecciones. Sin embargo, pensamos que es necesario que los gobernantes de los Estados lleguen a acuerdos bilaterales que tengan previsto el retorno de los bienes culturales a los países que se han visto privados de ellos, promoviendo préstamos a largo plazo, depósitos, ventas y donaciones entre las instituciones interesadas, de cara a favorecer el intercambio internacional de dichos bienes. Estos intercambios pueden ser muy positivos cuando se trate de completar un conjunto de objetos o de terminar una serie concreta. De este modo, el país que reclama las obras puede recibir a cambio una pieza fundamental para el conjunto de su patrimonio que sea equivalente a la reclamada. Ciertamente existen obstáculos legales en muchos países que dificultan la cesión de la propiedad de las colecciones e, incluso, en algunos de ellos los propios propietarios particulares sólo poseen el usufructo de los bienes culturales. El hecho de que muchos de los objetos que son reclamados por los países de origen procedan del Estado o de instituciones públicas hace que estén sometidos a reglas estrictas de enajenación o alienación. Países como el Reino Unido, Francia, Italia o España, por poner sólo unos ejemplos, transfieren el título de propiedad de un objeto inscrito en el inventario de un museo de derecho público y no puede ser autorizada su enajenación sin contar con el voto de una ley aprobada en el parlamento nacional (Ganslmayr, 1979:65). Además se dan dificultades de carácter psicológico al pensar los países donantes que, si devuelven los bienes culturales a los países de origen, se puede estar dando la impresión que se reconoce implícitamente que se poseían de manera ilícita. Se trata, más bien, de ser generosos y abiertos a las nuevas realidades de nuestra sociedad, sin caer en resentimientos y juicios de valor que no responden ni están en consonancia con los tiempos y la mentalidad en que se llevaron a cabo dichas acciones.

El *argumento técnico* afirma que todos los problemas referentes a la devolución de los bienes patrimoniales suelen resolverse mucho mejor de manera confidencial cuando lo tratan las personas responsables de los museos que mediante exigencias legales y procesuales. Es evidente que los especialistas en conservación y restauración están en condiciones de ofrecer sus opiniones a favor del retorno de las obras de arte a los países donde fueron creadas. Pero también ha de poner los medios necesarios para que dichas obras se conserven y sean presentadas a toda clase de público cuando aquellas se encuentran en otros lugares que no son los propios de su origen.

4. RESTITUCIÓN Y RESPONSABILIDAD ÉTICA

Hoy muchos se preguntan si es o no conveniente restituir los bienes culturales a sus países de origen y si esto resultaría positivo para el conjunto del patrimonio cultural. Si partimos de una consideración puramente técnica, es posible que encontremos muchas razones para afirmar que es mejor que las obras de arte que existen en los museos permanezcan donde se encuentran actualmente porque están bien conservadas, inventariadas, estudiadas y expuestas al público. Nadie pone en duda que los grandes museos europeos y norteamericanos han contado con los medios necesarios para llevar a cabo una excelente labor de conservación y restauración, y que, en la mayoría de los casos, han cumplido de manera sistemática con su misión científica. En tiempos pasados, tal vez, este grado de competencia justificó en gran medida que muchos de los objetos sustraídos, recusados, expoliados, comprados o recibidos a modo de regalo o trueque pudieran conservarse en los museos receptores y que los museos propietarios se vieran privados de ellos porque no disponían de los medios técnicos necesarios para evitar su deterioro.

Sin embargo, hoy podemos certificar que todos los países poseen los medios necesarios y la sensibilidad suficiente para apreciar el valor de su patrimonio, apostando por exigir su recuperación, devolución y restitución. Y lo hacen desde la convicción de que es un derecho legítimo que les avala desde el punto de vista de la responsabilidad ética. La toma de conciencia de que, en el pasado, algunos pueblos y culturas han sido objeto de abusos y de marginaciones que les han desposeído de aquellos valores fundamentales que les hacían sentirse con una identidad propia, ha hecho posible que hoy se considere necesaria la restitución de los bienes expoliados como una forma de devolverles la memoria, la identidad y la dignidad.

Si todos los pueblos y culturas son iguales, y no hay lugar para la marginación y la minusvaloración de los demás, es necesario abrir un espacio de diálogo donde no sólo la tolerancia sea un valor a conseguir, sino la misma aceptación de la pluralidad y el respeto a la diferencia se consideren las bases fundamentales para que se dé la armonía social entre todos los pueblos. Pero, para que esto sea posible, es preciso tender la mano al otro para que, sintiéndose aceptado y reconocido en su diferencia, puedan establecerse nuevas formas de entendimiento y de encuentro capaces de valorar las características que les definen como comunidades culturales únicas e irrepetibles.

Dicho esto, es preciso atenerse a un código deontológico que tenga en cuenta los problemas de la alienación y restitución de los bienes culturales, partiendo de dos premisas que son divergentes, pero también complementarias. En primer lugar, hemos de partir de la afirmación que los objetos y colecciones que poseen los diferentes pueblos tienen un valor importantísimo para definir su propia identidad y, en consecuencia, poseen el derecho inalienable de poder contar con ellos para la exposición y el disfrute de sus ciudadanos. Por otra parte, no podemos obviar que esos mismos objetos forman parte del patrimonio cultural de la humanidad y no deben ser considerados propiedad exclusiva de las comunidades que los han creado, porque trascienden el ámbito meramente individual y adquieren una dimensión universal. Eso no debe interpretarse como una negación de que el patrimonio cultural constituye uno de los elementos más importantes que distingue a unos pueblos de otros, al ser el resultado de las diferentes experiencias y modos de vida que se han dado dentro de unas comunidades geográficas, sociales, religiosas y políticas particulares. En este sentido, pertenecen a los pueblos que les han creado y que hoy están en su derecho de reivindicarlos a pesar del interés que representan para la humanidad entera.

Es por eso que hemos de intentar cambiar ambas realidades para buscar los caminos apropiados que traten de conjugar ambas reivindicaciones de carácter subjetivo y objetivo. Desde el punto de vista subjetivo, es normal que los países creadores de dicho patrimonio estén convencidos de que han de poner todo su esfuerzo en conservar y exponer en su propio territorio los testimonios pasados de la creatividad de sus comunidades como una forma de despertar su conciencia y suscitar el sentimiento de orgullo que les anima a seguir trabajando de forma creativa en el futuro. No es de extrañar que dichos países se sientan gravemente ofendidos cuando constatan que su patrimonio ha sido enajenado de diferentes maneras y por diversos motivos. Están en su derecho de reivindicar su restitución y en solicitar a los países que se han llevado, ilegal o legalmente, los bienes culturales que les pertenecen para conservarlos en sus museos o en sus instituciones privadas, conscientes de que las distintas disposiciones de la UNESCO -la Convención de 1970, la Convención UNIDROIT de 1995 y el Segundo Protocolo de la Convención de La Haya de 1999- y el Código Deontológico del ICOM (2001) les apoyan en sus reivindicaciones. Pero, ¿cómo llevarlo a cabo?

Los países que han protagonizado dicha enajenación, independientemente de las razones y condicionantes socio-culturales que en su momento les llevaron a ello, no pueden quedar indiferentes ante los sentimientos de orfandad y desasimio cultural e identitaria que experimentan los que han perdido algunos de los elementos fundamentales de su patrimonio cultural. La UNESCO considera hoy el derecho de los pueblos a recuperar los bienes culturales que forman parte integrante de su identidad cultural y a reagruparlos dentro de sus museos. Se trata de un problema de solidaridad en el que se han de ver implicados no sólo los antiguos países colonizadores o los estados beligerantes, sino también todos aquellos países que, de una u otra forma, se han aprovechado y, en ocasiones abusado de la dispersión de dichos bienes (Ganslmayr et alii, 1979:62).

Ya en la Conferencia de Dakar, celebrada en 1978, se afirmaba que el proceso de descolonización de los pueblos debía ser corroborado con la restitución y retorno de aquellos bienes culturales que formaban parte integral de la civilización de las naciones expoliadas. Cualquier objeto o elemento cultural que posea un significado singular de la forma de ser de un pueblo, ha de ser considerado como parte integrante de su patrimonio. De hecho, los principios que la Conferencia de Dakar pone como exponentes fundamentales de la línea a seguir son de gran trascendencia a la hora de tomar decisiones pertinentes respecto a la restitución de dichos bienes. En primer lugar, afirma el derecho que todos los pueblos tienen de exigir la recuperación de los bienes que forman parte de su patrimonio cultural, considerado como un principio ético ineludible. En segundo lugar, considera que se ha de asegurar el retorno a sus países de origen de los bienes culturales fundamentales, ya sea por su valor tradicional, social, cultural o religioso. En tercer lugar, se ha de tener presente que la noción de país de origen es ambigua, sobre todo cuando se añaden las dimensiones de espacio y de tiempo porque son muchos los factores que influyen en su configuración, ya sea por causas históricas, modificación de fronteras o sucesiones de Estados. Finalmente, la Conferencia de Dakar anima e invita a establecer una negociación bilateral y una cooperación técnica que favorezca la transmisión del patrimonio incautado de forma ordenada y eficaz.

5. HACIA UNA NUEVA APUESTA MUSEOLÓGICA

Ante el problema de la restitución de los bienes culturales, ya sean tangibles e intangibles, la museología está llamada a tomar una postura bien definida porque ella estudia los objetos, las tradiciones, los monumentos y todos aquellos elementos que pueden contribuir a explicar el significado más profundo de los pueblos y que tratan de expresarlo y de exponerlo ante el público que los contempla. Si, como señala Stránský (1987:294), el

museo no puede ser considerado como un fin en sí mismo, sino como un medio que posibilita la relación entre la persona y la realidad, en la que el museo siempre representa una realidad fragmentaria, habrá que plantearse hasta qué punto la museología está dispuesta a asumir las consecuencias éticas que comporta el hecho de poseer unas obras de arte o unas colecciones y tener que conservarlas y mantenerlas para poder exponerlas y, al mismo tiempo, hacer frente a las exigencias de aquellos pueblos, comunidades o estados que les reclaman muchas de las obras que se encuentran en los principales museos del mundo. Pensamos que el Código deontológico de la museología ha de ir más allá de la simple orientación sobre el comportamiento que han de tener los profesionales de los museos y se ha de centrar también en las consecuencias que tiene para los museos el hecho de contar con numerosas colecciones que, en ocasiones, no pueden exponerse al público por falta de espacio. Habrá que analizar con detención qué política se desea seguir a la hora de crear y gestionar las colecciones y cómo se pretende llevar a cabo una acción capaz de combinar la exigencia de la inalienabilidad con la necesidad ética de la restitución y devolución de algunas obras que son un referente de la identidad de los pueblos que las reclaman.

Si la museología y los museos están dispuestos a entrar en la dinámica del diálogo y del encuentro entre las diferentes culturas y los pueblos que las crearon, no tendrán más remedio que replantearse cuáles han de ser sus funciones con respecto a las colecciones y obras de arte que contienen. Todos sabemos que existen muchos museos que cuentan con colecciones bastante fragmentarias que no son suficientes para, como señala la UNESCO, *“permitir a un pueblo recobrar una parte de su memoria e identidad”*. Y, sin embargo, los objetos que les faltan a estos museos pueden encontrarse de manera abundante en los museos de otros países. Es por eso que el ICOM promueve los intercambios internacionales siempre motivados más por razones culturales que políticas. De este modo, se creó en 1978 un Programa de Intercambios entre Museos (MUSEP) con el propósito de recabar toda la información disponible sobre aquellos museos que estuvieran dispuestos a intercambiar, prestar o recibir prestaciones de objetos. Además, se propusieron fórmulas de contratos para que se pudieran adoptar acuerdos bilaterales entre los museos y se ofrecieron orientaciones de carácter técnico y legal para resolver los problemas que se pudieran presentar a la hora de realizar los intercambios.

De hecho, la Recomendación relativa al intercambio internacional de bienes culturales adoptada en 1976 durante la XIX Sesión de la Conferencia General de la UNESCO en Nairobi, ya proponía hacer un gran esfuerzo por concienciar al personal de museos sobre la necesidad de que se dé un reparto equitativo del patrimonio, utilizando de manera racional las colecciones que se encuentran en los almacenes de muchos museos y posibilitando nuevas formas de adquisición lícita para los museos de aquellos objetos que faltan en sus colecciones. Sin embargo, a pesar de los esfuerzos realizados por la UNESCO, todavía hoy muchos especialistas opinan que los intercambios pueden atentar contra las normas éticas de los museos y que hay que evitar cualquier medida que pueda contribuir a la pérdida de las colecciones u objetos que poseen desde hace tiempo. Podríamos preguntarnos, por el contrario, si los intercambios de obras no contribuirían en muchos casos a la rehabilitación del patrimonio en aquellos países en los que, por múltiples razones, se dispersó de manera significativa.

Si nos encontramos en un mundo global donde la comunicación se da en tiempo real en todos los lugares del planeta al mismo tiempo y si, por otra parte, contamos con las nuevas tecnologías que nos permiten disfrutar de las obras de arte que se exhiben en todos los museos del mundo, no tendríamos que temer estar dispuestos a compartir, en condiciones de igualdad y complementariedad, aquellas obras que son patrimonio de la humanidad. Restituir aquellos bienes culturales que se han perdido debería ser

considerado como un gesto de solidaridad internacional (Monreal, 1979: 53), que ha de involucrar a todos los países que, de alguna manera, se han enriquecido con la dispersión de dicho patrimonio. Por supuesto, no se trata de que aquellos países que cuentan con una serie de obras importantes para que la sociedad comprenda la universalidad y pluralidad de la cultura, vean desmantelados sus museos. Más bien, se ha de procurar que los países cuenten con aquellos objetos que son indispensables para comprender cuál es su razón de ser en la historia y, al mismo tiempo, se garantice la conservación, protección jurídica y utilización pública de todas ellas en los países a los que se restituyen. De este modo, todos saldríamos ganando y se estarían poniendo los cimientos para la construcción de la armonía social entre los pueblos, a la que la museología y los museos están dispuestos a contribuir porque nada de lo realmente humano les puede resultar ajeno.

Restitución y reconciliación han de ser dos elementos fundamentales si queremos que los pueblos que sufrieron el expolio de sus obras de arte puedan recuperar la confianza en sí mismos y estén dispuestos a mirar esperanzados el futuro, en la convicción de que se les ha reconocido el derecho a ser ellos mismos, sin interferencias ni mediaciones innecesarias. Porque todos los pueblos están llamados a decir su palabra y, a través de ella, a definir los caminos que han de seguir en la construcción de su propia identidad. Y los museos han de dar testimonio de que eso es así y no puede ser de otra manera. Habremos recuperado el tiempo perdido y un nuevo horizonte, más prometedor, nos estará sugiriendo que otro mundo mejor y más justo es posible.

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THE BRAVE MUSIC OF A DISTANT DRUM

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ABSTRACT

The National Taiwan Museum is the oldest surviving museum in Taiwan. Established in 1908 by the colonial government of Japan, its collections bear witness to Taiwan's successive administrations and evolving policies towards the indigenous people. In this paper, we examine two disputed ownership cases in which the museum has been embroiled in recent years: one is to reconstitute a Japanese giant drum that was loaned out to a local temple decades ago; and the other is to develop joint programmes with indigenous people to organize displays of indigenous collections, the repatriation issue of which awaits further broader discussions. In both cases, the museum pledges to build partnerships with the parties concerned, but with the ongoing tribal identity campaigns spearheaded by those seeking official recognition of their ethnicity, the museum is also drawing up contingency plans for possible de-accessioning. The opposite roles that the museum plays in restitution and repatriation, and the changing relations between the museum, the represented groups and society, illustrate most vividly the fundamental shift of museological practices since the late 20th century.

RESUMÉ

La musique courageuse d'un tambour lointain

Le musée national taiwanais est le plus ancien musée de Taiwan. Établi en 1908 par le gouvernement colonial japonais, ses collections témoignent des différentes administrations qui se sont succédé à Taiwan et de l'évolution de leurs politiques envers la population indigène. Dans ce document, nous analyserons deux récentes disputes au sujet des droits de propriété de certaines œuvres d'art. La première dispute concerne la restitution d'un tambour géant japonais prêté à un temple local depuis des décennies. L'autre affaire porte sur le développement de programmes avec le peuple indigène pour organiser l'exposition des collections indigènes, à propos de laquelle la question du rapatriement exigera de plus amples discussions. Dans ces deux cas, le musée s'engage à établir un partenariat avec les parties concernées. Toutefois à cause de la campagne politique menée par les tribus, afin d'obtenir la reconnaissance officielle de leur identité ethnique, le musée formule aussi des plans d'urgence pour des possibilités d'acquisition. Les rôles divergents, que le musée joue dans la restitution, le rapatriement, et les relations changeantes entre le musée et les différents groupes sociaux représentés, illustrent clairement le changement fondamental des pratiques muséologiques depuis la fin du XX^e siècle.

RESUMEN

La osada música de un tambor lejano

El Museo Nacional de Taiwan es el más antiguo del país. Establecido en 1908 por el gobierno colonial de Japón, sus colecciones dan testimonio de las diferentes administraciones que se han sucedido en Taiwán y de la evolución de las políticas relacionadas con la población indígena. Analizaremos aquí dos recientes disputas sobre el tema de los derechos de propiedad de ciertas obras de arte. En el primer caso, se trata de restituir a los japoneses un tambor gigante tomado en préstamo hace décadas de un templo local. El segundo, se refiere al desarrollo conjunto de programas con el pueblo indígena a efectos de organizar la presentación de sus colecciones, cuya repatriación se encuentra esperando discusiones más profundas. En ambos casos, el museo se compromete a establecer una asociación con las partes comprometidas. Sin embargo, a causa de las campañas políticas llevadas a cabo por las tribus con el fin de obtener el reconocimiento oficial de su identidad étnica, el museo traza también planes de contingencia para posibilitar la alienación. Los diferentes roles que el museo juega en la restitución y la repatriación, así como sus cambiantes relaciones con los diversos grupos sociales representados, ilustra en forma más vívida el giro fundamental de las prácticas museológicas desde fines del siglo XX.

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Introduction

Established in 1908 by the colonial government of Japan, the National Taiwan Museum (hereafter NTM) is the oldest surviving public museum in Taiwan. Over the century, its neo-classical façade and extensive holdings of native anthropological, zoological, botanical and geological specimens have been treasured by the 'studious and curious'. One salient character of such colonial products is, however, the haunting association with power, plunder and possession. In the rich tapestry of the museum's multi-disciplinary collections, there are dark undercurrents alluding to disputed ownership and a painful history. In one instance, a giant drum has been loaned out to a temple for decades in an enigma-riddled manner, and the later curatorial team finds itself in a quandary of reclamation. More significantly, in recent years, the museum also faces potential repatriation requests from indigenous people, an issue which has come to the fore in the wake of an ethnic resurgence. The aim of this paper is to examine how the museum, cast as restitution claimant and repatriation respondent respectively, explores collaborations with concerned parties apropos of its latest guiding ethos. Taking turns playing opposite roles in the argument allows the museum to gain insightful knowledge of the compounded matter, an intimate understanding that may help it to develop newer and braver dimensions in partnership-building. It is hoped that the discussion will open up more fruitful and creative avenues for the museum community to fulfill its double missions as a guardian of objects and an agent in the public service of society.

For all intents and purposes, repatriation may have been one of the most hot-button issues in the museological quarter. From the long standing debate on Britain's 'lawful' removal of the Elgin Marbles¹, to the "Declaration on the Importance and Value of Universal Museums" jointly released by 18 world-class museums², the subject has interested and vexed generations of museum people and various stakeholders. At times, no compromise can be reached as the divide between 'retain' and 'return' seems unlikely to be bridged. The

¹ Jeanette Greenfield, *The Return of Cultural Treasures*, Cambridge, Cambridge University Press, 1989.

² "Declaration on the importance and value of universal museums", in: Karp, Ivan; Kratz, Corinne A.; Szwaja, Lynn; Ybarra-Frausto, Tomas; Buntinix, Gustavo; Kirshenblatt-Gimblett, Barbara and Rassool, Ciraj (eds), *Museum Frictions: Public Culture/Global Transformation*, Durham, Duke University Press, 2007, p. 247-249.

antagonism is understood to have boiled over bitter tensions between sovereignties. The 1970 UNESCO convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property represents a supernational attempt to put an end to the illicit trafficking and trade in artifacts³, but since the convention has no retrospective effect, it fails to address the fate of the spoils and souvenirs taken in the colonial era, in war time or when the owners were too powerless to resist. In April 2010, a conference on 'International Cooperation for the Protection and Repatriation of Cultural Heritage', hosted by Egypt and attended by "nations who want their important artifacts returned"⁴, cranked up the heat again and demanded that the situation be properly re-examined. Nonetheless, it must be pointed out that though systematic cross-border negotiations are slow to some peoples liking, the readiness of individual museums to hold bilateral talks with overseas repatriation claimants has become increasingly evident. Domestically, the 'bone of contention' is getting a second look, too. The U.S.A., Canada, Australia and New Zealand, to name just a few, are countries that have tried to re-position indigenous people at the center rather than at the periphery of the matter, and assess acquisitions against the values of the original cultures⁵. In recognition of this gradual yet fundamental policy shift, a wealth of literature has been devoted to examining how museums deal with the legal, ethical, emotional and curatorial aspects of repatriation⁶, but rarely do we see an example in which the said museum gets to play claimant and respondent. The dual role thus presents an interesting case worthy of investigation.

From Restitution to Partnership:

The First Sino-Japanese War, fought between 1894 and 1895, resulted in the defeat of China and the cession of Taiwan to Japan. Firm in the belief that this was going to be the first overseas territory with many more to come in its southward expansion, Japan was bent on turning Taiwan into a showpiece colony. The dictum was simple: to rule Taiwan successfully, Japan had to understand Taiwan, including the inhabitants and the ecology. Soon, at the behest of the colonial government, scholars such as anthropologist Inō Kanori (1867~1925) and botanist Kawakami Takiya (1871~1915) began to conduct a comprehensive probing and collecting of the island's life. In 1908, in commemoration of the North-South Railway inauguration, the Governor General Sakuma Samata's administration set up the Taiwan Governor Museum (today's National Taiwan Museum), by far the biggest public museum in Taiwan. The museum was later relocated to a purpose-built structure to house the sprawling collections. It is the solid foundation laid at the time that has earned the museum its designation as 'the birthplace of Taiwan's modern knowledge'. Subsequent governmental changes resulted in the renaming of the museum several times, but its ambition to remain the stronghold of Taiwan's material culture research has never wavered.

Categorically speaking, the museum has always been an encyclopaedic museum, collecting both *naturalia* and *artificilia* (Chinese and 'savages'). It is alleged that the museum had set out to concentrate on natural history, but the guarded cautiousness of the colonial government against the rebellious 'savages' inevitably put the accent on anthropology and

³ Colin Renfrew, *Loot, Legitimacy and Ownership: The Ethical Crisis in Archaeology*, London, Duckworth Publishers, 2009.

⁴ Jason Koutsoukis, "Egypt pushes for return of antiquities to origin countries", *The Morning Sydney Herald*, December 7, 2009.

⁵ Moira Simpson, *Making Representations: Museums in the Post-Colonial Era*, London, Routledge, 1996.

⁶ See various articles and their references in Knell, Simon; MacLeod, Suzanne & Watson, Sheila (eds), *Museums Revolutions: How Museums Change and are Changed*, Abingdon, Routledge, 2007.

ethnography. Since de-colonization, with the urgent imperative of “civilizing the natives”⁷ dispelled, the emphasis was moved back to zoology, botany and geology. In the 1990s, on the crest of ethnic resurgence, the limelight shifted again. The word ‘repatriation’ and the consequences it might trigger started getting the attention of museum staff and ethnographers. While the debate was relatively mild in Taiwan, elsewhere, the related discussions were escalating: the Canada-based Mohawk Nations took the Glenbow Museum to court and demanded the return of cultural patrimonies⁸; the Native American Graves Protection and Repatriation Act (hereafter NAGPRA) became a piece of enacted legislation applicable to all federally-funded museums in the U.S.A.; and the Glasgow Museum, Scotland, gave back a Ghost Dance Shirt to the Lakota Sioux. The repercussions were felt globally.

In January 2001, the museum commenced a long overdue, full-scale inventory check. Sorting the heaps of items scattered in multiple storage rooms was already a huge task, but halfway through the process, the media got a whiff of rumours concerning mismanagement and the museum’s credibility was poignantly questioned. An independent team of specialists was retained by the central government to oversee the inventory check. Was the oldest surviving museum in Taiwan too ill to look after its holdings? As it quickly became clear, the museum’s collection management was far healthier than initially assumed. Nonetheless, a small number of collections were indeed missing, of which 35 objects were identified as ‘not matched’, i.e. objects given an accession number but the current whereabouts of which are unknown. A giant drum, with the accession number AH1986, was on the ‘not matched’ list, yet it left a paperwork trail to follow⁹. The unexpected development precipitated a role reversal for the museum. While the earlier speculations on the museum’s incapability seemed to support the justification of possible indigenous repatriation, the first post-check decision that the museum had to make was to decide whether it should ask for the restitution of its own object.

Taiko (meaning ‘giant drum’ in Japanese) is a traditional musical instrument in Buddhism and Shintoism. So solemn and awe-inspiring, its thunderous sound is deeply rooted in religious ceremonies and public festivals. Given the spiritual connotation, the taiko in the Taiwan Grand Shrine, Shintoism’s tutelary shrine in Taiwan during colonial rule, was understandably sacred in that it resided permanently in the courtyard. But shortly after the evacuation of the Japanese ruling government in 1945, the shrine was remodelled into a hotel and the taiko was transferred to the museum. Very little was heard about it after that time. It was only until the 2002 inventory check that its ‘quietness’ was noticed. It appeared that the taiko was loaned out in March 1960 to the Lungshan Temple, the most visited Buddhist temple in northern Taiwan. The record suggested that recently several reminders were filed, but no reply was documented.

Once the anomaly was spotted, the temple was immediately contacted. Its executive committee verified that the borrower on the loan slip had been a committee member years ago, but the committee was unaware whether or why the unconventional loan had taken place; neither could it pinpoint where the taiko was. Difficult as it was, the distinctive size of the taiko gave the search a clear direction, and the quest ended with a ‘hidden-in-plain-view’ finding. The examinations carried out by the specialists and curators yielded the

⁷ Matsuda Kyōko, “Inō Kanori’s ‘history’ of Taiwan: colonial ethnology, the civilizing mission and struggles for survival in East Asia”, *History and Anthropology*, vol. 14, no. 2, 2003, p. 179-196.

⁸ Jacqueline Gibbons, “The museum as contested terrain: the Canadian case”, *The Journal of Arts Management, Law and Society*, vol.26, no.4, 1997, p. 309-331.

⁹ The Council for Cultural Affairs, *The inventory Report on the Collections of the National Taiwan Museum*, Taipei, 2004.

conclusion that in all likelihood, the taiko had been taken apart and re-assembled into the two giant drums currently displayed in the temple's prominent drum storey. In addition to the closely matched size, the inscriptions on one drum's skin and on the other's body provided the much-needed collateral information to sustain the hypothesis. It is indisputable that the statute of limitation had passed on the case, yet the temple was willing to untangle the imbroglio or even hand the drum(s) back. The question is: should the museum insist on possession?

Taiko is generally hollowed out from a single piece of wood. As the making requires both excellent craftsmanship and suitable material, its availability is limited. Only a couple of colonial-era taikos are left in Taiwan, but none of them are as culturally or historically loaded as the one from the Taiwan Grand Shrine. It will be imperative for the museum to adhere to the conservation codes and refrain from all actions that may cause any deterioration. Moreover, the museum is a public museum and the taiko is by law a piece of state-owned property. Claiming a piece of state-owned property from a private entity, a beneficiary that got 'lucky' because of a loophole in the system, seems unfailingly responsible.

But what would a drum be if it can no longer be played? If it can no longer give the awakening sound and send the chanting up to heaven? Baudrillard's "every object thus has two functions – to be put to use and to be possessed"¹⁰ comes to mind. Had the drum always stayed in the museum's storage or display case, the contrast of the two functions would not have been so sharp. But the Shintoism drum had a perfect fit in the Longshan Temple, a Buddhist answer to the Grand Shrine both in stature and in context. Its sublime beats resonated on the SARS's blessing ceremony and on every New Year Eve's farewell event. To re-'museumify' the drum would be to deprive the society of a form of refuge or solace. At last, the decision was made: the drum will remain an accessioned museum object, but loaned out to the temple indefinitely.

Partnership:

On the heels of the 2002 inventory check, an indigenous MP, spurred by the 'problem' it exposed, proposed taking advantage of the situation and sought to establish a National Museum of Indigenous Peoples. It is unclear if she had recommended the collection transfer from the NTM to the new one, but the proposal was later shelved. The museum was once again left to its own devices to deal with the indigenous collections. Having reflected on the global practices and its own experience, and having developed a more acute and sympathetic appreciation of the repatriation complex, it was determined to increase the involvement of the indigenous people.

The first approach the museum took was to organize ad hoc exhibitions and send the completed projects on tour to the newly founded indigenous cultural centres around the island. As the centres typically feature basic facilities and little collections, the touring exhibitions aimed to boost attendance and pique local interest. A few projects later, however, the chief of the museum's Anthropology Division, Li Tzu-Ning, decided to overhaul the strategy. Li felt that the approach was too museum-centred and too paternalistic. Under the new scheme, indigenous communities which take the initiative to propose collaborations will get exhibition priority. The museum's attitude was to be one of facilitation, not of leadership, ergo the carte blanche given to the community members in organizing and venue selecting. Several tribal communities have since been in touch with the museum and been welcomed to the museum's 'treasure trove'. If there was any doubt or anxiety caused by the unfamiliar players, it was swiftly quashed by the exciting thoughts

¹⁰ Jean Baudrillard, *The System of Objects*, J. Benedict (trans), London, Verso Books, 1996, p. 85.

that came out from the brainstorming sessions. In one instance at the museum, the Amis tribal community from eastern Taiwan stumbled across a long-forgotten raffia cap overlaid with boar tusks, a ceremonial headgear worn only by chiefs. In another instance, a group of Atayal people, “of all the savages in the island...the most active and aggressive in head-hunting”¹¹ in the early 20th century, found a head-hunting knife graced with seven tassels of human hair, indicating that the knife was used to behead seven enemies. The Atayals stood up at once to pay tribute to the spirit of their valiant ancestor. The museum is proud of its extensive research, but oftentimes the indigenous communities can correct or enrich the interpretations of the objects from first-hand experience. For example, an everyday mesh bag was identified by the Atayal group as being designed specifically to hold an enemy’s head. Moreover, since the interpretations and objects are voiced and chosen by the indigenous people, and the exhibitions evolve around indigenous narratives, this thus offers a stimulating perspective refreshingly different from the museum’s usual inward-looking, self-referential viewpoint. In an interview, the director of the museum, Hsiao Tsung-Huang, is quoted as saying: “An artifact, made or used by people, is a specimen in a museum. Only when it travels back to the original culture, will the ‘people’ side of the artifact re-surface”¹². The scheme was a runaway success¹³. Encouraged by the feedback, the museum is planning to draw additional resources to implement more collaborative exhibitions. From Partnership to Repatriation?

In spite of the Janus-faced role the museum finds itself playing, the principle of partnership-building is a current that runs through the above two cases. In both instances, the objects are returned to the original contexts and reanimated by original interpretations, a luxury that de-contextualized museums can afford only when collaborating with outside parties. The collaborations would have been a fierce shake-up to old-school museum management, especially since the inherent dynamic from such interactions may nullify the museum’s prerogative in interpretation. But the museum seems relatively unfazed. In line with the new global paradigm, it has increasingly reached out and engaged in dialogues with the communities whose cultures it presents and whose patrimonies it holds.

By all accounts, repatriation has yet to command wide attention from the indigenous people in Taiwan. The most publicised case is perhaps the ‘Alliance for the Return of Pots’ launched primarily by the Ami people in 2005 to follow through an institution-to-institution transfer: the muddled, delayed return of the archaeological discoveries from the Department of Anthropology of National Taiwan University, to the National Prehistory Museum, the designated repository built near the excavation site. Apart from the Alliance’s protest, which does not demand institution-to-tribe transfer, few requests for repatriation or indefinite loan have been vocalized. Whether the absence of such requests is the result of deliberation or lack of awareness is uncertain, but the paucity of serious precedents does render the museum’s partnership-building simultaneously promising and ‘dangerous’ – promising in the sense that the presentation in the museum will be enriched as never before, and dangerous in the sense that voices clamoring for repatriation are all too real. With the vigorous identification campaigns in full swing, will the up-close-and-personal encounters with the historical artifacts help the indigenous people and the museum bond? Or will the museum’s community empowerment sow the seeds of repatriation and lead to its collections being split asunder?

¹¹ James Davidson, *The Island of Formosa, Past and Present*, Taipei, SMC Publishing Inc., 1992, p. 566.

¹² Interview with the director at the National Taiwan Museum, April 23, 2010.

¹³ The scheme, participated by several major museums, was partly sponsored by the Council of Indigenous Peoples, Executive Yuan.

Prior to the Japanese occupation, an understanding of Taiwanese 'savages' had been scarce. Inō Kanori's survey was the first detailed survey of its kind and his binary classification, lowland indigenous and highland indigenous (7 tribes), became the frame of reference in ethnographic studies. In general, lowland indigenous people were deemed the more 'civilized' sister, and only the highland (later expanded to 9 tribes) had the official, legal status of being the 'indigenous' people. But many regarded the classification as too sweeping and as soon as the political climate changed, identity campaigns were mounted in quick succession. Since 2001, approximately the time of the inventory check in the museum, the Council for Indigenous Peoples has recognized 5 more tribes, taking the total to 14. One of the most legendary colonial resistance heroes, Mona Rudao (1882-1930), referred to as of the Atayal tribe in previous history books, was hence re-listed as from the Sediq.

With at least another 5 to 10 tribes, mostly from the lowland, queuing up to be given the *de jure* status, the landscape of Taiwan's ethnography is shifting. The museum's pressing challenge, therefore, is the re-installation of its permanent exhibition gallery. To date, museums in Taiwan tend to prefer showing a full ensemble of the recognized tribes, but are struggling to keep up with the pace of recognition. The museum, the first in Taiwan to display indigenous cultures, is also in dire need of updating its dioramas, currently comprising reconstructions of the tableaux of 9 tribes. Equipped with the unsurpassed collections at their disposal, the curators must now decide whether to give an updated portrayal while preparing to accommodate imminent adjustments for tribal recognition, or to boldly adopt a new storyline, for instance, a thematic one. They must also contemplate whether to capitalize on the partnership and go on to work on a bigger canvas, say, a direct, wide-ranging consultation with all the represented tribes. A great opportunity may emerge from here. Eager to replace the stereotypical 'frozen in the past' exhibitions, post-colonial museums have frequently tried to incorporate the participation of today's indigenous people to introduce contemporary elements into the presentations¹⁴. But the political volatility in Taiwan allows one more pertinent thread of discourse to be introduced: the fluid, political shaping relations between 'indigenous' and 'us' over the course of time. Against the backdrop of the ongoing identification campaigns, the continuous, long-term consultations may be instrumental in opening up an array of topics that have hitherto eluded investigation or presentation. But if the collections and displays could be employed to provide the public with a unique glimpse into the past and present of the indigenous people, could they also provide the indigenous people with a unique glimpse into their own past, present and future?

Taiwan's indigenous people have few written languages and most of the spoken languages are either moribund or endangered. Tangible objects and the intangible beliefs embedded therein are a few of the extant testimonies of their winding history. Accordingly, all identity-forming and recognition-seeking movements are inextricably linked to the substantiality of the material culture. For example, when the tribe of Truku petitioned to be separated from the Atayal, the grounds they cited included the significant differences in textile patterns, facial tattoo designs, as well as the times of festivals. It is here that the museum's collections *in toto* could have helped settle the score. The comprehensiveness of the collections, accumulated before the imposition of acculturation policy and covering almost all corners of the island, may contain clues to put the pieces of most ethno-puzzles in place. So far, only a number of long established tribal groups have utilized or are scheduled to utilize the museum's outreaching partnership programme. For most indigenous people seeking to strengthen their arguments for distinction/interaction, the

¹⁴ National Museum of the American Indian, *The Changing Presentation of the American Indian: Museums and Native Cultures*, Seattle, University of Washington Press.

archive remains a largely unplumbed resource. Should the programme continue, more and more groups are expected to tap into this resource. Will the programme inadvertently 'educate' the indigenous people and stoke the repatriation fire? Lowland indigenous tribes, which make up the bulk of the recognition waiting list, are the ones that first became assimilated by latecomers. Will any of them, needing to revive legacy or assert confidence, become the first to try claiming the objects for good? The museum's collections, towering over those of its peers both in quantity and quality, contain some of the most striking and remarkable items ever produced by the lowland people. They would have been highly sought after at any time, but in this increasingly virtual world, "the comfort of things"¹⁵ must be more tempting than ever.

The irony of 'the more the collections reach, the greater risk they are in' is unmistakable. The outreaching partnership and similar programmes are cementing mutual trusts, as testified by the blessing of a Paiwan priest to turn the museum into a sacred site in which the ancestral spirits can dwell. But the prospect that the museum may accidentally orchestrate the outbound traffic of the collections is very real and should not be taken lightly. Nonetheless, the museum has no plan to veer off the course of its brave collaborations, not least because of the intensive emotions that the indigenous people have shown at object homecomings. One thing which needs to be clarified here is that, as discussed above, the intent behind the museum's programmes was born of a mixed reflection on the museum's founding philosophy, mission, idiosyncrasies and management. No matter how 'noble' the intent sounds, it is not the objective of the museum nor this paper to recommend this course to all. Moreover, since all the major Taiwanese museums of a similar collection scope: the private Shung Ye Museum of Formosan Aborigines, the National Museum of Natural Science and the National Prehistory, were all founded in the 80s or 90s, they have very different acquisition means and are not burdened by the weight of colonial history as is the NTM. Even if the NTM's partnership-building leads to eventual repatriations of its own collections, it is highly unlikely to open the floodgates and prompt the indigenous people to lodge similar requests at any of these 'modern' museums. The unlikelihood of a repatriation domino effect for the NTM's peers certainly reduces some complications, but it does not mean that the museum's venturing into the contested terrain is any easier.

At the time of writing, the law on state-owned property does not favour repatriation requests and no NAGPRA equivalent is considered in Taiwan, but the museum is racing against time to ready itself for various scenarios. It has sped up the digitalization of its collections, printed several scholarly catalogues, and in 2009, opened a special exhibition highlighting the most glamorous lowland indigenous artifacts. Should the tide change and de-accessioning become likely, the measures taken should afford the museum a window of time to ponder the next step.

Conclusion

In this paper, we discuss two episodes from the NTM's handling of restitution and repatriation: a Japanese taiko and collections of Taiwanese indigenous artifacts. It will be an over-simplification or even a trivialization to equate the museum with the indigenous people in terms of their respective roles. Above all, the museum is the finder and keeper of the taiko, and the indigenous people are the makers and users of the artifacts. On the spectrum of emotions, one seems to be leaning towards scholarly detachment and the other, emotive self-assertion. But it will be equally unfair to overlook the dedication that the museum staff have put into safeguarding the collections, through which the makers and

¹⁵ Daniel Miller, *The Comfort of Things*. Cambridge, Polity Press, 2008.

users are remembered. At the risk of sounding self-indulgent, one can perhaps argue that as the indigenous artifacts were placed in the museum as early as it was found, they have become an inseparable part of the museum's identity.

In the first part of the paper, we trace how the museum, at the start of the 21st century, taking into account the museological and societal developments, decides on its relations with the historical collections it possesses and the multiple indigenous groups it represents. The museum arrives at a conclusion that serving the groups, instead of padlocking the collections, should be the latest guiding ethos. But partnership-building does not exist in a vacuum. The second part of the paper, therefore, calls attention to the impact of the ongoing recognition campaigns: how a little studied factor may spur the museum to broaden the collaborations with the indigenous tribes, or build the momentum for repatriation. Even when confronted by the potential tug-of-war over the collections, the museum pledges to soldier on, continuing forging links with the indigenous people. But can a delicate balance between being a guardian of objects and an agent in the public service of society be struck? Or are the two missions complementary, not mutually exclusive?

In 2008, the museum celebrated its centennial anniversary. When the museum door first opened in 1908, Shintoism was the state religion and the 'savages' were the third-class citizen on a colonial island. A century later, religious freedom and cultural diversity are the accepted norms. What will the museum, a 'permanent institution...which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment', be like in another 100 years? Will it be the tangible taiko and indigenous artifacts or the intangible web of relations between object makers/users/keepers/visitors that is the centerpiece of the presentation? Will the raddled drum sound the brave music? And for whom? We should be intrigued.

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MUSEUMS, COLLECTIONS AND DEACCESSION: SOME EXAMPLES OF “UNLAWFUL APPROPRIATION OF OBJECTS DURING THE NAZI ERA”

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Although museums may not be acquiring on the scale that they once were, the market for cultural material has exploded during the last 20 years. Most items are now sold to a growing number of private collectors and spectacular collections containing unprovenanced material have been amassed all over the world. For many of these collectors, having their collection displayed in a museum, or even having it become a museum, is seen as the ultimate validation of their achievement. In the absence of evidence to the contrary, museums must assume that such collections of unprovenanced items might contain illicit material (...) One day one of these fabulous private collections will be offered to a museum. What is that museum going to do? (Neil Brodie, Jenny Doole, Peter Watson).

ABSTRACT

The issue of the restitution of objects / collections by museums prompted by the proposed theme: A New Global Ethics on Deaccession and Return of Cultural Heritage -- Do Museums Have the Duty to Restitute ? is addressed through presenting the efforts of art museums and research programs investigating the provenance of works of art in their collections whose origins are murky, on the topic of art confiscated by the Nazis from 1933 to 1945, “Spoliation of Jewish Property”. It highlights documents (standards of conduct for Museology) ; the construction of a database with specialized information – Provenance – aiming at widespread dissemination (internet), reaching out to people with legal rights to claim restitution: the original owners or their heirs. It indicates and presents positive outcomes in the public domain, while underscoring difficulties that still hamper the restitution of assets, resulting in lengthy, expensive and extenuating legal battles through law suits filed against museums with important collections, in a musicological context. In closing, this paper asks: is the moral duty to return a cultural asset – a guideline established in the ICOM Code of Ethics for Museums – truly being honored in its basic concept at the practical level, when so many hurdles still exist?

RÉSUMÉ

Musée, collections et aliénation: quelques exemples de « l’appropriation illégale d’objets pendant la période nazie »

A partir du thème proposé - «Une nouvelle déontologie au regard mondial de l’aliénation et de la restitution du patrimoine culturel - Les musées ont-ils le devoir de restituer ? » - la restitution des objets/collections des musées est abordée par la présentation des efforts développés par les musées d’art et les programmes de

recherche pour enquêter sur la provenance des œuvres d'art d'origine douteuse qui figurent dans leurs collections, sur le thème de la « spoliation des biens culturels juifs » - l'art confisqué par les nazis entre 1933 et 1945 . Est soulignée l'importance des documents (normes de conduite de la muséologie), la construction de bases de données - provenance - avec des informations spécialisées destinés a large diffusion (Internet) parmi ceux qui ont le droit de demander des restitutions: propriétaires d'origine ou héritiers. Sont indiqués et présentés les résultats positifs qui sont du domaine public et, parallèlement, sont soulignées les difficultés qui persistent pour la restitution des objets, résultant de longues, coûteuses et épuisantes batailles juridiques, entreprises contre des musées qui détiennent d'importantes collections, dans un contexte muséal. L'article se termine en se demandant si l'obligation morale de restituer un objet culturel -- orientation toujours présente dans le code de conduite de la muséologie -- a été suivie dans sa vraie conception, au niveau pratique, même si des obstacles persistent toujours.

RESUMEN

Museo, colecciones y alienación: algunos ejemplos de la “apropiación ilegal de objetos durante el período nazi”

A partir del tema propuesto Una nueva ética global para la alienación y la restitución del patrimonio cultural - Los museos, ¿tienen el deber de restituir?, la restitución de objetos y colecciones de museos es abordada a partir de los esfuerzos desarrollados por los museos de arte y los programas de investigación que realizan encuestas sobre la procedencia de las obras de origen dudoso que figuran en sus colecciones, relacionada con el tema de la “expoliación de los bienes culturales de los judíos” es decir, el arte confiscado por los nazis entre 1933 y 1945. Se subraya la importancia de los documentos (normas de conducta), la construcción de bases de datos (procedencia) con la información especializada destinada a una amplia difusión (Internet) entre aquellos que tienen derecho a reclamar las restituciones: propietarios originales o herederos. En el documento se indican y se presentan los resultados positivos que son de dominio público y paralelamente se subraya la dificultades que persisten para la restitución de los objetos, producto de largas, costosas y apabullantes batallas jurídicas en el contexto museal, emprendidas contra los museos que poseen importantes colecciones. El autor finaliza preguntándose si la obligación moral de restituir un objeto cultural (orientación siempre presente en el Código de Ética del ICOM), se ha seguido en su verdadera esencia, a nivel práctico, aun cuando los obstáculos persistan siempre.

* * *

What immediately prompts reflection is the title of the ICOM Conference (Shanghai, November 2010) for which these papers have been invited, exploring Museums for Social Harmony, stressing the role played by museums as a contributing factor in building a context of social harmony. Through this delicate cultural image underpinning the existence of a mutual meeting point for respectful agreement among groups, it is possible to perceive the horizon in order to ensure understanding among those involved, which may be understood as the ‘positive path’ for human relationships. This route is supported by theoretical grounds that are expressed through ethics, and in the practical field of everyday life, appearing as a moral proposition, or rather as the presence of a normative content focused on a context of living harmoniously together.

From this point of view, professions are regulated by standards that guide the performance of activities, striving to outline their profiles through boundaries on conduct, which must adapt to social rules. Like any other approach to living in society, these standards do not stand apart from propositions inspired by laws in many ways; they may even be ruled by laws, which are in turn underpinned by Moral and Ethical precepts.

With regard to Museology, the regulatory tool is the ICOM Code of Ethics for Museums. This document highlights its importance for this field, affirming on its first page that:

The cornerstone of ICOM is the ICOM Code of Ethics for Museums. It sets minimum standards of professional practice and performance for museums and their staff. In joining the organization, ICOM members undertake to abide by this Code¹. Further on, "Preamble"², corroborating the remarks in the previous paragraph, it states that in some countries, the "minimum standards" derive from legal instruments or result from "government regulation".

And exploring the issue opening this paper: Do Museums Have the Duty to Restitute? Although the reply may be deemed pertinent and positive, depending on the circumstances underlying the problem presented, it is nevertheless convenient to express the position aired by the field and backed by the document in question. Similarly, a parallel is drawn with statements by some entities, professionals, authors and other citizens linked to this topic. Consequently, this is not limited to merely stating what is expressed conceptually by the field, but rather visualizing the practice that this field pursues in its daily routines.

In Chapter "2 - Museums that maintain collections hold them in trust for the benefit of society and its development"³ the pertinence of the problem is already apparent at the start of the text introducing the topics.

In text "Principle"⁴, the role of the museum is spotlighted as the institution responsible for "a significant public inheritance", noting its activities related to items and collections "includes rightful ownership".

The document then explores the topic "Removing collections"⁵, the point that is the theme selected for the ICOFOM Symposium, and addressed the ethical aspects of deaccessioning or "removal of an object from a permanent collection"⁶.

This is precisely the topic to be explored in this paper, explaining that, from a theoretical and methodological standpoint, the concept used for deaccession has the same meaning as that used in the Documentation field for any type of collection, insofar as this term (and its concept) encompasses theoretical and practical procedures falling within the domain of

¹ ICOM-International Council of Museums, ICOM Ethics Committee, ICOM Code of Ethics for Museums, Seoul, ICOM, 2004, p. iii. Available online: <<http://icom.museum/ethics.html>>. Consulted: April 2010.

² ICOM, 2004, opus cit., p. iv.

³ ICOM, 2004, opus cit., p. 3-6.

⁴ ICOM, 2004, opus cit., p. 3.

⁵ ICOM, 2004, opus cit., p. 4-5.

⁶ Shane Simpson, "Deaccessioning and Disposal", Museums and Legal Issues Seminar, Museums Association of Victoria, Australia, 1991, p. 3. (paper presented - 16th March 1991), Available online: <<http://www.simpsons.com.au/documents/museums/museumlaw/Deaccess.pdf>>, Consulted: April 2010.

this subject. This specialized knowledge of another field of expertise is deployed in a museological context, as well as in other context that require input from this knowledge.

Although this paper makes no attempt to analyze the etymological aspect (which will be presented further on, as an example of an action undertaken by museums), “Deaccession” contains the prefix de, thus indicating a type of return, the opposite of accession -- “The process of making additions to a collection”. In fact, this meaning – deaccession -- implies the formal withdrawal of the “accession number” (register number) from the museum catalog, constituting part of the evidence of the process of the definitive removal of the item from a collection, also involving the legal revocation of “official custody undertaken after careful consideration (...) as the result of a decision to transfer the material to another custodian (...) the legal owner⁷”, in the case that will now be presented.

With regard to Museology, reference is made yet again to Code (ICOM), topic “2.13 - Deaccessioning from Museum Collections”, whose wording focuses on the removal of an item from a collection – “object or specimen” – mentioning that, among other points requiring analysis, consideration must be given to the nomenclature used: “legal standing⁸”.

Pursuant to the matters presented above, Chapter “6 - Origin of Collections” highlights topics “6.2 - Return of Cultural Property ; 6.3 - Restitution of Cultural Property” that present the basic assumptions for the return or restitution of items from collections.

In this case a written explanation must be presented of the item acquired in a manner that might characterize “conclusive evidence of unlawful appropriation⁹”, as can be confirmed in topic 6.3, in the underlined portion of the quote presented below.

ICOM – Code...¹⁰

6.2 Return of Cultural Property

Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

6.3 Restitution of Cultural Property

When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country’s or people’s cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to co-operate in its return.

⁷ Joan M. Reitz, ODLIS-Online Dictionary for Library and Information Science, Danbury/Connecticut, Western Connecticut State University, 2002. Available online:

<<http://vlado.fmf.uni-lj.si/pub/networks/data/dic/odlis/odlis.pdf>> and <<http://lu.com/odlis/index.cfm>> Consulted: April 2010.

⁸ ICOM, 2004, opus cit., p. 4-5.

⁹ AAM-American Association of Museums, Museum Resource/Museum Ethics, Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era (November 1999, amended April 2001), Washington, AAM, 2001. Available online:

<https://www.aam-us.org/museumresources/ethics/nazi_guidelines.cfm>. Consulted: April 2010.

¹⁰ ICOM, 2004, opus cit., p. 9-10.

When dealing with “institutions de mémoire culturelle” (cultural memory institutions), as they are called by Gérard Namer¹¹, taking museums as one of the examples, it must be recalled in the historical panorama underpinning the formation of various collections that are currently considered as museological, the historical records confirm episodes that include: plundering through gathering up the spoils of war (in his text entitled *Collection*, which is already rated as a classic source for consultation, K. Pomian presents a detailed report)¹² ; plundering by hegemonic groups (colonizers) called ‘civilized’, granting themselves this ‘right’; or as the outcome of excavations by ‘foreign missions’ that also anointed themselves as the ‘only ones with the necessary skills’ to carry these priceless items away. Today, none of this would be acceptable due to the inadequate ethics that justified these events.

There is no doubt that the truth of these occurrences cannot be ignored, and more than even it is crucial to offer a positive response through the question that is the mainspring of this paper *Do Museums Have the Duty to Restitute?*

When visiting the British Museum in London, the Louvre in Paris or the Museums area in Berlin, it is easy to view their permanent collections as something natural and assured, assuming that they have always been there and forgetting that they have been acquired over time.

Used frequently in museum circles, the word “acquired” has become a type of shorthand, alluding to donations, acquisitions and even looted items – not by the museums themselves, obviously, but rather by dealers and donors¹³.

In this situation, with Museums linked to various sources of supply for their collections: donations, purchases from private parties, institutions and dealers, there is no way of avoiding the risk of running into the problem known as “illicit traffic of cultural property¹⁴”.

This paper does not attempt to present the set of documents related to the appropriate and legal and practical measures that are listed as desirable by international (or local) entities whose scope is also local or international, disseminated by museums and other cultural heritage institutions. All these documentary resources are available for consultation (internet), thanks to the advent of information and communication technologies that assure easy public access to these data¹⁵. What will be stressed in this list of propositions and

¹¹ Gérard Namer, *Memoire et société*, Paris, Méridiens Kincksieck, 1987, p. 159.

¹² Krzysztof Pomian, “Coleção”, In: Le Goff, Jacques (coord), *Memória e história*. Lisboa, Imprensa Nacional, Casa da Moeda, 1984, p. 51-83.

¹³ Peter Burke, “Caça ao Tesouro”, *Folha de São Paulo-Caderno Mais*, 28 Fev 2010, p. 6.

¹⁴ UNESCO, Regional workshop on the fight against illicit trafficking of cultural property, Cape Town, South Africa, 27-30 September 2004, Paris, UNESCO. Available online:

<http://portal.unesco.org/culture/en/files/28614/11278971185/capetown_2004.pdf>. Consulted: April 2010.

¹⁵ Examples of those sources of consultation:

INTERPOL-International Criminal Police Organization, Property Crime-Works of Art, Lyon, INTERPOL, Available online:

<<http://www.interpol.int/Public/PropertyCrime/Default.asp>>. Consulted: April 2010.

UNESCO, Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, Paris, UNESCO. Available online:

<http://portal.unesco.org/en/ev.php-URL_ID=25035&URL_DO=DO_TOPIC&URL_SECTION=201.html>. Consulted: April 2010.

activities is an example of an ethically inspiring action implemented by museums in response to a problem that may be called recent, which has already been addressed by efforts in this field.

The upsurge of social demands focused on public transparency in terms of the status of collections – especially works of art – and the possibilities ushered in by the Worldwide Web through the internet, streamline the development of intercommunications through in-depth research projects that can extend their findings in terms of the scope of the dissemination of information on items in art collections housed in museums.

For the case in question, this approach follows the movement within a spirit of “against the illicit trafficking in cultural objects¹⁶” which, in the museum context, was characterized by the disclosure of documents drawn up by AAM - American Association of Museums and AAMD - Association of Art Museum Directors, during the late 1990s, respectively, “Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era”, AAM¹⁷; and “Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)¹⁸”. Moreover, the first Washington Conference on Holocaust-Era Assets, was held in December 1998, on which occasion:

44 ... governments represented endorsed a set of principles, which called on nations and current possessors to research and identify art that had been confiscated by the Nazis and not yet returned to the rightful owners¹⁹.

These two documents and the Conference recommended that databases be set up to disseminate information focused especially on the issue of acquisitions, thus revigorating efforts underway since the end of World War II at various levels, including international contexts -- International Conference on Jewish Material Claims against Germany, 1951²⁰. However, it must be recalled that the dissemination of this information, prior to the advent of the internet, was limited to hard copies or searches through local archives, and even contacts by mail.

UNESCO, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, UNESCO, 14 November 1970. Available online: <http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html>. Consulted: April 2010.

UNIDROIT, International Institute for the Unification of Private Law, Convention on Stolen or Illegally Exported Cultural Objects, Roma, 1995. Available online: <<http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm>> Consulted: April 2010.

UNESCO, International Standards Section-Division of Cultural Heritage, Legal and Practical Measures Against Illicit Trafficking in Cultural Property: UNESCO Handbook, UNESCO, Paris, UNESCO, 2006. Available online: <<http://unesdoc.unesco.org/images/0014/001461/146118e.pdf>>. Consulted: April 2010.

¹⁶ UNESCO, 2006, opus cit., p. 9.

¹⁷ AAM, 2001, opus cit.

¹⁸ AAMD-Association of Art Museum Directors, Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945), New York, AAMD. Available online: <<http://www.aamd.org/papers/guideln.php>>. Consulted: April 2010.

¹⁹ U.S. Holocaust Memorial Council, U.S. State Department, Washington Conference on Holocaust-Era Assets, November 30 December 3, 1998, Washington, D.C., 1998. Available online: <http://www.state.gov/www/regions/eur/wash_conf_material.html>

<http://www.ushmm.org/assets/washington_conference.htm>. Consulted: April 2010.

²⁰ Claims Conference, International Conference on Jewish Material Claims against Germany-1951, New York, Claims Conference, 2010. Available online: <<http://www.claimscon.org/>> Consulted: April 2010.

Immediately after the Second World War, laws were passed in European countries concerning the return of art works to their original owners. But despite this legislation, many art works remained unclaimed and were deposited with national collections. In the late 1990s, following a number of international conferences on the theme of Nazi looting of art works, the issue regained prominence and requests were made for art works to be returned, including by museums. This led to a resolution being adopted by the Council of Europe in 1999; and some countries passed new laws or issued directives for museums on the identification and return of art works stolen during the Second World War²¹.

It may be said that the movement in art museums was rooted in the need to seek out more detailed information, even today, on trading in works of art that changed hands mainly during the period encompassing the rise and fall of the Nazi Party (1933-1945), or shortly before and after this era (before 1932 and after 1946), consequently including objects pillaged in the wake of the Holocaust and on countries that were occupied during World War II. It is public knowledge that some of these items, thought to have disappeared, were in fact included in museum collections²².

From the time it came into power in 1933 through the end of World War II in 1945, the Nazi regime orchestrated a system of theft, confiscation, coercive transfer, looting, pillage, and destruction of objects of art and other cultural property in Europe on a massive and unprecedented scale. Millions of such objects were unlawfully and often forcibly taken from their rightful owners, who included private citizens, victims of the Holocaust, public and private museums and galleries, and religious, educational and other institutions²³.

The museums have linked up into a worldwide electronic network, in response to the recommendation issued by the Executive Council of ICOM (December 1999):

- To make such relevant information accessible to facilitate the research and identification of objects of doubtful provenance by potential rightful owners or their heirs.
- To actively address and participate in drafting and establishing procedures, nationally and internationally, for disseminating information on these objects and facilitating their rightful return.
- To actively address the return of all objects of art that formerly belonged to Jewish owners or any other owner, and that are now in the possession of museums, to their rightful owners or their heirs,

²¹ ICOM-International Council of Museums, Spoliation of Jewish Cultural Property, ICOM, Available online: <<http://icom.museum/spoliation.html>>. Consulted: April 2010.

²² Princeton University Art Museum, Provenance Research. Princeton, New Jersey, Art Museum Princeton University, 2010. Available online: <artmuseum.princeton.edu/art/provenance> Consulted: April 2010.

²³ AAM, 2001, opus cit.

according to national legislation and where the legitimate ownership of these objects can clearly be established²⁴.

The purpose is not only to build up better communications among them, but mainly to respond to the need for public disclosure to stakeholders who may have suffered losses through these actions.

This activity stressed one of the benchmark indicators that the Documentation applied to museum collections includes as part of the survey of data on item acquisition. As is well known among professionals in this field, when art museums are cataloguing their collections, the most important piece of information on the legal status of the objects acquired is assigned an indexation indicator in order to retrieve this information, and the term “ ‘provenance’, (...) [is] used to mean ‘ownership history’²⁵”.

This indicator, Provenance, which presents a detailed description of each work of art, is available for on-line consultation (Provenance List), through a database under the same title, in order to keep society properly advised, as this information circulates freely -- “the Internet provides another powerful method of distribution²⁶” -- helping the museum clear up doubts or fill in gaps for each item in its collection. Above all, should its ownership not be properly established, allowing claimants to identify and locate items in these collections, in order to finally present a well-founded request for restitution.

As an example of one of the museums investigating this issue in its collections, discussing and disclosing these data, the following is noteworthy: Museum Collection Provenance, 1933-45, J. Paul Getty Museum²⁷, the information desk at museums that may be considered as the trail-blazing database among art museums on the Internet, following the model: “individual museums provenance research projects²⁸”. This relates to the indicator or set of indicators collecting data on the provenance of an item to other information gathered during the cataloguing process – Museum Documentation – in order to disseminate specialized information – Information in Museums or Museum Information.

According to ICOM, this source (and unfortunately the website does not give the date on which the information was included), the following museums conduct research activities in compliance with the model outlined above:

The National Gallery of Victoria (Australia); Landesmuseum Joanneum (Austria); Gemäldegalerie Berlin (Germany); Art Institute of Chicago; Cleveland Museum of Art; Harvard University Art Museums; J. Paul Getty Museum; Los Angeles County Museum of Art; Metropolitan Museum of Art – MoMA; Boston

²⁴ ICOM-International Council of Museums, Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners -14 January 1999, Paris, ICOM, 1999. Available online: <<http://icom.museum/worldwar2.html>>. Consulted: April 2010.

²⁵ Neil Brodie, Jenny Doole, and Peter Watson, *Stealing history: the illicit trade in cultural material*, Cambridge, Kent, London, McDonald Institute for Archaeological Research, ICOM UK and Museums Association, 2000, p. 3. Available online: <<http://www.stanford.edu/group/chr/stealinghistory.pdf>>. Consulted: April 2010.

²⁶ J. Paul Getty Museum, *Research on Museum Collection Provenance, 1933-45*, Available online: <<http://www.getty.edu/museum/research/provenance>>Consulted: April 2010.

²⁷ J. Paul Getty Museum, opus cit.

²⁸ ICOM-International Council of Museums, “[Individual Museums Provenance Research Projects](#)”, Spoilation of Jewish Cultural Property Web Page, Paris, UNESCO-ICOM Information Centre, 2001, Available online: <<http://icom.museum/spoliation.html#individual>>. Consulted: April 2010.

Museum of Fine Arts; National Gallery of Art; Seattle Art Museum.
(US Museums).

At the Getty, it is possible to access “The Nazi-Era Provenance Internet Portal²⁹”, under the responsibility of the AAM – American Association of Museums, whose financing entities include the Getty Grant Program.

Open to institutions and individuals, the purpose of this consultation resource is, according to this website, “to provide a searchable registry of objects in U.S. museum collections that changed hands in Continental Europe during the Nazi era (1933-1945)”. Although the site does not indicate the timing of this update, through to the date on which this paper was written (April 24, 2010) the information indicated that it included among objects and museums: “28081 objects from 168 [participating museums](#) listed in the Portal”. This portal explains that, for the Smithsonian Institution, the set of museums is entered in the records as a single institution.

The findings of this paper focus on museums whose assets have been confiscated, indicating some positive outcomes (“resolved stolen art claims³⁰”), notwithstanding all the difficulties that may be presented by a process of either restitution or financial compensation, especially when many families were decimated, with few survivors.

Some examples of restitution are shown, out of a total of 158 claims listed in the document entitled “Legal Services - Resolved stolen art claims³¹”.

-- Czech Republic.

Narodni Galerie v Praze (National Gallery of Prague),
Collection of paintings, including several by František Kupka,
Litigation - - Court-ordered return Jiri Waldes, heir of Jindrich Waldes,
Date of return/resolution. 1996.

-- France.

Musée d’Art Moderne et Contemporain, Strasbourg,
Painting “Die Erfüllung” (1909) by Gustav Klimt,
Litigation - Court-ordered return – Aff on appeal 12/8/2000,
Claim by Fritz Grunwald, heir of Karl Grunwald, Austrian art dealer,
Date of resolution: 1/11/1999 (appeal 12/8/2000).

-- New Zealand.

Public Gallery of Art,
5 paintings from the Macchiaioli school, including “Woman Rocking a Baby” by Odoardo Borrani and “The Baker’s Shop at Settignano” by Telemaco Signorini,
Litigation - Court-ordered compromise - 3 paintings remained in museum, 2 paintings were auctioned on behalf of Heirs of Cino Vitta,
Date of return/resolution. 4/1999.

-- Switzerland.

Musée des Beaux-Arts de la Chaux-de-Fonds,

²⁹ AAM-American Association of Museums, The Nazi-Era Provenance Internet Portal, Washington, AAM. Available online: <http://www.nepip.org/public/info/about.cfm? menu_type=info>. Consulted: April 2010.

³⁰ Herrick Feinstein, (LLP), “Legal Services”, Resolved Stolen Art Claims - Claims for Art Stolen During the Nazi Era and World War II, Including Nazi-Looted Art and Trophy Art. New York, Herrick, 2010. Available online: [http://www.herrick.com/siteFiles/Legal Services/A509D2F79A206B3E1874858CFD50413D.pdf](http://www.herrick.com/siteFiles/Legal%20Services/A509D2F79A206B3E1874858CFD50413D.pdf)>. Consulted: April 2010.

³¹ Herrick Feinstein, (LLP), 2010, opus cit., p. 4, 5, 16, 18, 20, 22.

Painting “Dedham from Langham” by John Constable,
 No litigation - Return to Nephew of French art collectors John and Anna Jaffe,
 Date of return/resolution. 5/16/2008.

-- The Netherlands.

The Netherlands, Nederlands Kunstbezitcollectie (The NK Collection),
 Drawing “Fisherman on horseback” by Jozef Israels,
 No Litigation (Polak Committee advised Dutch Government to restitute paintings),
 Return to Mr. L., heir of E. d. V.,
 Date of return/resolution. 3/22/2004.

-- USA.

Fine Arts Museum, San Francisco,
 Painting “Ermina and Vafrino Tending the Wounded Tancred” (c. 1650-1660) by Pier
 Francesco Mola,
 No litigation - Return to Musee du Louvre, French National Collection,
 Date of return/resolution. 1986.

However, on the other hand, aspects representing claims from injured parties clearly demonstrate the difficulties encountered in some countries and will certain museums (all the cases in the participants are mentioned by name in the documents) which, when requested to respond through restitution by means of either a formal request forwarded to the institution or when sued through the Courts, have adopted attitudes that claimant counsel view as being ‘grounded on technicalities’ in order to obstruct and postpone the proceedings.

This type of impediment may be noted in several of the reports presented, for example, in documents: “Restitution of Holocaust-Era Looted Art The Washington Conference (1998) An Overview” (Charles A. Goldstein)³². “The Holocaust and Museum Ethics” (Charles A. Goldstein and Frank K. Lord IV)³³. “Cases and Recovery Experience - United States: Museums Respond to Claims³⁴”.

These documents and others that can be accessed through the internet, addressing cases of restitution whose protagonists are adopting negative stances, included some museums that are famed worldwide for their important collections. They also support and disclose a list of behavioral guidelines jointly with professional associations in order to resolve the problem explored in this paper. Reflection is required on the commitment expressed by the field and its agents, with regard to the duty of restitution, a point of honor that museums must uphold.

³² Charles A. Goldstein, “Restitution of Holocaust-Era Looted Art: the Washington Conference (1998) An Overview”, Conference of the International Union of Attorneys: Art and the Law (Spain May 8-9, 2009), Malaga and New York/Budapest, Picasso Museum and Commission for Art Recovery, 2008. Available online: <http://commartrecovery.org/docs/MALAGA_LECTUREfinalMAY2009.pdf>. Consulted: April 2010.

³³ Goldstein, Charles A., and Lord IV, Frank K., “The Holocaust and Museum Ethics”, Conference of the Council of American Jewish Museums (CAJM)- Provenance Research and CAJM Leadership: Not an Option, An Imperative (February 4, 1999), New York, CAJM and Commission for Art Recovery, 2008. Available online: <http://commartrecovery.org/docs/THE_HOLOCAUST_AND_MUSEUM_ETHICS_CAJM_1.pdf> Consulted: April 2010.

³⁴ Commission for Art Recovery, Cases and Recovery Experience - United States: Museums Respond to Claims, New York, Commission for Art Recovery, 2008. Available online: <<http://commartrecovery.org/usaclaims.php>> Consulted: April 2010.

Is this ethical duty being effectively deployed as established, or is it currently more theoretical than practical?

In closing: Do Museums Have the Duty to Restitute? They certainly do, particularly when aware of historical events underpinning the formation of collections and, as an example of many cases that have not yet been resolved, the fact related to this problem, as addressed by this paper.

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DEACCESSIONING AND REPATRIATION

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ABSTRACT

Museums are finding themselves in a state of change, moving away from the direction for which they were originally conceived, that which focused on the collecting and holding of valued objects and specimens in perpetuity. The long-held sense of permanence ascribed to the collections is being challenged by factors originating both from within the museum, and from without. This is causing museums to examine alternatives to managing their collections in light of their ongoing relationship with the communities they serve. In particular, increasing demands from indigenous peoples for the return of their cultural materials, often appropriated under questionable circumstances, are compelling museums to realign their thinking, prepare suitable policies, and implement courses of action. In the United States, legislation, by way of the Native American Graves Protection and Repatriation Act (NAGPRA), provides a process by which cultural materials are returned to Native Americans. On the other hand, in Canada, the Assembly of First Nations and the Canadian Museums Association jointly produced a document emphasising an equal partnership approach between museums and First Nations in all aspects related to Aboriginal heritage, history and culture. With repatriation being the new reality for the process of deaccessioning, museums are in a position to provide the moral and ethical leadership to reconcile wrongs perpetrated in the past and promote partnerships for a more even handed social harmony.

RÉSUMÉ

Aliénation et restitution

Les musées se trouvent eux-mêmes en état de changement, en s'éloignant de la voie pour laquelle ils avaient été conçus à l'origine, laquelle avait comme objectif la collection et la possession à perpétuité d'objets et de spécimens. La pérennité attribuée aux collections est mise au défi par des facteurs provenant à la fois de l'intérieur du musée et de l'extérieur. Ils obligent les musées à envisager des alternatives pour administrer leurs collections à la lumière de leurs rapports habituels avec les communautés qu'elles servent. En particulier, les demandes croissantes venant des peuples indigènes pour la restitution de leurs biens culturels, que l'on s'est souvent approprié dans des circonstances contestables, obligent les musées à réviser leur opinion, à préparer les politiques qui conviennent et à mettre en application des lignes de conduite. Aux États-Unis, grâce à l'Acte de Protection et de restitution des tombes des Premiers Américains (NAGPRA), la législation offre un processus par lequel les biens culturels sont restitués aux autochtones. Par ailleurs, au Canada, l'Assemblée des Premières Nations et l'Association des Musées canadiens ont produit conjointement un document insistant sur une démarche partenariale équilibrée dans tous les aspects concernant le patrimoine, l'histoire et la culture autochtones. Quoique la restitution soit la nouvelle réalité pour le processus d'aliénation, les musées sont en position

d'assurer la direction morale et éthique afin de mettre fin aux torts perpétrés dans le passé et de promouvoir un partenariat qui reconnaisse une harmonie sociale plus égalitaire.

RESUMEN

Alienación y restitución

Los museos se encuentran en estado de cambio, alejándose de la dirección para la cual fueron originalmente concebidos y cuyo objetivo era la colección a perpetuidad de objetos y especímenes. El sentido de permanencia atribuido a las colecciones, se encuentra frente el desafío de factores que provienen a la vez del interior y del exterior del museo y lo obligan a encarar distintas alternativas para administrar sus colecciones a la luz de sus crecientes relaciones con las comunidades que sirven. Las nuevas demandas de los pueblos indígenas para la restitución de sus objetos culturales, de los que se apropiaron en circunstancias cuestionables, obligan a los museos a rever sus opiniones, a preparar políticas convenientes y poner en práctica conductas adecuadas e implementar cursos de acción. En los Estados Unidos, gracias al Acta de Protección y Repatriación de las Tumbas de los Nativos Americanos (NAGPRA), la legislación ofrece un proceso por el cual los bienes culturales son restituidos a los pueblos originarios. Por otra parte, en Canadá, la Asamblea de las Primeras Naciones y la Asociación de Museos Canadienses, han producido conjuntamente un documento que enfatiza la conveniencia de una asociación igualitaria entre los museos en todos los aspectos que conciernen al patrimonio y a la historia de las culturas autóctonas. Aunque la restitución constituya una nueva realidad para el proceso de alienación, los museos están en posición de asegurar una dirección ética que ponga fin a los errores perpetrados en el pasado y que promueva una asociación capaz de reconocer la armonía social de manera igualitaria.

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Museums find themselves in a state of change. The fact that deaccession and repatriation (restitution) have been chosen as the current subjects of discussion is not only an indication of their importance to museums, but also representative of the movement of museums in a direction away from that for which they were originally conceived. This shift in direction is in response to the pressures of a growing reality that is challenging an inalienable aspect of museum responsibility.

The foundations on which museums were built were centred on collections composed mainly of cultural curiosities, natural specimens, historical rarities, and works of art. Many came from private individuals and much was collected by museums from the field. Collecting the curious and the beautiful became a passion for museums, as was the desire to publically display these acquisitions for all the world to marvel. Museums became known and gained prominence through their collections in the same way named assemblages gave immortality to the originating collector. In time, these collections became ascribed with an aura of indisputable value and permanence. Museums believed that they would hold collections in perpetuity and no thought was given to the contrary.

Even though most collection items were not made or came into being with permanence in mind, this perspective is supported by the fact that museums are housed in structures

purposely built for them and that white gloves are worn when handling objects. Codes of ethics further reinforce the credo that museums acquire collections to be held in trust (for present and future generations). Nevertheless, this sense of permanence is being challenged by diverse factors originating both from within the museum, and from without. Formerly thought to be inalienable, collections are receiving a scrutiny that was once believed impossible.

Museums are evolving and taking on new and expanding roles in their relation to the communities they serve. In the course of this development, museums are examining all aspects of their fiduciary responsibilities, including the connection they have with their collections. While collections are still the acknowledged core of museum undertakings, they have lost the cachet of being the sole focus. Museums have diversified and with this has come the need to question long-held principles pertaining to the collections. There are also identifiable circumstances which play a practical role in this re-assessment. For example, museums are physical structures with little or no room in which to expand. Many have run out of space to properly house collections which are under increasing threat by crowded storage facilities. Objects have become damaged, often beyond repair, due to improper housing, through infestation, or by other means. Some lack accompanying data and therefore have little use for didactic and research purposes. More recently, following a trend, a number of museums are changing their stated mandates and embarking in new directions. A new vision may simply mean a change in the mission statement or a major “re-branding” of the product, the museum. These are only some of the conditions which have caused museums to question their long-held sense of permanence and to examine alternatives to managing their collections. Many of the answers to this dilemma fall within the realm of “considered removal” and the act of deaccessioning.

There are, then, many compelling reasons why museums should give serious consideration to divesting themselves of burdensome collections – whether to make room for extant holdings or for new acquisitions either to improve quality or to fill gaps in assemblages or sequences. On the other hand, there are also those motives which stretch credibility and could bring museums diminishment by public censure or contempt for unethical behaviour. Included here are the desires to dispose of collections for the sake of convenience (as may well be the case when mandates are changed), and, for monetary gain (including acts of corruption). Whatever the reasons, there are consequences which museums must consider with great care when contemplating such an action. So too, museums need to be careful as to which collections or objects are to be earmarked for deaccessioning. For instance, the differing affections which museums have for objects can set up a determination for deaccessioning. This in turn leads to a search for legitimacy and the setting up of standards.

While the foregoing refers to some internal issues which could cause deaccessioning to take place, the greatest pressure challenging the museum’s long-held sense of permanence in respect of its collections, is coming from external sources. In North America, for example, these external sources comprise primarily those aboriginal peoples now known as First Nations (in Canada) or Native Americans (in the USA). These peoples have squarely targeted those museums, in both North American and in Europe, holding materials originating from their cultures and over which they would exercise a claim. In fact, the same holds true around the world where material culture has been appropriated by invaders, explorers, scientists, and yes, museums. European countries that have engaged in imperialistic activities have, no doubt, spoils which have been taken in times of both war and peace from nations under their subjugation, much of which now resides in museums. From these external forces, museums are being held to atone for actions for which they themselves may not be directly responsible, but in which they are seen to be indirectly

complicit. Nevertheless, ill-gotten collections, being those received or acquired under questionable (often now, illegal) circumstances are all justifiably open to claim. By association, collections of the same cultural provenance, regardless if they were legitimately obtained, are also being targeted, thus adding more pressure to the increasing collections fluidity which museums are facing. The seriousness of these external demands are compelling museums to realign their thinking, prepare appropriate policies, and implement courses of action, all in light of increasing requests for the repatriation of cultural materials.

To put these two issues into a comparative perspective, deaccession is, in museum-speak, the physical process of formally removing an object or objects from the “permanent” collections, normally following a period of deliberation in respect of such an action and its consequences. Repatriation (return) is only one consequence of deaccessioning. It should be mentioned that the term “restitution” also means reparation, and it is not germane to this paper. Further, repatriation could be seen as a moral obligation, while restitution may have legal grounds which form its basis.

Objects may be considered for deaccessioning if they are too damaged to warrant repair or restoration, and in such cases, witnessed destruction and disposal is an accepted procedure to follow. In the case of objects or collections for which there is non-existent or insufficient data, while these may go through the process of deaccessioning but may not leave the museum’s premises, their status changes. They may find use, for example, in school or public programming either in the museum or in the community, or as props in exhibitions, or as raw, illustrative, or experimental materials for use by conservators. So long as these de-accessioned objects remain somewhere in the museum’s scope, knowledge of their altered state seldom goes beyond the museum walls.

If, on the other hand, objects or collections leave the museum, especially in substantial numbers or continuously over long periods of time, or if they have an iconic identification with the institution in question, then the community is likely to hear of this action. This can create problems for the museum of immense proportions. At the outset, after due consideration and in concert with institutional policies, museums receive objects from benefactors who range from just ordinary members of the community to private collectors of considerable means. Upon receipt and acceptance by the museum, objects, whether donated, purchased or bequeathed, go through the formal process of accessioning. Where objects have not been purchased, a gift receipt (or equivalent) is normally perfected between the museum and the donor. This receipt indicates that both parties are bound in a kind of contract, an agreement whereby the donor gives rights of possession to the museum (and all that entails) and the museum confirms that it wants the donation for its collections. Even though what the museum will do with or how it will treat the objects is not spelled out, there is, nevertheless, an tacit agreement on the part of the museum with the donor that it accepts the gift to preserve, to present and to use it in the course of its (the museum’s) scientific and didactic activities, and to hold it, in perpetuity, in trust for the community. At the outset, both the public’s perception and the museum’s own perspective does not include receipt for purpose of disposal (or why would the museum accept it in the first place).

When objects that are deaccessioned leave the confines of the institution, there is very little the museum can do to suppress any ensuing negativity. Both donors and the community at large feel a sense of betrayal that leads to a loss of confidence in what they perceive as the museum’s primary trust responsibility. The public becomes wary and reluctant to support the museum through donations or by visitation. The stigma can be enduring and can leave the museum permanently scarred. The transferral of deaccessioned objects to

another museum, while not always endorsed, can have an ameliorating effect on any fallout that may occur. It is the selling of collections by the museum, however, that is particularly distasteful to the community.

When it comes to the return of material culture to originating peoples, the public's position tends to soften. It is hard to know whether this is a result of pangs of guilt, the acquisition of a conscience, or just simple submission, but the situation in which museums find themselves, however "noble" it may appear, is still little understood by the community. In North America, First Nations and Native Americans have been disenfranchised for so long, having been stripped of their culture with much of their traditional materials being appropriated, often under problematic conditions, away from their places or origin. In fact, the oldest and the best of the material culture from the Pacific Northwest Coast peoples of Canada resides in museums in Europe (pursuant to early exploration by the British and Spanish in particular) and in the United States (as a result of scientific study and collecting forays into the area).

In Canada, for example, through a growing movement of self-determination and cultural resurgence, First Nations peoples have been gathering strength and demanding the return of objects from their cultural heritage. Much of the impetus for this has come from the long struggle by the Kwakwaka'wakw peoples of northern Vancouver Island to repatriate the many hundreds of sacred potlatch masks and other regalia which were confiscated by government agents in 1921, and ultimately deposited in major museums in eastern Canada and the United States. With efforts starting in the late 1950s, and resulting in the building of two museums, one located at Cape Mudge, opened in 1979, and the other at Alert Bay, opened in 1980, in which to house the objects, much of the confiscated potlatch materials slowly returned to the originating communities, not to the private individuals or families who were the owners in 1921. From this hard fought, but still not fully completed struggle, First Nations have been buoyed by the fact that museums can be put in a position which would compel them to loosen their grip on what they (museums) thought was solely theirs and formulate a new ethics in respect of a peoples who are part of and reside in the communities they serve. The return of the potlatch materials was not without conditions, the primary one, in this case, being the construction of a museum with acceptable atmospheric controls and security in place to safeguard the objects. Even though museums may be willing to return objects to First Nations peoples, this undertaking is not devoid of an overarching museum presence throughout the procedure.

In 1990, the United States Congress passed a Federal law entitled the Native American Graves Protection and Repatriation Act (NAGPRA) which provides, among other things, a process for museums and Federal agencies to return certain cultural materials – human remains, funerary and sacred objects, and objects of cultural patrimony – to lineal descendants, "culturally affiliated" tribes, and Native Hawaiian organizations. This is powerful legislation whereby the initiative originates with the museum in response to the Act. It is the museums that must identify cultural items in their collections and prepare inventories of same, consult as to the identification of and send notices to lineal descendants, Native American tribes and Native Hawaiians, describing the lineal descendancy or cultural affiliation, and stating that the cultural materials in question may be repatriated. Museums holding materials subject to NAGPRA have specifically appointed staff whose sole responsibility is to deal with nothing but the compliance of their institution with this act. NAGPRA is a legislated repatriation to which any aboriginal person or group may respond.

A few years later, in 1992, a Canadian document was produced jointly by the Assembly of First Nations and the Canadian Museums Association by way of a Task Force Report on

Museums and First Peoples entitled, *Turning the Page: Forging New Partnerships Between Museums and First Peoples*. This document emphasises an equal partnership approach between museums and First Nations based on the principles of working together, mutual appreciation, common interests, acceptance of the philosophy of co-management and co-responsibility, and, the full involvement of First Nations in the development of policies, projects and programmes related to Aboriginal heritage, history and culture. In respect of repatriation, the Report encourages museums and First Nations to work collaboratively to resolve issues relating to the management, care and custody of cultural objects, and takes the position that as concepts of ownership vary, there should be a case-by-case joint approach to resolving repatriation issues based on moral and ethical criteria rather than one that strictly adheres to the letter of the law. The Report favours the return of human (ancestor) remains, associated burial materials, sacred and illegally obtained objects, and objects considered to be of special significance to the cultural patrimony of the appropriate First Nations. Several options for this process that have been recommended include: restitution; transfer of title; loan by museums to First Nations of sacred and ceremonial objects for use in traditional ceremonies and community festivals; the replication of materials designated either for repatriation to First Nations or retention by the museum, for use by the other party; and, shared authority in the management of cultural property.

It should be noted that a number of Treaties negotiated over the last decade between the government and several First Nations groups in British Columbia (the one area in Canada where no previous treaties had previously existed) have included the return of museum collections from, for example, the Royal British Columbia Museum, located in Victoria. The basic principle that was worked out was one of sharing the collection but only after those materials and objects considered “sacred” or culturally significant, or were from graves or obtained in a questionable fashion, had been set aside for return. In the end, however, the negotiations came down to issues of power and control, with museums throwing up roadblocks and impeding the process, and First Nations having great difficulty reaching consensus within their own groups.

Since the Task Force Report is not a “legislated” document, it is not enforceable. In addition, the Report calls for special funding from the federal government to assist museums and First Nations to implement the principles and recommendations it contained. Far too little of the requisite funding has been forthcoming to adequately address this issue. Nevertheless, museums with First Nations collections have responded in spirit and have been endeavouring to comply with the recommendations. Some museums have been proactive where human (ancestor) remains are concerned and have taken the initiative, while others have taken the course of waiting for requests to come from First Nations before taking action. Requests are normally handled on a case-by-case basis and the burden of proof of claim rests with the First Nations themselves. Where there are conflicting claims, the onus is on the First Nations to reach a resolution amongst the competing groups before the museum becomes fully involved. Where there is negotiation but no resolution, the objects continue to remain in the care of the museum.

For the museum, the task of repatriation is not an easy one and even when it has deaccessioned and released objects, it has done so knowing that it relinquishes all rights to materials for which it has cared for a good long time. What happens to these objects is entirely up to the discretion of the recipients. While the museum is fully aware that even though most collection items were not made with permanence in mind, it needs to accept the reality that repatriated objects may well be left to disintegrate or decay. It also must accept the circumstance that such objects may be passed from hand to hand or even sold to profit the new owners. After all, whether they admit it or not, museums have, by their nature, set standards of excellence and in doing so have pumped up the values of their

collections. In this way, they have become a powerful player in the marketplace and this is bound to have consequences for any objects which have previously resided in museums.

Nevertheless, the claims coming from First Nations peoples for the repatriation of their cultural materials that have been appropriated away from communities of origin, is something museums cannot ignore. Museums need to ask themselves whose culture it is that they are holding and whether they have the moral and ethical rights to continue to do so, especially in the light of demands from First Nations or those from any indigenous peoples for that matter. Perhaps museums have forgotten that they are the stewards, not the owners of this material. Museum vaults are full of booty, the acquisition of which, to the indigenous outsider, appears to be innumerable cases of "theft in the guise of science". As stewards, museums are the custodians or keepers of the objects in their care on behalf of others. One of the questions being asked in concert with this current discussion is whether museums have the right to alienate. Perhaps the question should be whether museums have the right to retain. To whom do museum collections belong? Who has the legitimate right of ownership? Do those currently living "own" the product of an earlier peoples? Who is the final arbiter? These questions are those with which museums holding materials from other cultures are now struggling and for which there is no one answer.

Regardless of how and why materials are earmarked for deaccessioning, the basic physical process is the same, whereby objects are formally and permanently removed from any active inventory by way of generating and keeping detailed records that are held in perpetuity. In cases of repatriation, the museum may very well need to respond to the appropriate protocol as required by First Nations or other indigenous peoples. For First Nations peoples of the Pacific Northwest Coast, for example, this normally takes the form of funding the formal transference, from the provision of boxes in which the items are packed and transported, to the interment of human/ancestor remains, to all accompanying ceremonies, including the provision of food and "gifts" for such individuals as chiefs, speakers, witnesses, cultural workers and anyone else taking care of traditional business, to whatever else the recipients consider necessary. All these processes need to be recorded in detail and appended to the deaccessioning documentation.

Deaccession and repatriation (restitution) are two terms that make museums decidedly nervous. Museums even close ranks and become excessively defensive when these themes are discussed. Perhaps this is a result of years of guilty covetousness, a late blooming conscience, or an unresolved quandary. Regardless, museums are just plain uncomfortable addressing these two, almost inseparable issues. At a time when museums themselves are questioning their role in the scheme of things, where new, primary collections are no longer available, where secondary and "tourist" materials comprise large portions of collections thus raising the spectre of authenticity, perhaps there is a feeling that they (museums) have met all their responsibilities. Museums initially have been collectors and hoarders with a "bring 'em back alive" attitude, and are now having to see themselves in a different light, a light that includes deaccessioning and repatriation. Perhaps, in the absence of new primary materials, there will even be a point at which museums will no longer collect, especially since those objects representing the cultural continuum seem to hold little ongoing interest. While a dismantling of the collections is tantamount to museums dismantling themselves, museums need to assume a different mantle in order to fully serve its public. Such service may no longer just mean collecting, caring, researching, or informing, but must extend to the ethical and moral leadership the museum could provide to reconcile wrongs perpetrated in the past and promote partnerships for a more equitable social harmony.

The defining point of the “new” museum and its shift in direction is that it must now develop the skills to guide the cultural changes that are happening. Certainly, museums are still in a position of having collections and resources, but the atmosphere throughout the world has changed. Holding collections is no longer of great importance. What will be important is to include diverse peoples and to be able to disseminate “ownership” for the benefit of all.

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RESTITUCIÓN DEL PATRIMONIO CULTURAL ARQUEOLÓGICO INDÍGENA EN AMÉRICA

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RESUMEN

Muchos son los desafíos que deben enfrentar los museos cuyas colecciones están integradas por restos humanos de antiguas comunidades. ¿Cómo armonizar las políticas culturales del pasado y los derechos legítimos de sus descendientes? ¿Tienen los museos el deber de restituir ante las demandas de los descendientes de las culturas primitivas y verdaderas poseedoras de esos bienes? Para los museos, la posibilidad de deshacerse de una parte de aquello que les ha sido confiado, como dice F. Mairesse, suele ser vivida por muchos profesionales como un contrasentido para su vocación. En general estas instituciones fueron creadas para conservar las colecciones e incrementarlas. Los reclamos indígenas por el tratamiento y restitución de sus restos humanos arqueológicos comenzados en la década del 70 han sido reconocidos, en su mayor parte, a partir de los años 90, logrando el retiro de los mismos de las exhibiciones de museos y, en otros casos, la restitución a sus primitivos dueños.

¿Cómo afrontan y resuelven los museos estas responsabilidades sociales? Los criterios para determinar la descendencia lineal o la afiliación cultural han facilitado las restituciones aunque las múltiples demandas sobre un mismo resto u objeto sagrado siguen siendo parte de la problemática a resolver. Numerosos conflictos han surgido dentro de la comunidad académica, quienes ven peligrar sus “objetos de estudio”, a través de los cuales investigan cómo eran las costumbres y modos de vida de otras culturas. Por otra parte, la principal función del museo, educar a través de la observación, podría estar en crisis. El compromiso de quienes tienen a su cargo la gestión de los museos saben que no todas las piezas de su colección son iguales ante los principios de restitución: la problemática de las reliquias y de los restos humanos obliga a una consideración moral y religiosa. Por ello el museo debe estar permanentemente interesado en consultar a representantes oficiales de comunidades indígenas en cuanto al trato, gestión e interpretación de los objetos culturalmente relacionados con ellas que existen en sus colecciones.

ABSTRACT

Restitution of the indigenous archaeological cultural heritage in the American continent

Museums that have collections with human remains have many challenges to face. How to reconcile the cultural norms and standards of the past with the legitimate rights of their descendants? Do museums have the duty to return in answer to the demands of the first peoples, who are the true agents and owners of this property? For museums, as François Mairesse has said, “the possibility of disposing of a part

of what was entrusted to them is usually experienced by many curators as a thwart to their vocation". In general, these institutions were created to preserve collections and to increase them. Most of the demands for restitution of human archaeological remains, which began in the 1970s, were recognized in the 1990s when the directors were successful in removing the remains from museum exhibitions and, in other cases, to return them to the original owners. How do museums face these social responsibilities and how can they resolve the conflicts around them? The criteria for attributing direct descent or cultural affiliation have made restitution easier, even if the multiple demands regarding the same relic or sacred object are still part of the problem to be solved.

Many conflicts have risen in the academic community which sees their "study objects" in danger, pieces on which their members do research without knowing what were the customs and life styles of other cultures. First of all, a major function of museums, to educate through observation, would be in a crisis. Museum managers know that not all the objects in their collections are the same with regard to their value for restitution: the issue of cultural relics and human remains forces us to consider the moral and religious aspects. This is why museums should be constantly interested in consulting official representatives of the indigenous communities regarding the handling, the management and the interpretation of objects in its collections that have cultural links to these communities.

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Muchos son los desafíos que deben enfrentar los museos cuyas colecciones están integradas por restos humanos de antiguas comunidades. ¿Cómo armonizar las políticas culturales del pasado y los derechos legítimos de los descendientes de esas comunidades? ¿Cómo afrontan y resuelven los museos estas responsabilidades sociales? ¿Tienen los museos el deber de restituir ante las demandas de los descendientes de las culturas primitivas y verdaderas poseedoras de esos bienes?

El compromiso de quienes tienen a su cargo la gestión en el seno de los museos saben que no todas las piezas de su colección son iguales ante los principios de restitución: la problemática de las reliquias y de los restos humanos obliga a una consideración moral y religiosa. Existe hoy un claro acercamiento a la restitución dentro del contexto de los objetos culturales sagrados y restos humanos pertenecientes a los indígenas americanos más allá de que dichos objetos o restos sean únicos o raros ¿Estamos, pues, a punto de conocer un cambio normativo para aquello que concierne a la gestión de colecciones?

Existen más de 350 millones de indígenas en todo el mundo, en algunos casos manteniendo sus formas ancestrales de vida nómada o conformando sociedades tribales. En casi la totalidad de América encontramos descendientes de antiguas culturas originarias -más de 40 millones de personas, es decir, el 10% de la población- siendo en Bolivia (60%), Perú (30%) y Guatemala (45% maya) donde representan un mayor porcentaje.¹ Los indígenas también representan una parte importante de la población de Paraguay y Ecuador (10%); en otros países como Chile, Colombia, Venezuela y Argentina son poblaciones minoritarias (menos del 5% de cada país) y EEUU (0,9%). En México (11%), el estado con mayor población indígena es Oaxaca, mientras que en Brasil (0,4%) se concentra especialmente en las zonas remotas, inaccesibles y poco desarrolladas del occidente del país, tales como la Amazonía, Matto Grosso y áreas vecinas a éstas.

¹ Nestor García Canclini y Carlos Juan Moneta, *Las industrias culturales en la integración latinoamericana*, Grijalbo, México, 1999.

Uruguay es el único país que ya no posee presencia indígena dentro de su población, la cual es mayormente blanca de origen europeo (más del 98%).

1. Evolución en el tratamiento de restos humanos indígenas

En la década del '60, la Society for American Archaeology (SAA), redactó su primer código. Formulado en cuatro declaraciones genéricas, hizo hincapié en la práctica arqueológica de visión patrimonialista, en un contexto de posguerra norteamericano que veía la creciente expansión de dicha actividad en ese país.

El punto de inflexión a este concepto de la arqueología culturalista que incidió en la gestión e intervención de los bienes culturales durante el siglo XX aparece, casi treinta años después, en el Código de Ética discutido y aprobado en el II Congreso Mundial de Arqueología realizado en Barquisimeto, Venezuela, en 1990. En los principios enumerados se reconoce la importancia del patrimonio arqueológico indígena para la supervivencia, bienestar y espiritualidad de los Pueblos Originarios y la autonomía de la herencia cultural indígena más allá del reconocimiento científico especializado, pero por sobre todo, que los bienes culturales indígenas, pertenecen a los indígenas. Por otra parte, se reconocen y aceptan las metodologías autóctonas de interpretación, cuidado, administración y protección de su patrimonio cultural.

En 1993, en Nevada, EE.UU., se discutieron los principios éticos que orientarían la práctica arqueológica, en revisión a ese primer esfuerzo por formular criterios de la regulación de la actividad llevado adelante por la Society for American Archaeology en 1960. Dichos principios, fueron aprobados en 1995 y quedaron establecidos los siguientes criterios: Administración, Responsabilidad, Comercialización, Educación y Extensión Cultural, Propiedad Intelectual, Divulgación y Publicación, Registro y Preservación, Capacitación y Recursos. Es en el segundo punto, Responsabilidad (Accountability), donde destaca: *“...la actividad de los profesionales, debe considerar, también, al resto de los implicados con los sitios y materiales arqueológicos; por ello, las consultas y relaciones con la comunidad, deben ser parte del trabajo”*.

El “derecho de opinión” sobre la intervención o no en sitios sagrados y la divulgación/publicación de la información obtenida de los descendientes de las sociedades que produjeron los restos materiales estudiados fue considerado dentro del Código de Ética Profesional aprobado por la Assembléia Geral Ordinaria, durante la IX Reuniao Científica Da Sociedade de Arqueología Brasileira, en Río de Janeiro, en 1997. El reconocimiento de los derechos indígenas en los grupos étnicos de descendencia directa o que acrediten dicha herencia y el diferenciar la intervención en aquellos sitios considerados sagrados (cementeros indígenas) de cualquier otro sitio fueron algunos de sus puntos destacables.

2. Los primeros reclamos de restitución

Los primeros reclamos de restitución se hicieron públicos en los '70, en varias partes del mundo. Las comunidades de América del Norte y Australia marcaron el rumbo inicial.

La Declaración de Barbados I, del 30 de enero de 1971, fue el resultado del Simposio de antropólogos realizado por el Consejo Mundial de Iglesias (World Council of Churches). Sin participación indígena, los planteamientos principales fueron elaborados por misioneros y antropólogos preocupados por la situación de los grupos aborígenes en el continente. Probablemente haya sido el desencadenante manifiesto de una serie de

procesos que se desarrollaron con posterioridad en toda América Latina pues es a partir de 1971 que la organización y movilización indígena se desarrolla orgánicamente.²

La Declaración de Barbados II de julio de 1977 suscrita por 18 indígenas y 17 antropólogos, en su punto 3, Responsabilidad del Estado, dice:

El Estado debe reconocer el derecho de las entidades indígenas a organizarse y regirse según su propia especificidad cultural, lo que en ningún caso puede limitar a sus miembros para el ejercicio de todos los derechos ciudadanos, pero que, en cambio, los exime del cumplimiento de aquellas obligaciones que entren en contradicción con su propia cultura.

Expuestos los lineamientos más generales se observa el desenvolvimiento de dos posiciones antagónicas: por un lado, “todo hallazgo, ruina y yacimiento paleontológico y arqueológico de interés científico” (de acuerdo a estas razones invocadas, los restos humanos pertenecerían a la categoría de “hallazgo”, “ruina”, etc., “invisible” en su condición de humanidad) y, por el otro, las comunidades aborígenes intentando recuperar la parte de su historia que les fue enajenada. Las distintas concepciones de identidad subyacentes a los sistemas normativos (organizados en cuerpos de leyes o sostenido por costumbres y tradiciones) van a constituirse en el eje que vertebra la controversia entre los grupos en conflicto, en tanto que el acto de restitución, implicaría restituir a los huesos (hasta entonces considerados como propiedad del museo o colección), su identidad/visibilidad como sujeto perteneciente a una comunidad y por lo tanto sujeto de derecho a rituales y ceremonias.³

Un caso paradigmático es la Ley del Museo Nacional del Indio Americano de 1991 (National Museum of the American Indian Act), por la cual: “la mayoría de las colecciones de los museos nacionales se trasladaron a un nuevo museo, administrado por un comité de pueblos indígenas...” y la NAGPRA (Native American Graves Protection and Repatriation Act)⁴, Ley de Repatriación y Protección de las Tumbas de Americanos Nativos, que se aplica a los restos humanos y a los objetos de importancia cultural descubiertos con posterioridad a 16 noviembre 1990. La legislación no es aplicable a las tierras privadas y fue sancionada después de una larga campaña conducida por líderes espirituales y organizaciones indígenas que culminó con “La caminata más larga” (The Longest Walk), una movilización que partió desde San Francisco y llegó hasta Washington a petionar al entonces presidente Carter.

En los países Latinoamericanos los primeros reclamos ante las autoridades se registran a mediados de la década del '80, concretándose una década y media después algunas devoluciones.⁵ En una primera instancia, hacia los años 90 algunos países aprueban y sancionan legislaciones apoyadas en el Convenio 169 de la Organización Internacional del Trabajo sobre Pueblos Indígenas y Tribales en Países Independientes, el cual dice en el inciso a) del Artículo 4: “*deberán reconocerse y protegerse los valores y prácticas sociales,*

² Andrés Serbin, “Etnicidad y política. Los movimientos indígenas en América Latina”, en: Nueva Sociedad, Nro. 49, julio-agosto, 1980

³ María Di Fini, “Visibilidad/Invisibilidad en la relación Sociedad Aborígen/Estado Nación”, en: *La Trama Cultural* 2° Edición: Mariano Garreta y Cristina Bellelli, 2000.

⁴ The Native American Graves Protection and Repatriation Act (NAGPRA), Pub.L. 101-601, 104 Stat. 3048, is a United States federal law passed on 16 November 1990 requiring federal agencies and institutions that receive federal funding to return Native American cultural items and human remains to their respective peoples.

⁵ En Argentina hasta el momento se concretó la devolución de dos restos humanos de caciques de las comunidades *Tehuelche* (1994) y *Ranquel* (2001) y la devolución de una momia *Guanche* a Canarias.

culturales, religiosos y espirituales propios de dichos pueblos y deberá tomarse debidamente en consideración la índole de los problemas que se les plantean tanto colectiva como individualmente". Pero generalmente no se reconoce a los pueblos originarios derechos sobre sus muertos y las comunidades indígenas se oponen al tratamiento que les otorga esta ley.⁶

Las Naciones Unidas han enunciado su parecer en su Declaración de los Derechos de los Pueblos Indígenas, cuyo artículo 13, parte III dice:

Los pueblos indígenas tienen el derecho de manifestar, practicar, desarrollar y enseñar sus tradiciones espirituales y religiosas, sus costumbres y ceremonias; el derecho de mantener, proteger y tener acceso privado a sus sitios religiosos y culturales; el derecho al uso y control de objetos ceremoniales; y el derecho a la repatriación de sus restos humanos. Los Estados deberán tomar medidas efectivas, en conjunto con los pueblos indígenas involucrados, para garantizar la seguridad de los lugares sagrados indígenas, incluidos los sitios de enterratorios, que deberán ser preservados, respetados y protegidos.

Por su parte el Consejo Internacional de Museos, en su Código de Deontología (2004) hace referencia, en particular, al tratamiento de materiales culturales delicados (restos humanos u objetos con carácter sagrado):

...su exhibición debe hacerse de conformidad con las normas profesionales y teniendo en cuenta, si se conocen, los intereses y creencias de las comunidades o grupos étnicos o religiosos de los que proceden. Deben presentarse con sumo tacto y respetando los sentimientos de dignidad humana de todos los pueblos. El museo tendrá que responder con diligencia, respeto y sensibilidad a las peticiones formuladas por las comunidades de las que proceden restos humanos u objetos de carácter sagrado con vistas a que se retiren de la exposición al público. Se responderá de la misma manera a las peticiones de devolución de esos restos y objetos. Las políticas de los museos deben establecer claramente el procedimiento para responder a esas peticiones.⁷

A fines de 2001, el Congreso de la República Argentina estableció que *"los restos mortales de aborígenes, cualquiera fuera su característica étnica, que formen parte de museos y/o colecciones públicas o privadas, deberán ser puestos a disposición de los pueblos indígenas y/o comunidades de pertenencia que los reclamen"*. La norma, que por años no fue reglamentada, debido a las fuertes demandas, no evitó el trámite de sancionar leyes individuales para cada caso de devolución. La falta de reclamo de los restos mencionados no exime al poseedor de la obligación de informar su existencia. Es interesante destacar que la ley incluye las colecciones de tipo privadas.

⁶ Así lo manifiesta, entre otros, Luis Pincén descendiente del cacique ranquel Pincén cuya captura, en 1878, marcó el ocaso de la resistencia indígena, al decir "...ni siquiera nos nombran y por lo tanto no nos consideran una cultura viva..."

⁷ ICOM, *Código de Deontología del ICOM para los museos*, aprobado en Buenos Aires en 1986, enmendado y revisado en Barcelona en 2001 y en Seúl en 2004, párrafos, 4.3 y 4.4.

Existen diversas instituciones museísticas que han desarrollado iniciativas más abarcativas a las normas delineadas por la ley. Un ejemplo de ello es el Instituto Smithsonian⁸ cuyas acciones van más allá de la ley NMAI, su enmienda de 1996 y la Ley de Protección de Sepulturas Indígenas Americanas y Repatriación. Esta última contempla la repatriación sólo a comunidades o poblados indígenas de Alaska y organizaciones de nativos hawaianos reconocidas por el gobierno federal dentro de los Estados Unidos. El museo ha aplicado un enfoque activo en cuanto al cuidado y la devolución de todos los restos humanos que están en su poder ampliando el espectro de destinatarios a todos los países y no sólo dentro de USA. Todos los restos humanos en las colecciones del museo se preservan en una instalación separada del Instituto Smithsonian, manejados en un entorno mínimamente invasivo hasta el momento de retornar a su comunidad y/o lugar de origen. El acceso a los restos está limitado a los miembros del equipo que tienen la responsabilidad de protegerlos y a representantes indígenas oficiales relacionados culturalmente con ellos que deseen visitarlos. La Oficina de Repatriación del Museo Nacional del Indígena Americano⁹ (NMAI) repatrió el 1 de noviembre de 2007, cuatro restos humanos provenientes de Chile, que se encontraban en su custodia, a dos localidades reconocidas como culturalmente vinculadas a ellos: la Comunidad Atacameña de San Francisco de Chiu Chiu en la Región de Antofagasta, y agrupaciones Aymaras en la Región de Arica y Parinacota.

La repatriación demandó cinco años de consulta comunitaria con representantes de pueblos indígenas del norte de Chile para corroborar la legitimidad del reclamo, con el gobierno chileno a través del Consejo de Monumentos Nacionales de Chile (CMN) y la Corporación Nacional de Desarrollo Indígena (CONADI), y contó con la colaboración de la Embajada de los Estados Unidos en Santiago. Los restos, consistentes en dos cuerpos y dos cráneos, habían llegado al Museo del Indígena Americano sin una documentación adecuada. Fueron adquiridos por un coleccionista particular, el Sr. George Gustav Heye, cuya colección pasó a manos de la Institución Smithsonian para luego conformar el Museo Nacional del Indígena Americano en 1989.¹⁰

Desde que esta legislación se aplica, en EE.UU., se han devuelto a sus respectivas tribus 32 mil restos humanos, cerca de 670 mil objetos funerarios, 120 mil objetos funerarios no asociados y 3500 objetos sagrados. NAGPRA también pone restricciones a las excavaciones de restos indígenas aunque se limite el posible estudio de los mismos. Más de 110 mil restos no han podido ser asociados con alguna tribu en particular y permanecen en las distintas instituciones en USA.

En los países donde las legislaciones aún están en discusión, algunas autoridades de museos cuestionan la viabilidad de los reclamos desde un enfoque legalista, revelando profundas contradicciones en el interior de la comunidad académica entre quienes apoyan la restitución de los restos y quienes dicen “defender” un patrimonio cultural del cual los museos no deberían desprenderse.¹¹ Los argumentos que apoyan esta última posición se basan en la falta de cobertura jurídica para los “huesos” de personas muertas en estos casos particulares. Los restos humanos no son “cosas” en sentido jurídico, y por lo tanto

⁸ Por ley pública 101-185 de 1989 fue transferida al Museo Smithsonian la propiedad de más de 800.000 objetos comprendidos en la colección George Gustav Heye del Museo del Indígena Americano en la ciudad de Nueva York.

⁹ La Oficina de Repatriación es un programa adscrito al Departamento de Servicios Comunitarios del Museo Nacional del Indígena Americano y está ubicado en el Centro de Recursos Culturales (CRC) en Suitland, Maryland.

¹⁰ Embajada de los Estados Unidos de América en Chile, Comunicado del Museo Nacional del Indígena Americano referente a Repatriación a Comunidades Indígenas en Chile, 5 de noviembre 2007.

¹¹ Acta de la 16° Sesión Ordinaria del Consejo Académico, La Plata, 27 de octubre de 1989.

no son susceptibles de propiedad alguna. La institución que los cobija, en tanto patrimonio cultural de una nación, lo hace por delegación de su gobierno nacional y podría negarse a su devolución.

3. Legitimidad de los reclamos: las etnias

La descendencia parental consanguínea, se relaciona con el proceso de naturalización de la pertenencia étnica que define a la “etnia” como “un grupo capaz de reproducirse biológicamente, y que comparte características culturales comunes”. De este concepto deriva la legislación europea de “*iuris sanguis*” que privilegia la adscripción étnica por nacimiento. “La versión socio-biológica de este argumento afirma que la etnicidad es una extensión del parentesco y que el parentesco es el mecanismo habitual para la prosecución de fines colectivos en la lucha por la supervivencia”.¹²

La NAGPRA, desde 1990, ha establecido un amplio criterio en los procedimientos de identificación determinado por la descendencia lineal y por las afiliaciones culturales entre las tribus de hoy y los restos humanos, objetos funerarios, objetos sagrados u objetos de patrimonio cultural en museos o colecciones pertenecientes al estado o excavadas intencional o no intencionalmente en territorios del Estado. Se divide en “*Criterio para determinar la descendencia lineal*” por el sistema de parentesco tradicional de la tribu, o por el sistema legal de descendencia (estos estándares requieren que la primitiva persona sea identificada como individuo del que se puede trazar la descendencia) y “*Criterio para determinar la afiliación cultural*” que implica mostrar pruebas de la identidad compartida por la tribu indígena actual y el grupo primitivo al que pertenecían los objetos. La ley enumera todas las posibilidades de justificación de afiliación, incluso mediante la documentación de diseños distintivos en la producción de manufacturas de esa cultura o sus métodos de distribución. Las evidencias geográficas, parentesco, biológicas, arqueológicas, antropológicas, lingüísticas, folclore, tradición oral, historia, información relevante y opinión experta pueden ser utilizadas en la justificación.

Los pedidos de restitución de restos, en algunos casos, tienen más de un reclamante y estos son aspectos que deben conciliarse. Ante múltiples solicitudes de restitución y sin posibilidad certera de determinar al verdadero dueño, sería criterioso que el museo o institución retuviera en custodia el resto u objeto sagrado hasta que las partes acuerden quién lo recibe o se decida legalmente por juicio. En el caso que los descendientes no puedan ser identificados, entonces, esos objetos y restos, junto con los objetos funerarios o sagrados asociados y objetos de patrimonio cultural podrían asociarse a la tribu ocupante de las tierras en que fueron encontrados (previa correspondencia temporal) o la tribu con más cercana relación a esos objetos. Un ejemplo de las dificultades que hay que afrontar es la del Hombre Kennewick, un esqueleto encontrado el 28 de julio 1996 cerca de Kennewick, Washington. Las tribus Umatilla, Colville, Yakima y Nez Perce lo han reclamado como ancestro y solicitan permiso para re-enterrarlo. Los arqueólogos a su vez presentan sus reclamos debido a la edad del resto pues no hay suficientes evidencias para conectarlo con tribus modernas razón por la que es especialmente valioso científicamente. Sólo han logrado determinar que los restos son de origen indio americano.

Para evitar equivocaciones por errores de fichaje y catalogación todos los museos y colecciones deberían completar un riguroso re-inventariado de todos los restos humanos y objetos sagrados y después de ese período comenzar las restituciones ante un posible reclamo de devolución. En la actualidad son muchos los museos de Latinoamérica que

¹² Montserrat Guibernau, *Los Nacionalismos*, Barcelona, Ariel, 1996.

han completado o que están trabajando en el reordenamiento de las “piezas humanas a restituir”.

4. Las investigaciones sobre restos humanos indígenas hoy

Durante el siglo XIX la ciencia estaba totalmente refugiada en la experiencia, en lo fáctico, lo observable, lo cuantificable, en oposición a lo metafísico y lo especulativo. El conocimiento científico era concebido como conocimiento probado. A finales del siglo XIX y comienzos del XX nuevas disciplinas querían hacerse su lugar en el prestigioso mundo de la ciencia. Las ciencias duras comenzaban a desmonopolizar la producción de conocimiento científico y aparecen otras disciplinas que pretenden acotar académicamente diversos espacios similares en lo social. Dentro de este panorama, comienza a afianzarse la arqueología como disciplina científica, apartándose de sus comienzos espirituales y románticos. Luego, ya entrados los años 70, surge la Nueva Arqueología o Procesualista, como un proyecto unitario que se propone descifrar una verdad única sobre el pasado mediante la generación de leyes que permitan explicar el comportamiento humano.

La Antropología Social o Cultural se ocupa de la descripción y análisis de las culturas, las tradiciones socialmente aprendidas del pasado y del presente. La Arqueología es una disciplina que estudia las sociedades a través de sus restos materiales, sean estos intencionales o no y ayuda a la Antropología Cultural en el estudio de los pueblos ya desaparecidos. La Arqueología Histórica estudia las culturas del pasado reciente, mediante una combinación de registros escritos y excavaciones arqueológicas.

El concepto de Patrimonio Cultural y concretamente el de Patrimonio Arqueológico, es el orientador de esta última revolución de la arqueología, la cual ha tenido como consecuencia la ampliación y fragmentación de esta disciplina en cuatro sectores: Arqueología Académica o Universitaria, Arqueología Divulgativa o Museográfica, Arqueología Pública, y Arqueología Comercial o Contractual. Las Arqueologías Académica y Divulgativa se ubicarían dentro de lo que es la Arqueología Tradicional, variando según su función y dependencia. La primera se centra en la investigación desde la academia, mientras que la segunda se centra en la difusión bajo la órbita de los museos. Con el nombre Arqueología Pública se designa a la actividad arqueológica que se realiza desde la administración y su objetivo es administrar el patrimonio arqueológico y funcionar como bisagra con el Estado. La Arqueología Comercial consiste en aquel tipo de actividad arqueológica que se realiza bajo contrato, en la cual se está brindando un servicio, generalmente vinculada a trabajos de evaluación de impacto y/o rescate arqueológico. Se suele hablar solamente de Arqueología de Gestión (Arqueología Pública y Contractual) contrapuesta a la Arqueología de Investigación (Arqueología Académica y Divulgativa). Decimos contrapuesta ya que generalmente la relación entre ambas es muy áspera, con virulentas críticas de una hacia la otra.¹³

La década de los 90 ha sido testigo de la apertura de discursos tradicionalmente marginados como es el caso de los grupos nacionalistas e indigenistas entre otros. Las contradicciones internas que atraviesan los sectores académicos, en una cuestión de alguna manera novedosa, pone en juego no sólo principios éticos, sino que interpela los propios fundamentos sobre los cuales la ciencia antropológica construyó su “objeto de

¹³ Felipe Criado Boado, *El futuro de la Arqueología, ¿la Arqueología del futuro?*, Trabajos de prehistoria, Vol. 53, N° 1, 1996.

estudio” apropiándose de fragmentos de la realidad humana para exhibirlos en exposiciones y museos.

El desarrollo argumentativo puede plantearse desde el problema de la identidad y la utilización del concepto de patrimonio cultural vinculado a la noción de “propiedad”. Respecto al primer punto como condición para proceder a la devolución se suele “(...) verificar la autenticidad de las entidades (reclamantes) para definir errores, (...) saber si realmente tienen personería jurídica y si corresponden al grupo étnico.” Aún en el caso de cumplirse estas condiciones, no todos los académicos están de acuerdo en la devolución porque afirman que: “los objetos considerados de valor arqueológico son propiedad de los estados nacionales y una institución no puede disponer para ellos otro destino diferente que la guarda que se le ha encomendado”. En cambio quienes apoyan la restitución, invocan razones humanitarias y el “derecho de sus descendientes a tratar a sus restos según las costumbres comunitarias”.

La NAGPRA trata de llegar a un equilibrio entre los intereses científicos de investigación y los reconocimientos de los nativos, que, como cualquier cultura del mundo, tiene respeto religioso y espiritual por los restos de sus ancestros. Se retornarán todos los restos solicitados salvo que los mismos sean indispensables para completar un estudio científico específico y cuyo resultado pueda ser de gran beneficio de la Nación. Estos restos u objetos, según su legislación, deberán ser devueltos a sus tribus luego de no más de 90 días después de terminados los estudios. Esto puede llevar a confusión pues hay restos u objetos que pueden ser estudiados durante años o permite justificar una falta de restitución a un constante estudio. El decreto intenta también mediar en la tensión que existe entre los intereses de las tribus comunales en el respeto por el tratamiento de sus ancestros y aspectos culturales relacionados y los intereses de la comunidad científica que estudia esos mismos intereses. Se divide el tratamiento de restos humanos de indígenas americanos, objetos funerarios, objetos sagrados y objetos de patrimonio cultural en dos categorías básicas: las de *descubrimiento casual* y las de *excavaciones planificadas*, en ambos casos deben ser consultadas las potenciales líneas de descendientes de las tribus para su aprobación. Para excavaciones planificadas, la consulta debe realizarse en el período de planificación del proyecto. En las de descubrimiento casual, las regulaciones ponen fechas límite para el inicio y fin de los trabajos de consulta. Se permite un corto tiempo para hacer análisis antes de la devolución de los restos. Una vez determinado que los restos pertenecen a indígenas americanos, los análisis sólo pueden ser realizados con consentimiento de los indígenas si es en tierras tribales o por solicitud documentada si es en tierras federales.

La participación de comunidades originarias en experiencias de rescate de restos humanos ha dado resultados muy positivos. En 2003 un estudio de impacto ambiental realizado en la zona de Sacanana, Patagonia Argentina, por un equipo de arqueología del CENPAT-CONICET determinó la existencia de tres importantes sitios arqueológicos en el área de exploración minera adjudicada a la empresa canadiense IMA S.A. Estos incluían una estructura funeraria prehistórica de piedras denominada “chenque”. Con la supervisión de la Secretaría de Cultura de Chubut y el acuerdo entre tres comunidades indígenas locales, la Dirección de Asuntos Indígenas, los directivos de la empresa y el equipo científico, durante dos años se aplicaron políticas de protección y de control mensual que permitieron la conservación de esos sitios. A principios de 2005 ante una clara situación de riesgo, se procedió a la inmediata relocalización en tierras de Blancuntre (una de esas

comunidades). Los trabajos se realizaron con la activa participación de todas las partes involucradas, en especial los miembros de los pueblos originarios de la zona.¹⁴

En contraposición, la falta de consulta a las comunidades indígenas locales puede repercutir negativamente en la relación entre estos últimos y la comunidad académica. En 2004, en las proximidades de Las Grutas (Río Negro, Patagonia Argentina), se iniciaron trabajos arqueológicos a partir del hallazgo fortuito de restos humanos que fue comunicado al equipo en forma inmediata gracias al éxito de la experiencia descrita en el párrafo anterior. Antes de comenzar las tareas, se realizó una reunión con representantes de las comunidades Mapuches de Las Grutas y San Antonio Oeste que permitió intercambiar puntos de vista y consensuar algunas estrategias de rescate y estudio sobre la base de la búsqueda de intereses comunes. Poco después, el equipo de trabajo realizó otro hallazgo en la zona y por escasez de tiempo y falta de comunicación, no pudo contar con la participación de miembros de comunidades originarias, hecho que repercutió negativamente en la relación. Estas experiencias destacan la importancia de la efectiva interrelación y del fortalecimiento de la confianza mutua centrada en intereses comunes de preservación y memoria.¹⁵

Al intervenir en una sepultura de cuerpos, realizada seguramente en circunstancias ceremoniales -si bien desconocemos en sus detalles-, se supone que hay una intervención sobre una concepción del mundo que hizo que fueran depositados precisamente allí y convirtió a ese espacio en un lugar sagrado. Los descendientes de esos cuerpos integran hoy culturas vivas con ancestros no muy lejanos -en ocasiones menos de quinientos años- y la publicación de las imágenes, se transforma en una invasión a la intimidad que esos cuerpos claramente denotan.

Las restituciones pueden ir acompañadas de ceremonias de dos tipos: una privada (las que realiza la institución que entrega, en acto oficial y la de la tribu que recibe, con oraciones en su lengua) y otra ceremonia de entierro que, posteriormente, puede o no reunir a su gente para un ritual que incluye cánticos y danzas. Estas demostraciones: discursos, ceremonias y danzas demuestran el apego que las tribus originarias tienen por sus restos ancestrales y objetos sagrados pero por sobre todo mantienen vivas las expresiones inmateriales de las culturas a través del tiempo.

5. Los restos humanos indígenas y los museos

Mientras se incrementaron los reclamos de distintas comunidades originarias por la devolución de sus ancestros, la polémica por el retiro de restos humanos de las exhibiciones habría dado origen a diversas rupturas dentro de la comunidad científica de algunos museos. Se puede afirmar que desde el s.XIX hasta hoy han evolucionado las técnicas expositivas y se trabaja aún duramente en renovar la presentación de los paradigmas científicos en la función educativa que tiene el Museo. Se invita al visitante a reflexionar sobre la exhibición y el tratamiento de restos humanos en los museos y se exhiben aquellos que cuentan con la autorización previa de las comunidades a las que alguna vez pertenecieron, en tanto que los no autorizados pasan a depósito dando cuenta previamente de los procedimientos y las distintas etapas a considerar. En un trabajo

¹⁴ X Congreso Asociación Latinoamericana de Antropología Biológica (ALAB): Chiquichano F¹, Sayhueque C², Dahinten S³. Miembro y Presidente de la comunidad indígena de Blancuntre, ²Descendiente de pueblos originarios de Patagonia, Director de Asuntos Indígenas de la Provincia del Chubut, ³Centro Nacional Patagónico (CONICET) y UNPSJB.

¹⁵ *Ibid*: Favier Dubois CM, García Guraieb S^{1,3}, Mariano C². ¹CONICET, ²INCUAPA, Departamento de Arqueología, Facultad de Ciencias Sociales (UNCPBA) Olavarría, ³INAPL, Buenos Aires, Argentina.

planificado y sistemático de determinación del estado de conservación y las características específicas a tal efecto se respetan las instancias de evaluación, registro, tratamiento, definición de los contenedores y características del depósito.

En algunas exhibiciones se intenta mostrar las prácticas y la actitud ante la muerte, que es un tema que se puede seguir tratando pues no son comunes, si existen, las legislaciones que prohíban la exhibición de restos humanos más allá de las recomendaciones de los códigos de ética de las diversas disciplinas involucradas. El Comité Internacional de Museos, por ejemplo, sugiere trabajar a partir del permiso de las partes: "Que la comunidad de pertenencia del resto humano manifieste su consentimiento para la exhibición de dichos restos".

En cada país se ha abierto un debate entre los académicos enrolados en la idea de "defender el patrimonio" de las instituciones y los descendientes de indígenas que reclaman "su patrimonio", mientras la legislación de cada país comienza a examinar la problemática del retorno reconociendo la "preexistencia étnica y cultural de los pueblos indígenas" dando origen a nuevas normativas.

Los defensores del patrimonio museológico fundamentan su idea en que estos restos y objetos sagrados serían los últimos testimonios de razas extinguidas (los descendientes en muchos casos han fusionado su antigua cultura a otras incorporando elementos exóticos a la misma) y sostienen que el público que asiste a los museos, la gente del lugar, tiene un sentido de pertenencia y se niega a que ese patrimonio le sea quitado.

¿Cuán grande sería el perjuicio para el Museo si se hace un despoblamiento masivo de estos cuerpos? ¿Cómo proceder en los casos en que el reclamo incluye la exigencia de devolución de un porcentaje de lo recaudado por las instituciones en concepto de entradas por la exhibición de los restos humanos indígenas? Para algunas instituciones el "objeto a restituir" ha sido el más atrayente de la colección y es el convocante de gran cantidad de público.¹⁶

Custodia en lugar de *propiedad* es la postura del museo con respecto al cuidado de sus colecciones. Por ello el museo debe estar permanentemente interesado en consultar a representantes oficiales de comunidades indígenas en cuanto al trato, gestión e interpretación de los objetos culturalmente relacionados con ellas que existen en la colección del museo.¹⁷ A través de ellos podemos comprobar cómo eran las costumbres y modos de vida de otras culturas. Además, la principal función del museo es educar a través de la observación.

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¹⁶ Es el caso, por ejemplo, del MAM (Museo Arqueológico de Montaña de Salta, Argentina) donde los niños congelados de Llullaillaco, hoy son la principal atracción del museo que ha sido creado especialmente para exhibirlos.

¹⁷ "Repatriación Internacional", Oficina de Repatriación - Repatriation Office, Centro de Recursos Culturales, Museo Nacional del Indígena Americano.

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RESTITUTION DU PATRIMOINE CULTUREL ARCHÉOLOGIQUE INDIGÈNE DANS LE CONTINENT AMÉRICAIN

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RÉSUMÉ

Les musées dont les collections réunissent des restes humains d'anciennes communautés doivent faire face à de nombreux défis. Comment concilier les normes et coutumes culturelles du passé et les droits légitimes de leurs descendants? Les musées, ont-ils le devoir de restituer en répondant aux demandes des descendants des cultures premières, véritables dépositaires et propriétaires de ces biens? Pour les musées, aux dires de François Mairesse, la possibilité de se dépouiller d'une partie de ce qu'on leur a confié est généralement ressentie, par beaucoup de professionnels, comme un contresens à leur vocation. En général, ces institutions ont été créées pour conserver les collections et pour les augmenter. La plupart des réclamations des communautés indigènes pour la restitution de leurs restes humains archéologiques, commencées pendant la décennie du 70, ont été reconnues à partir des années 90, quand leurs dirigeants ont réussi à retirer ces restes des expositions dans les musées et, en d'autres cas, à les restituer à leurs propriétaires d'origine. Les musées, comment font-ils face à ces responsabilités sociales et comment arrivent-ils à les résoudre? Les critères pour déterminer la descendance en ligne directe ou l'affiliation culturelle ont rendu plus facile la restitution même si de multiples demandes sur un même relique ou objet sacré continuent à faire partie du problème à résoudre.

De nombreux conflits ont surgi dans la communauté académique qui voit en danger "ses objets d'étude", à travers lesquels ses membres font des recherches pour savoir comment étaient les habitudes et les modes de vie d'autres cultures. D'autre part, la fonction principale du musée, celle d'éduquer à travers l'observation, pourrait être en crise. Ceux qui font la gestion des musées savent que pas toutes les pièces de leurs collections ne sont égales quant aux principes de restitution: la question des reliques et des restes humains oblige à une considération morale et religieuse. C'est pourquoi le musée doit s'intéresser constamment à consulter des représentants officiels des communautés indigènes quant au traitement, la gestion et l'interprétation des objets d'origine indigène qui sont culturellement liés à ceux qui existent dans ses collections.

* * *

Les musées dont les collections réunissent des restes humains d'anciennes communautés doivent faire face à de nombreux défis. Comment concilier les normes et les coutumes culturelles du passé et les droits légitimes de leurs descendants? Les musées, comment affrontent-ils et s'acquittent-ils de cette responsabilité sociale? Les musées, ont-ils le

devoir de restituer en répondant aux demandes des descendants des cultures premières, véritables dépositaires et propriétaires de ces biens ?

Les responsables de la gestion des musées savent que toutes les pièces de leurs collections ne sont pas pareilles quant aux principes de restitution: la question des reliques et des restes humains oblige à une considération morale et religieuse. De nos jours, on voit une approche favorable à la restitution dans le contexte des objets culturels sacrés et des restes humains, même si ces objets ou restes sont uniques ou rares: Sommes-nous donc sur le point de connaître un changement normatif en ce qui concerne à la gestion de collections ?

Il y a plus de 350 millions d'indigènes dans le monde, dans quelques cas ils subsistent sous des formes ancestrales de vie nomade ou en sociétés tribales. Dans presque la tout l'Amérique du nord et du sud nous trouvons les descendants de cultures anciennes d'origine - plus de 40 millions de personnes c'est-à-dire 10 % de la population - en étant, la Bolivie (60 %), le Pérou (30 %) et le Guatemala (45 % Maya) où ils représentent un pourcentage important.¹ Les indigènes constituent aussi une part importante de la population du Paraguay et de l'Équateur (10 %); dans d'autres pays comme le Chili, la Colombie, la Venezuela et l'Argentine ce sont des populations minoritaires (moins de 5 % de chaque pays) et les États Unis (0,9 %). Au Mexique (11 %), l'état avec une plus grande population indigène est Oaxaca, alors qu'au Brésil (0,4 %) les indigènes sont concentrés surtout dans les zones lointaines, inaccessibles et peu développées dans l'ouest du pays, tels que l'Amazonie, Matto Grosso et les territoires qui les voient. L'Uruguay est le seul pays qui ne possède pas de présence indigène déjà présent au sein de sa population, qui est surtout blanche d'origine européenne (plus de 98 %).

1. Évolution dans le traitement des restes humains indigènes

Pendant la décennie des années 1960, la Société Américaine d'Archéologie (SAA) a rédigé son premier code de déontologie. En quatre déclarations génériques, le code a mis l'accent sur la pratique archéologique de vision patrimoniale dans un contexte d'après-guerre nord-américain qui voyait l'expansion croissante de cette activité dans ce pays.

Un tournant dans le concept de l'archéologie culturaliste qui marquait la gestion et l'interprétation des biens culturels pendant le XX^e siècle apparaît, presque trente ans après, dans le Code de Déontologie approuvé à la suite des débats lors du II^e Congrès Mondial d'Archéologie qui a eu lieu à Barquisimeto, au Venezuela, en 1990. Dans les principes on reconnaît l'importance du patrimoine archéologique indigène pour la survie, le bien-être et la spiritualité des Premiers Peuples et l'autonomie du patrimoine culturel indigène, au-delà de la connaissance scientifique spécialisée, mais on reconnaît surtout que les biens culturels indigènes appartiennent aux indigènes. D'autre part, on reconnaît et on accepte les méthodologies autochtones d'interprétation, de sauvegarde, d'administration et de protection de leur patrimoine culturel.

En 1993, au Nevada, aux États-Unis, on discuté les principes éthiques qui guident la pratique de l'archéologie, de manière à réviser le premier effort pour formuler des critères faits par la Société pour l'Archéologie Américaine en 1960. Ces principes ont été approuvés en 1995 en établissant les critères qui dans les domaines suivants : l'administration, la responsabilité, la commercialisation, l'éducation et l'action culturelle, la propriété intellectuelle, la diffusion et la publication, l'inventaire et le catalogage, la préservation, la formation professionnelle et les ressources. C'est au deuxième point, la

¹ Nestor García Canclini y Carlos Juan Moneta, *Las industrias culturales en la integración latinoamericana*, Grijalbo, México, 1999.

responsabilité (Accountability), où on souligne : “...l’activité des professionnels doit aussi tenir compte des implications qui résultent des fouilles sur les sites et les matériaux archéologiques ; voilà pourquoi les consultations et les relations avec la communauté doivent constituer une partie du travail”.

Le “droit d’opinion” sur l’intervention ou la non intervention dans les sites sacrés et la diffusion / publication de l’information obtenue des descendants des sociétés qui ont produit les restes matériels étudiés a été considéré dans le Code de l’Éthique Professionnelle approuvé par l’Assambléia Geral Ordinaria, pendant la IX Reuniao Cientifica da Sociedade de Arqueologia Brasileira, à Rio de Janeiro, en 1997. La reconnaissance des droits indigènes dans les groupes ethniques de descendance directe ou qui font foi de cet héritage et le fait d’établir la différence entre l’intervention dans les sites considérés sacrés (cimetières indigènes) ou autre site quelconque, sont parmi les points à signaler.

2. Les premières réclamations de restitution

On a entendu les premières réclamations de restitution dans les années 70, dans plusieurs parties du monde. Les communautés d’Amérique du Nord et d’Australie ont été les premières.

La Déclaration de Barbados I, du 30 janvier 1971, a été le résultat du Symposium d’anthropologues réalisé par le Conseil Mondial des Églises (World Council of Churches). Sans la participation des indigènes, les demandes principales ont été présentées par des missionnaires et des anthropologues préoccupés par la situation des groupes aborigènes du continent. Elle a probablement été la première d’une série de processus qui se sont développés postérieurement dans toute l’Amérique Latine, puisque c’est à partir de 1971, que l’organisation et mobilisation indigène s’est mise en marche organiquement.²

La Déclaration de Barbados II, du juillet 1977, souscrite par 18 indigènes et 17 anthropologues, dans son point 3, Responsabilité de l’État, dit:

L’état doit reconnaître les droits des entités indigènes à s’organiser et à se régir selon leur propre spécificité culturelle, ce qui ne peut nullement limiter leur membres à exercer tout les droits des citoyens, mais qui les exempte, en échange, d’accomplir les obligations qui soient en contradiction avec leur propre culture.

Dans la lecture des lignes générales on remarque le déroulement de deux positions opposées: d’une part les arguments scientifiques : “toute découverte, ruine et gisement paléontologique et archéologique d’intérêt scientifique” (selon les arguments invoqués, les restes humains appartiendraient à la catégorie de “découverte”, “ruine”, etc., “invisible” en leur condition d’humanité) et, de l’autre, les communautés aborigènes qui essayent de récupérer la partie de leur histoire dont elles ont été privées. Les différentes conceptions d’identité sous-jacentes dans les systèmes normatifs (organisés en corps de loi ou appuyés sur des coutumes et traditions) vont se constituer en axe qui oriente la dispute entre les groupes en conflit, tandis que l’action de restitution impliquerait restituer aux os (considérés jusqu’à ce moment-là la propriété du musée ou de la collection) leur identité /

² Andrés Serbin, “Etnicidad y política. Los movimientos indígenas en América Latina”, en: Nueva Sociedad, Nro. 49, julio-agosto, 1980.

visibilité en tant que relique appartenant à une communauté et, en conséquence, sujet de droit aux rites et cérémonies.³

Un cas paradigmatique c'est la loi du Musée National de l'Indigène Américain de 1991 (National Museum of the American Indian Act), pour laquelle: "la majorité des collections des musées nationaux ont été transférés à un nouveau musée, géré par un comité de peuples indigènes..." et la NAGPRA (Native American Graves Protection and Repatriation Act)⁴, Loi pour le Rapatriement et la Protection des Tombes des Américaines indigènes, qui s'applique aux restes humains et aux objets d'importance culturelle découverts après le 16 novembre 1990. La législation n'est pas applicable aux terres privées et a été sanctionnée au bout d'une longue campagne conduite par des dirigeants spirituels et organisations indigènes dont le but a été "La marche la plus longue" (The Longest Walk), un mouvement qui, partant de San Francisco, est arrivé jusqu'à Washington pour présenter la demande au Président Carter.

Dans les pays latino-américains, les premières réclamations aux autorités datent du milieu des années 80, mais les quelques restitutions se sont matérialisées seulement après quinze ans.⁵ D'abord, vers les années 90, quelques pays approuvent et sanctionnent des législations basées sur l'Accord 169 de l'Organisation Internationale du Travail autour de Peuples Indigènes et Tribales des Pays Indépendants, lequel établit dans son paragraphe a) de l'Article 4: "*on devra reconnaître et protéger les valeurs et pratiques sociales, culturelles, religieuses et spirituelles propres à ces peuples et on devra considérer sérieusement la nature des problèmes auxquels ils font face collectivement et individuellement*". Mais, en général, on ne reconnaît pas aux premiers peuples leurs droits sur leurs morts et les communautés indigènes s'opposent au traitement que cette loi leur donne.⁶

Les Nations Unies ont énoncé leur avis dans leur Déclaration des Droits des Peuples Indigènes, dont l'article 13, partie III dit:

Les peuples indigènes ont le droit de manifester, pratiquer, développer et enseigner leurs traditions spirituelles et religieuses, leurs coutumes et cérémonies; le droit de conserver, protéger et avoir accès privé à leurs sites religieux et culturels; le droit à l'usage et contrôle des objets cérémoniaux; et le droit au rapatriement de leurs restes humains. Les États devront prendre des mesures efficaces, conjointement avec les peuples indigènes concernés, pour garantir la sécurité des sites sacrés indigènes, y compris les sites d'enterrements, qui devront être préservés, respectés et protégés.

³ Maria Di Fini, 'Visibilidad/Invisibilidad en la relación Sociedad Aborigen/Estado Nación', en: *La Trama Cultural* 2° Edición: Mariano Garreta y Cristina Bellelli, 2000.

⁴ The Native American Graves Protection and Repatriation Act (NAGPRA), Pub. L. 101-601, 104 Stat. 3048, is a United States federal law passed on 16 November 1990 requiring federal agencies and institutions that receive federal funding to return Native American cultural items and human remains to their respective peoples.

⁵ En Argentine, jusqu'à ce moment-ci, on a concrétisé la restitution de deux restes humains de chefs des communautés Tehuelche (1994) et Ranquel (2001) et la restitution d'une momie Guanche aux îles Canaries.

⁶ Ainsi parle, parmi d'autres, Luis Pincén, descendant du chef ranquel Pincén dont la capture, en 1878, a marqué la fin de la résistance indigène, en disant "...on ne nous nomme même pas et en conséquence on ne nous considère pas une culture vivante ..."

Par ailleurs, le Conseil International de Musées, dans son Code de Déontologie (2004) fait allusion en particulier au traitement de matériaux culturels délicats (restes humains ou objets de caractère sacré):

...leur exposition doit se faire en accord avec les normes professionnelles et en tenant compte, si on les connaît, des intérêts et croyances des communautés ou groupes ethniques ou religieux d'où ils procèdent. Ils doivent être présentés avec tact et en respectant les sentiments de dignité humaine de tous les peuples. Le musée devra répondre efficacement, montrant du respect et de la sensibilité devant les demandes formulées par les communautés d'où ces restes humains ou objets de caractère sacré procèdent en vue de les faire retirer de l'exposition au public. On répondra de la même manière aux pétitions de restitution de ces restes ou objets. Les normes de procédure des musées doivent établir clairement le procédé pour répondre à ces pétitions.⁷

À la fin de l'année 2001, le Congrès de la République Argentine a établi que *“les restes mortels des aborigènes, quel que soit leur caractère ethnique, qui font partie des musées et/ou de collections publiques ou privées, devront être mis à la disposition des peuples indigènes et/ou communautés d'appartenance qui les réclament”*. La norme qui est longtemps restée sans réglementation dû aux fortes demandes, n'a pas interdit de se servir des lois particulières pour chaque cas de restitution. L'absence de réclamations de ces restes n'exempte pas celui qui les détient de l'obligation d'informer de leur existence. Il est intéressant de souligner que la loi comprend les collections privées aussi.

Diverses institutions muséales existent qui ont développé des initiatives plus étendues que les normes délinéées par la loi. Le Smithsonian Institution est un exemple⁸ dont les actions vont au delà de la Protection de Tombes Indigènes Américaines et le Rapatriement. Celle-ci envisage le rapatriement seulement à des communautés ou peuples indigènes d'Alaska et à des organisations indigènes hawaïennes reconnues par le gouvernement fédéral aux États-Unis. Le musée a un regard proactif quant à la sauvegarde et à la restitution de tous les restes humains qu'ils détiennent, en amplifiant l'entendu de destinataires à tous les pays et non seulement aux États-Unis. Tous les restes humains qui sont dans les collections de musée sont exposés dans une installation séparée du Smithsonian Institution, maintenus dans un milieu minimalement invasif, jusqu'au moment de les retourner à leur communauté et/ou à leur endroit d'origine. L'accès aux restes est restreint aux membres de l'équipe qui ont la responsabilité de les protéger, et aux représentants indigènes officiels responsables des affaires culturelles qui sont en rapport avec qui désirent les visiter. L'Office de Rapatriement du Musée National de l'Indigène Américain⁹ (NMAI) a rapatrié, le 1^{er} novembre 2007, quatre restes humains provenant du Chili dont il avait la garde, à deux localités reconnues culturellement liées: la Comunidad Atacameña de San Francisco de Chiu Chiu dans la Région de Antofagasta, et des groupes Aymaras de la Région de Arica et de Parinacota.

⁷ ICOM, *Code de Déontologie de l'ICOM pour les musées*, approuvé à Buenos Aires en 1986, amendé et revu à Barcelone en 2001 et à Seul en 2004, paragraphes 4.3 et 4.4.

⁸ Par la loi publique 101-185 de 1989, on a transféré au Smithsonian Museum la propriété de plus de 800.000 objets de la collection George Gustav Heye du Musée de l'Indigène Américain de la ville de New York.

⁹ L'Office de Rapatriement est un programme agrégé au Département des Services Communautaires du Musée National de l'Indigène Américain, placé au Centre des Ressources Culturelles (CRC) à Suitland, Maryland.

Le rapatriement a demandé plus de cinq ans de consultation communautaire entre les représentants du peuple indigène du nord du Chili pour établir la légitimité de la demande, et le gouvernement chilien, à travers le Conseil de Monuments Nationaux du Chili (CMN) et la Corporation Nationale du Développement Indigène (CONADI). Les négociations étaient menées avec la collaboration de l'Ambassade des États-Unis à Santiago. Les restes, deux corps et deux crânes, étaient arrivés au Musée de l'Indigène Américain sans aucun renseignement adéquat. Ils ont été acquis par un collectionneur particulier, M. George Gustav Heye, dont la collection est passée à la Smithsonian Institution et les restes se sont trouvés, plus tard, au Musée National de l'Indigène Américain en 1989.¹⁰

Depuis que cette législation a été mise en valeur aux États-Unis, on a restitué à leurs tribus respectives 32 mille restes humaines, près de 670 mille objets funéraires, 120 mille objets funéraires non associés et 3.500 objets sacrés. NAGPRA pose aussi des restrictions aux fouilles visant les restes indigènes, et même on met une limite à l'étude de ces restes. Plus de 110 mille restes n'ont pu être attribués à aucune tribu en particulier et, par conséquent, ils sont encore dans des différentes institutions aux États-Unis.

Dans les pays où les législations sont encore en cours d'élaboration, certaines autorités de musée mettent en cause la viabilité des réclamations d'un point de vue légaliste, ce qui révèle de profondes contradictions à l'intérieur de la communauté académique entre ceux qui sont pour la restitution des restes et ceux qui disent "défendre" un patrimoine culturel dont les musées ne devraient pas se dépouiller.¹¹ Les arguments qui appuient cette dernière position se basent sur le manque de protection juridique pour les "os" de personnes mortes, dans ces cas particuliers. Les restes humains ne sont pas "des choses" dans un sens juridique et, par conséquent, ne sont susceptibles d'aucune propriété. L'institution qui les héberge, en tant que patrimoine culturel d'une nation, agit par une délégation de son gouvernement national et pourrait refuser de les restituer.

3. Légitimité des réclamations: les ethnies

La descendance consanguine parentale fait parti du processus d'établir l'affiliation ethnique, lequel définit "l'ethnie" comme "un groupe capable de se reproduire biologiquement et qui partage des caractéristiques culturelles communes". La législation européenne de "*iuris sanguis*" qui privilège l'attribution ethnique par naissance relève de ce concept. "La version sociobiologique de cet argument affirme que l'ethnicité est une prolongation du parentage et que le parentage est le mécanisme habituel pour la continuation de buts collectifs au cœur de la lutte pour la survie".¹²

La NAGPRA a établi, depuis 1990, des critères dans les procédures d'identification déterminée par la descendance linéale et par les affiliations culturelles entre les tribus actuelles et les restes humains, objets sacrés ou objets de patrimoine culturel dans les musées ou dans des collections appartenant à l'état, ou résultant des fouilles menées dans un but intentionnelle ou des trouvailles fortuites, en territoires de l'État. Il se divise en "*Critère pour déterminer la descendance linéale*" par le système de parentage traditionnel de la tribu, ou par le système légal de descendance (ce qui demande que la primitive personne soit identifiée comme un individu dont on peut tracer la descendance) et "*Critère pour déterminer l'affiliation culturelle*" qui demande de fournir des preuves de l'identité partagée par la tribu indigène actuelle et le groupe premier auquel appartenaient les objets.

¹⁰ Ambassade des États-Unis d'Amérique au Chili. Note du Musée National de l'Indigène Américain par rapport à la Rapatriement à des Communautés Indigènes au Chili, le 5 novembre 2007.

¹¹ Procès-verbal de la 16^e Session Ordinaire du Conseil Académique, La Plata, le 27 octobre 1989.

¹² Guibernau, Montserrat, *Los Nacionalismos*, Barcelona, Ariel, 1996.

La loi énumère toutes les possibilités de justification d'affiliation, même au moyen de la documentation de dessins distinctifs dans la production de manufactures de cette culture ou ses méthodes de distribution. Les évidences géographiques, biologiques, archéologiques, anthropologiques, et linguistiques ; le folklore, la tradition orale, l'histoire, l'information importante et l'opinion autorisée peuvent être utilisés au moment de la justification.

Les réclamations de restitution de restes, dans certains cas, ont plus d'un réclamant et les parties doivent être réconciliées. Quand les demandes de restitution sont nombreuses et qu'on ne peut pas déterminer avec certitude qui est le véritable possesseur, il serait raisonnable que le musée ou l'institution garde le reste ou l'objet sacré jusqu'à ce que les parties en litige se mettent d'accord sur qui va le recevoir, ou jusqu'à ce que l'affaire ait une solution juridique. Si les descendants ne peuvent pas être identifiés, ces objets et restes avec les objets funéraires ou sacrés associés et les objets de patrimoine culturel pourraient revenir à la tribu qui occupe les terres où on les a trouvés (correspondance temporelle préalable), ou à la tribu ayant le lien le plus proche avec ces objets. Un exemple des difficultés auxquelles il faut faire face est celle de l'Homme Kennewick, un squelette trouvé le 28 juillet 1996, près de Kennewick à Washington. Les tribus Umatilla, Colville, Yakima et Nez Perce l'ont réclamé comme leur ancêtre et elles demandent la permission pour l'enterrer de nouveau. Les archéologues présentent, à la fois, leurs réclamations en s'appuyant sur l'âge du reste que ne montre pas évidences suffisantes pour l'associer aux tribus modernes, ce qui est pourquoi il a une valeur scientifique particulière. On n'a pu que déterminer que les restes sont d'origine indo-américaine.

Pour éviter des fautes dues aux erreurs dans l'inventaire ou dans le catalogue, tous les musées et collections devraient compléter un ré-inventaire de tous les restes humains et objets sacrés et une fois finie commencer avec les restitutions avant qu'une réclamation possible de restitution ne soit faite. De nos jours, les musées d'Amérique Latine qui ont complété ou qui sont en train de refaire le classement des "pièces humaines à restituer" sont nombreux.

4. Les recherches sur les restes humains indigènes aujourd'hui

Pendant le XIX^e siècle, la science était totalement plongée dans l'expérimentation, dans ce qui est faisable, observable, quantifiable, par opposition à ce qui est métaphysique et spéculatif. La connaissance scientifique était conçue comme une connaissance prouvée. À la fin du XIX^e siècle et aux débuts du XX, de nouvelles disciplines cherchaient leur place dans le monde prestigieux de la science. Les sciences dures commençaient à perdre le monopole de la production de connaissances scientifiques et d'autres disciplines ont apparu qui marquaient leur territoire dans les espaces académiquement similaires, en particulier dans le domaine social. Dans ce panorama, l'archéologie, en tant que discipline scientifique, commence à s'affermir, en s'éloignant de ses débuts spirituels et romantiques. Plus loin dans les années 70, la *nouvelle archéologie* ou *archéologie des processus* apparaît comme un projet qui se propose de déchiffrer une vérité unique sur le passé, à l'aide de la découverte de lois fondamentales qui permettent d'expliquer le comportement humain.

L'*anthropologie sociale* ou *culturelle* s'adresse à la description et à l'analyse des cultures et des traditions socialement acquises au passé et au présent. L'archéologie est une discipline qui étudie les sociétés à travers leurs restes matériels exhumés à dessein ou sans intention directe, et aide l'anthropologie culturelle à étudier les peuples aujourd'hui disparus. L'archéologie historique étudie les cultures du passé récent, au moyen des documents, les inventaires et les excavations archéologiques.

Le concept du *patrimoine culturel* et concrètement celui du *patrimoine archéologique*, est l'axe de la dernière révolution de l'archéologie, laquelle a eu comme conséquence l'élargissement et ensuite la fragmentation de cette discipline en quatre secteurs : *l'archéologie académique* ou *universitaire*, *l'archéologie de dissémination* ou *muséographique*, *l'archéologie publique* et *l'archéologie commerciale* ou *contractuelle*. Les archéologies académiques et de dissémination se placeraient dans ce qu'est l'archéologie traditionnelle et varient selon leur fonction et le milieu où elles sont situées. La première vise l'investigation à partir de l'académie tandis que la deuxième s'occupe de la diffusion dans le domaine des musées. On définit l'archéologie publique comme l'activité archéologique qui se mène à partir de l'administration et dont l'objectif est de gérer le patrimoine archéologique et de fonctionner en collaboration avec l'État. L'archéologie commerciale c'est le type d'activité archéologique qui se fait sous contrat, en offrant un service, généralement liée à des travaux d'évaluation d'impact et/ou de sauvetage archéologique. On a l'habitude de parler seulement d'archéologie de gestion (archéologie publique et contractuelle) en opposition avec l'archéologie de recherche (archéologie académique et de dissémination). On dit « en opposition » car généralement le rapport entre les deux est très âpre, avec des critiques virulentes de part et d'autre.¹³

Les années 90 ont été témoin de l'ouverture des discours traditionnellement marginaux comme c'est le cas de groupes nationalistes et indigénistes, parmi d'autres. Les contradictions internes qui traversent les secteurs académiques est un enjeux nouveau qui met en cause non seulement des principes éthiques mais aussi les fondements mêmes sur lesquels la science anthropologique a bâti son "objet d'étude" en s'appropriant de fragments de la réalité humaine pour les présenter en expositions et dan les musées.

Le développement de l'argument peut se poser á partir du problème de l'identité et de l'utilisation du concept de patrimoine culturel lié à la notion de "propriété". Par rapport au premier point, comme condition pour procéder à la restitution il est fréquent de "(...) vérifier l'authenticité des entités (ceux qui réclament) pour identifier des erreurs, (...) savoir si elles ont réellement un statut juridique et si elles correspondent au groupe ethnique". Même dans le cas où les demandeurs remplissent ces conditions, les académiques ne sont pas tous d'accord sur la restitution parce qu'ils attestent que "les objets considérés de valeur archéologique sont la propriété d'états nationaux et une institution ne peut disposer pour eux un autre destin différent de la sauvegarde qu'on lui a confiée". Par contre, ceux qui sont pour la restitution invoquent des raisons humanitaires et le "droit qu'ont les descendants à gérer ses restes selon les coutumes communautaires".

La NAGPRA essaie d'arriver à un équilibre entre les intérêts scientifiques de recherche et la reconnaissance des Premiers Peuples lesquels, comme n'importe quelle culture du monde, ont un grand respect religieux et spirituel pour les restes de ses ancêtres. On restituera tous les restes demandés, sauf s'ils sont indispensables pour compléter une étude scientifique spécifique et dont le résultat puisse être d'un grand bénéfice pour la Nation. Ces restes ou objets, selon la législation, devront être restitués à leurs tribus 90 jours au plus tard après la fin des études. Cela peut mener à confusion car il y a des restes ou des objets qui peuvent être étudiés pendant années, et ce texte permet ainsi justifier la non restitution à cause d'une étude permanente. Le décret essaie aussi de se placer au milieu de la tension qui existe entre les intérêts des tribus communautaires en ce qui

¹³ Criado Boado, Felipe, *El futuro de la Arqueología, ¿la Arqueología del futuro?*, Trabajos de prehistoria, Vol. 53, N° 1, 1996.

concerne le respect envers leurs ancêtres et la manière de les traiter, et les aspects culturels en ce qui les concerne et les intérêts de la communauté scientifique qui les étudie. On classe les restes humains d'indigènes américaines, les objets funéraires, les objets sacrés et les objets de patrimoine culturel en deux catégories fondamentales: celle de *découverte fortuite* et celle d'*excavation programmée*. Dans les deux cas, on doit consulter les lignes potentielles de descendants des tribus pour leur approbation. Pour les excavations programmées, la consultation doit se faire pendant le période de l'élaboration du programme du projet. Pour les découvertes occasionnelles ou fortuites, les règlements posent des dates limites pour le commencement et la fin des travaux de consultation. On permet une durée courte pour faire des analyses avant la restitution des restes. Une fois déterminé que les restes appartiennent à des indigènes américaines, les analyses ne peuvent se faire qu'avec le consentement des indigènes, si elles se font en terres tribales ou au moyen d'une demande documentée, ou s'il s'agit de terres fédérales.

La participation de communautés premières dans les cas du rachat de restes humains a donné des résultats très positifs. En 2003, une étude d'impact sur le milieu réalisée dans la région de Sacanana, Patagonie Argentine, par une équipe d'archéologie du CENPAT-CONICET a identifié l'existence de trois importants sites archéologiques dans l'aire d'exploration minière adjugée à l'entreprise canadienne IMA S.A. Ceux-ci comprenaient une structure funéraire préhistorique de pierres nommée "chenque". Avec la surveillance du Secrétariat de la Culture de Chubut et l'entente entre trois communautés indigènes locales, la Direction des Affaires Indigènes, les directeurs de l'entreprise et l'équipe scientifique, on a mis en place des mesures de protection et de contrôle mensuelles pendant deux ans qui ont permis la conservation de ces sites. Au début de 2005, devant une nette situation de risque, on a procédé à mettre les mêmes mesures en place en terre de Blancuntre (une de ces communautés). Les travaux ont été réalisés avec la participation active de toutes les parties concernées, en particulier les peuples originaires du territoire.¹⁴

Par contre, le manque de consultation avec les communautés indigènes locales peut répercuter négativement sur la relation entre ces dernières et la communauté académique. En 2004, près de Las Grutas (Río Negro, Patagonie Argentine), on a commencé des travaux archéologiques à partir de la découverte fortuite de restes humains, communiquée immédiatement à l'équipe grâce au succès de l'expérience décrite dans le paragraphe précédant. Avant de commencer les travaux, une réunion s'est tenue avec les représentants des communautés Mapuches de Las Grutas et San Antonio Oeste, ce qui a permis d'échanger des points de vue et d'arriver à un accord sur quelques stratégies de rachat et d'étude sur la base de chercher des intérêts communs. Peu après, l'équipe de travail a fait une autre trouvaille dans ce territoire et faute de temps et de communication, elle n'a pas pu compter avec la participation de membres de communautés premières et cela a détérioré les relations. Ces expériences soulignent l'importance de l'interrelation efficace et du renforcement de la confiance mutuelle fondée sur les intérêts communs de préservation et de mémoire.¹⁵

¹⁴ X Congrès Association Latino-américaine d'Anthropologie Biologique (ALAB): Chiquichano F¹, Sayhueque C², Dahinten S³. Membre et Président de la Communauté indigène de Blancuntre, ²Descendant de peuples originaires de Patagonie, Directeur des Affaires Indigènes de la Province de Chubut, ³Centre National Patagonique (CONICET) y UNPSJB.

¹⁵ Ibidem: Favier Dubois CM, García Guraieb S^{1,3}, Mariano C². ¹CONICET, ²INCUAPA, Département d'Archéologie, Faculté des Sciences Sociales (UNCPBA) Olavarría, ³INAPL, Buenos Aires, Argentine.

Au moment de faire une étude sur un enterrement de corps, réalisé sans doute dans de circonstances cérémonielles – même si nous ne connaissons pas les détails, on suppose qu'il y a une intervention sur une conception du monde qui a fait qu'ils fussent déposés juste là ce qui a transformé cet espace en un site sacré. Les descendants de ces corps intègrent, de nos jours, de cultures vivantes avec des ancêtres pas très lointains – parfois de moins de cinq cents ans – et la publication des images, devient en une invasion à l'intimité que ces corps dénotent clairement.

Les restitutions peuvent être accompagnées de cérémonies de deux types: l'une privée (celle que l'institution qui restitue fait, en cérémonie officielle et celle de la tribu qui reçoit, avec des prières dans sa langue) et une autre cérémonie d'enterrement qui peut réunir ou ne pas réunir les gens de la tribu en un rituel avec des chants et des danses. Ces démonstrations: discours, cérémonies et danses montrent l'attachement que les tribus originaires ont pour leurs restes ancestrales et objets sacrés mais et surtout, elles maintiennent en vie les expressions immatérielles des cultures à travers le temps.

5. Les restes humains indigènes et les musées

Au moment où les réclamations des différentes communautés originaires ont augmenté, la polémique autour de l'enlèvement des restes humains des expositions aurait été à l'origine des ruptures diverses dans la communauté scientifique de quelques musées. On peut affirmer que, depuis le XIX^e siècle jusqu'à aujourd'hui, les techniques d'exposition ont évolué et on travaille encore assidument afin de renouveler la présentation des paradigmes scientifiques dans la fonction éducative du musée. On invite le visiteur à réfléchir sur l'exposition et le maniement de restes humains dans les musées et on présente ceux qui sont sélectionnés avec l'autorisation préalable des communautés auxquelles ils ont appartenu, tandis que ceux qui n'ont pas été autorisés passent en dépôt, en fournissant au préalable des informations sur les procédés et en tenant compte des différentes étapes. Au moyen d'un travail programmé et systématique de constat de l'état de conservation et des caractéristiques spécifiques, on tient compte des évaluations, de l'inventaire, du traitement, de la description des conteneurs et des caractéristiques du dépôt.

Dans quelques expositions on essaie de montrer les pratiques et l'attitude face à la mort, un thème qu'on peut continuer à traiter car les législations qui interdisent l'exposition de restes humains, au delà des recommandations des codes d'éthique des diverses disciplines compris, ne sont pas courants si encore elles existent. Le Comité International de Musées, par exemple, suggère de travailler à partir de la permission des parties: "*Que la communauté d'appartenance du reste humain manifeste son consentement pour l'exposition de ces restes*".

Dans chaque pays, un débat s'est ouvert entre les scientifiques qui soutiennent l'idée de "défendre le patrimoine" des institutions et les descendants d'indigènes qui réclament "leur patrimoine", en même temps que la législation de chaque pays commence à examiner la question de la restitution en reconnaissant "la préexistence ethnique et culturelle des peuples indigènes" en donnant ainsi naissance à de nouvelles normes.

Les défenseurs du patrimoine muséal fondent leur idée en l'affirmation que ces restes ou objets sacrés seraient les derniers témoignages de races disparues (les descendants ont, à plusieurs reprises, fusionné leur ancienne culture à d'autres, en incorporant des éléments étrangères) et soutiennent que le public qui visite les musées, les gens du lieu, ont un sens d'appartenance et ne doit pas être dépouillé de leur patrimoine.

Dans quelle mesure nuirait-on au Musée si on provoque une disparition massive de ces corps? Comment agir dans les cas où les réclamations comprennent l'exigence de remettre un pourcentage de la recette réunie par les institutions estimées à partir des billets d'entrée pour l'exposition des restes humains indigènes? Pour quelques institutions "l'objet à restituer" a été le plus fascinant de la collection et celui qui a intéressé la majeure partie du public.¹⁶

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¹⁶ C'est le cas, par exemple, du MAM (Musée Archéologique de Montagne de Salta, Argentine) où les enfants congelés de Llullaillaco sont, aujourd'hui, le principal attrait du musée qui a été créé spécialement pour les exhiber.

RESTITUTION AND IDENTITY, FROM THE INDIAN PERSPECTIVE

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ABSTRACT

Important historical objects acquire cultural and emotional significance for the people to whom the objects originally belonged. They become part of the identity of the people infused with strong sentiments and emotional connotations. In the process of restitution of objects it is important to consider the following factors; the emotional connection the people have with objects, the object's legal status, Government policies regarding restitution, the impact it will have on both the countries, technical and financial feasibility of conservation and preservation of the objects. Museologists should be allowed to engage in diplomatic endeavor in process of restitution so that feasible solutions can be chartered out, which can benefit both the countries in terms of education, research and cultural enrichment.

The Indian Government's policy towards restitution of historically and culturally important objects has not been a positive and justifiable one. They have blundered in important cases, including the restitution of Mahatma Gandhi's memorabilia. Though the deaccession of objects is prohibited according to Indian law, yet one cannot rule out illegal deaccession from museums, as all museums in India do not have a scientific process of documentation.

Museums on the other hand are repositories of various cultures and give people an opportunity to comprehend and learn to tolerate different cultures at the same time. However, to accept the claims of restitution or to resist it depends on individual cases, moral justifications and the emotions of the people in question at a particular point of time. Giving back culturally and historically important objects to the country to which it rightly belongs is the true justification.

RÉSUMÉ

Restitution et identité: le point de vue indien

Les objets historiques à la signification forte ont une importance émotionnelle majeure pour les peuples auxquels ces objets appartenaient à l'origine. Ils constituent une partie de l'identité de la population et sont la source de sentiments puissants, chargés de connotations affectives. Lors de la restitution de ces objets il faut tenir compte de la façon dont ils ont été extraits à leur pays d'origine. Les muséologues seraient en droit de s'engager dans le processus diplomatique menant à leur restitution. Ainsi des solutions réalisables seraient définies, pouvant être bénéfiques aux pays concernés, autant dans le cadre de l'éducation, que de la recherche et de l'enrichissement culturel.

Pour ce qui est de la restitution de ces objets d'importance historique et culturelle actuellement à l'étranger, la politique du gouvernement de l'Inde, brille par une injustifiable absence. Des maladroites ont été commises dans des cas aussi importants que le retour des objets personnels de Mahatma Gandhi. L'aliénation

des objets est certes interdite, mais comment parler d'aliénation quand il n'y a pas eu d'enregistrement légal et scientifiques de ces objets en tant qu'inaliénables ?

Les musées sont des lieux qui nous introduisent aux différentes cultures et nous donnent l'occasion de voir, étudier, comprendre les cultures des autres, contribuant de la sorte à l'harmonie sociale. Cependant, accepter ou refuser les demandes de restitution dépend beaucoup des situations individuelles, des justifications morales et du climat émotionnel d'une population au moment où les faits ont lieu. En fin de compte, la véritable justification, est dans l'acte même de restitution de ces objets culturels et historiques à leur propriétaire légitime: leur pays d'origine.

* * *

Introduction

Sands of time erode the memories of man and the interpretation of those residual memories is what we call 'history'. But even history is too detailed and overwhelming, it is the objects, associated with history that the human imagination infuses with powerful meaning making it a witness of a particular time. The power of human imagination and the infused power of objects take on some of those details and give those events in human history immortality. Thus a sculpture, a painting, or a story, pack the essence of an event and float it across the ocean of time. In this way there forms a thematic link between the objects (associated with a particular event) and the event.

Objects that are thematically linked to important events in the history of a people become culturally significant. These objects become part of the identity of the people, eventually becoming imbued with emotional connotations. Museologists have to impress upon the Governments the importance of this emotional connection with certain objects. But government policies as in India do not allow museologists and museum professionals to engage in the diplomatic endeavor in the process of restitution. If museologists are allowed to be part of this inter governmental undertaking then they can iron out differences in culturally sensitive ways, preventing the process of restitution from becoming a diplomatic nightmare. Various methods of sharing can also be chartered out by which both the countries can benefit, such as a loan of the objects as well as exchange of cultural expertise on the subject.

The act of restituting an object will affect the mindshare of the common man in both countries, as the people of the host country develop a 'relationship' with the object, parting with it evokes an emotional response. The act of restitution will be like a cultural 'band aid' for the recipient country. However, every case has to be analyzed and deliberated in detail on an individual basis.

The process of restitution involves myriad of issues. The important issues in the process of restitution of objects are as follows: First, determining the cultural and historical significance of the objects; second, the emotional connection of the people with these objects and the sentiments of the people involved (of both the host country and the country of origin) towards the objects; third the means by which they were acquired by the host country; the policies of the Governments of the countries involved in regard to restitution, and the legal status of the objects in question; fourth, the impact the process of restitution will have on the host and the receiving country; fifth the financial and technical feasibility of the receiving country; sixth, the most important aspect for consideration should be the safety, conservation and preservation of the objects; and lastly the benefit in terms of research,

education and cultural enrichment the objects can give in relation to the host country or the country of origin. I will approach the process of restitution from the above perspective.

The Means, an example

'How is it that your countrymen steal our gods?' a Brahmin had asked John Chamberlain, a Baptist missionary, who had noted in his diary the following details of their conversation on 20th November 1817¹.

"Sir, a gentleman whose name I do not remember, came to me to let him take the image of Lukshmee away, which stood on the point where the river and rivulet meet; and he said he would give me a sum of money if I could consent to it. I told him that I could not take any money for it; that she was worshipped by all the people around, and that several times a year the people assembled from the country at a distance to see the goddess, and to bathe: at which time much was offered to her'. The gentleman persisted. He returned four or five times, offered ample remuneration and even took the Brahmin by boat to see the assemblage of gods in his Calcutta house, but still the brahmin refused to sell. Finally, the gentleman 'got his people together, took away the goddess by night. There the tree stands, Sir, but the goddess is gone!"

Such instances as cited by Historian Nayanjot Lahiri², in his article 'Archaeology and Identity in Colonial India' show us that a great deal of material culture was illegally, forcefully and deceitfully taken from India during the British rule. These artifacts found their place in British museums and private collections. The means used show contempt for the 'native people' and their culture and traditions. In a living culture the emotional bond with material culture continues to exist in the flow of time even when people are on hard times.

Emotional connection

Material culture, especially objects of worship evoke in a society 'emotional connections', which the society has made with the objects. These objects are injected with character and the society's perceptions and concepts of reality. Each object acts as a marker of the society's relationship to reality and the society's emotional connection with the world. To illustrate this relationship I will share my experience of a visit to the Saraswati Mahal Museum in Thanjavur, Tamil Nadu, India, in September 2009.

On my visit, while I was admiring a bronze Nataraja of the Chola dynasty, 10th century A.D, a simple woman came and placed a marigold on the object. I quietly observed her from a distance as I wanted to understand what the great bronze Nataraja meant to her. The Nataraja signifies the creation of the universe as well as its destruction according to the wheel of time. While I was admiring the great aesthetics and highly skilled craftsmanship of a bygone era, this visitor was standing with folded hands before the Nataraja in silent prayer, perceiving the museum object in the thriving richness of her sacred reality, interpreting transcendence into this reality of the museum object. During my prior research on visitors' behavior, I have observed similar behavior of visitors as well as museum employees across India. The holy characteristics of the objects do not seem to diminish even when they have been removed from their original context, still holding the power to invoke the same emotional connection that they have in their original environment.

The above characterization of objects in a sacred reality is a spiritual marker of the living Indian culture. Material culture is the medium through which man retains his roots and his

¹ Navanjot Lahiri, "Archaeology and Identity in Colonial India." *Antiquity* 74 (2000): 687-92. Print

² *ibid.*

identity. This behavior of museum visitors shows how an object can retain its cultural essence despite its displacement in time and space. Museums have to handle the delicate task of maintaining a balance between preserving the past, nurturing the living, changing society and providing the future with a clear account of its past.

Thus as Judith K. Spielbauer says

we have to understand preservation as an active, integrative participant in human experience through the study and understanding of the individual's culturally structured relationship to the meaning, value and significance manifested through material culture³.

We have to understand material culture and its importance to identity of a society as well as the emotional relationship the object has with the people to make rational and ethical judgments in relation to restitution and repatriation of objects. As Janna Thompson, Melbourne University, writes in *Cultural Property, Restitution and Value*:

Cultural property is often bound up with the very identity of collectivities, their traditions, and practices, and so long as their members retain relevant parts of this tradition, the lost artifact or relic will continue to be important to their collective life. And second, because cultural property does not belong to merely to the members of a particular generation, it is a possession of the collectivity as an *intergenerational* association. Its members pass it down from one generation to another, and it's meaning is bound up with their desire to perpetuate their traditions and practices. In this respect, a piece of cultural property is like a family heirloom. When a property has the status of an heirloom we assume that it can be subject to a legitimate demand for restitution several generations after dispossession has occurred⁴:

Policy of the Indian Government

Indian cultural policy does not directly involve museums, museum professionals and archaeologists in the process of restitution of cultural objects to India. It is the prerogative of the Ministry of Culture and the Ministry of External Affairs, under the authority of the Government. According to the Indian Government policy, National, State and Regional museums cannot sell or dispose any object in their collections. Deaccession of museum objects is prohibited in India. Furthermore, privately owned objects more than hundred years old have to be registered with the Archaeological Survey of India (ASI), and cannot be taken out of the country or sold without the prior permission of ASI⁵. However, illegal deaccession of objects cannot be totally ruled out in India as majority of the small museums do not have proper documentation of objects. For example the scientific

³ Judith K. Spielbauer, "A Means to an Integrative Preservation." ICOFOM Study Series 12 (1987): 275.

⁴ Janna Thompson, "Cultural Property, Restitution and Value." Melbourne University Working Paper 2003/1, Centre for Applied Philosophy and Public Ethics: 6. Accessed online 10 Feb. 2010

⁵ Acknowledgements: Dr. Chenna Reddy, Director, Archaeology and State Museums of Andhra Pradesh, Hyderabad, India, Dr. M. L. Nigam, Former Director, Salar Jung Museum, Hyderabad, India, Mr.D. Kanna Babu, Deputy Superintending Archaeology, Archaeological Survey of India, Hyderabad, India.

documentation of objects under the jurisdiction of the Archaeology and Museums of Andhra Pradesh has only started last year.

During the partition of India and Pakistan the material culture found in the territory of the respective countries were retained by them. Moreover, India has the second largest population of Muslims in the world; therefore the Islamic art was retained by India without much opposition. Similarly, the artifacts of the Indus Valley civilization that was found and kept in the museums of the territory of Pakistan have been retained in Pakistan.

Apathy of the Indian Government

Consider the site museum and state museum collections of Buddhist art from Amaravati, Guntur District in Andhra Pradesh India, of Satavahana period 2nd century BC. The culturally significant part of this collection is in the British Museum, London. According to Jessica Rawson, Keeper, Department of Oriental Antiquities, British Museum London (1992) "The Amaravati sculptures are the glory of the British Museum's Indian collections and are the most important single group of ancient Indian sculptures outside the subcontinent. They represent one of the highest points of the Indian sculptural tradition and proudly stand equal with the greatest art of the ancient world⁶." In 1859, part of the sculptures excavated from Amaravati were shipped to London and subsequently many followed till the end of nineteenth century, when "legislation was just starting to protect the ancient heritage of India and the wholesale removal of large parts of great monuments from India, easily possible in the decade of Mutiny, had stopped⁷." The Amaravati collection subsequently found its place in the British Museum, London.

Despite Buddhism being a living religion of India, and also being aware that they are culturally highly significant objects, the Government of India has not yet initiated the process of restitution of the Amaravati collection. If the entire collection is put together at the site museum in Amaravati, the visitors will have a holistic experience. Mr. Kanna Babu, former director of the site museum in Amaravati, feels that Indian museums have equally competent manpower and the capability to care for the objects. In his words "We wish that our cultural objects should be returned to their place of birth, that is our cherished dream".

Furthermore, the following two examples provide for more such evidence, which shows the apathy and indifference of the Indian Government towards its own culture.

Firstly, the personal possessions of Mohandas 'Mahatma' Gandhi, 'Father of the Nation' had come to the auction market in March 2009 in New York. Auctioneers were set to open the bid of Gandhi's personal possessions such as his iconic round glasses, a pocket watch, and leather sandals for an estimated 30,000 pound. The Government of India was urged to retrieve these possessions from this auction. The Consul General of India stationed in New York was asked to intervene in the proceedings of this auction as a representative of India, before the auction started. However, the offer made by the representative was too insufficient to even be worth mentioning⁸.

A golden opportunity fell in to the arms of the Indian Government to repatriate these culturally and historically significant objects, their cavalier attitude ensured that no plausible attempt was made. Ironically, all currency notes in India have a portrait of Mahatma

⁶ Robert Knox, *Amaravati - Buddhist Sculpture from the Great Stupa*. N.p.: British Museum Press, 1992. 7-22.

⁷ *ibid*

⁸ Thakur H. Dayal, and Prakashan Sundeep. *Ancient Culture of India*. [n.p.], British Museum Press, 1981. 166-68.

Gandhi. The only saving grace was that it was bought by, the Indian industrialist, Mr. Vijay Mallya for \$1.8 million, 60 times the expected price⁹. Secondly, Mr. Vijay Mallya also bought the Sword of Tipu Sultan and few other priceless artifacts, looted by the British forces in the 18th century and taken back to the United Kingdom, that came under the auctioneer's hammer in 2003 in London¹⁰. Though the Indian Government had failed embarrassingly, Mr. Vijay Mallya successfully brought back (repatriated) to India a few culturally significant objects, by exercising his economic leverage, showing pride in his identity, and inspiring the coming generations to preserve and celebrate their culture.

A collectivity's right to restitution may not last forever as argued by many, but as long as they are important to the identity of its people and especially as long as they are culturally significant they definitely hold the right to claim what rightly belongs to them.

Museums' Perspective

Museums, especially the major museums who have signed the Declaration on the Importance and Value of Universal Museums argue that they have the right to resist restitution claims as certain objects are of great value to humanity and that they are justified in 'keeping' the objects in order to promote their perpetuity. According to this Declaration:

The universal admiration for ancient civilizations would not be so deeply established today were it not for the influence exercised by the artifacts of these cultures, widely available to an international public in major museums. ... Calls to repatriate objects that have belonged to museum collections for many years have become an important issue for museums. Although each case has to be judged individually, we should acknowledge that museums serve the peoples of every nation. Museums are agents in the development of culture, whose mission is to foster knowledge by a continuous process of reinterpretation. Each object contributes to that process. To narrow the focus of museums whose collections are diverse and multifaceted would therefore be a disservice to all visitors¹¹.

Conclusion

To accept the claims of restitution or to resist it depends on individual cases, moral justifications and the emotions of the people in question at a particular point of time. Museums play an important role in integrating the peoples of the world, in reducing strife, promoting diversity and global harmony. In the museal reality if restitution is accepted in totality, then museums would become bereft of different cultures from different parts of the world. The common man will not have the opportunity to see cultures of other countries and also lose the possibility of seeing and appreciating various cultures side by side. Museums give a chance to the people to have a dialogue with cultures from different parts of the world. Museums are like a kaleidoscope of cultures of mankind and this acceptance of cultural diversity requires the intellectual and moral unity of museum professionals to

⁹ "Gandhi items 'to return to India'." BBC World News 5 Mar. 2009, South Asia ed. Accessed online: 10 Mar. 2010. <http://news.bbc.co.uk/2/hi/south_asia/7925686.stm>.

¹⁰ "Tipu's sword back in Indian hands." BBC World News 7 Apr. 2004, south asia ed. Web. 10 Mar. 2010. <http://news.bbc.co.uk/2/hi/south_asia/3609205.stm>.

¹¹ "Declaration on the Importance and Value of Universal Museums." The British Museum, British Museum, 2003. Accessed online: 10 Mar. 2010.

work towards making the social fabric of every society cohesive. On the other hand, restitution of culturally significant objects to the country of origin can go a long way in building bridges between countries and promoting global harmony. Giving back what rightly belongs to a culture is the true justification, which will also help in promoting goodwill, friendship and emotional bonding between the countries. It will heal the wounds inflicted in the past making way for a more tolerant future. Alas! It is 'emotions' that makes us human.

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RETURN OF CULTURAL RELICS TO THE NATION(S) OF ORIGIN: REFLECTIONS ON THE TRANSFER OF MUSEUM PIECES

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ABSTRACT

Many nations have lost cultural relics for various reasons, such as war, political conflict, stealing or smuggling, and more. And a number of them have been brought into museums across the world and become precious objects there. It is a serious problem for the relevant governments and museums to hand over these relics to their original country (countries) or museum (museums). The authors of this paper suggest six ways for dealing with this problem. 1) The relevant international conventions should be used to their full extent so that member countries whose museums are in possession of the illegally acquired objects would give back the relics to where they came from. 2) We should speed up drafting domestic laws to meet the urgent need for the issue. 3) We should set up special institution(s) to administrate such matters. 4) The role of the customs office should be exerted wholly. 5) Museums of our country should be well prepared to trace our lost relics overseas and to get them back accordingly; and 6) We should sign memorandums with a number of related nations for a less difficult recovery of our lost relics.

RESUMÉ

La Restitution des biens culturels aux pays d'origine : Réflexions sur le transfert des objets de musée

De nombreux pays ont vu leurs biens culturels disparaître pour des raisons aussi diverses que la guerre, les conflits politiques, le vol, la contrebande, et autres.... Une quantité non négligeable de ces objets ont été acquis par des musées à travers le monde, prenant ainsi une grande valeur. C'est un problème sérieux pour les responsables des pays possédants que de restituer ces objets aux pays d'origine et à leurs musées. Les auteurs suggèrent six approches pour traiter ces problèmes : 1) Utiliser toutes les mesures des conventions internationales ayant trait à ces questions, de manière à ce que les pays membres dont les musées possèdent des biens culturels illégalement acquis, les restituent aux pays d'où ils viennent. 2) Accélérer la rédaction de lois nationales permettant de répondre aux besoins les plus pressants à ce sujet. 3) Mettre en place des organismes spéciaux chargés de l'administration de ces questions. 4) Utiliser au maximum les services douaniers. 5) Utiliser les musées nationaux pour identifier les objets illégalement acquis et les faire revenir. 6) Signer des accords avec les pays possédant ces objets afin de faciliter la restitution de notre patrimoine culturel.

RESUMEN

Transferencia de las reliquias culturales a sus países de origen: Reflexiones sobre la entrega de las piezas de museo

La pérdida de reliquias culturales responde a razones que se encuentran detrás de las apariencias, tales como la guerra, los conflictos políticos, el robo o el contrabando, etc. Muchos objetos perdidos fueron entregados a distintos museos de diferentes países del mundo y hoy son exhibidos como piezas de gran valor. Es un serio problema tanto para los gobiernos como para los museos devolver estas reliquias a su país de origen o museos. Los autores de este documento sugieren las siguientes vías para enfrentar el problema. En primer lugar, se debería apelar a las correspondientes convenciones internacionales utilizándolas en su total alcance para que cada país, cuyos museos posean objetos adquiridos ilegalmente, los restituyan a su lugar de origen. En segundo término, es indispensable diseñar un conjunto de leyes domésticas que se ocupen de la urgente necesidad de tratar este tema. Asimismo, se debería crear una institución especial para administrar dicha problemática. En cuarto lugar, es indispensable que sea ejercida una mayor vigilancia en las oficinas de aduana. Quinto, los museos del país deberían estar mejor preparados para localizar las reliquias perdidas allende los mares y reclamarlas por las vías que corresponda. Finalmente, es indispensable firmar acuerdos internacionales para recuperar con menores dificultades para recuperar nuestras reliquias perdidas.

* * *

At present people in the field of museums internationally and in academic museum circles are debating heatedly about whether museum pieces illegally obtained should be handed over to where they came from, regardless of the way that this property was acquired. They may have been obtained through lawful channels such as buying or accepting donations from someone else, or simply through illegal activities such as stealing or smuggling. Many governments have given their due attention to this issue.

Since museum pieces are of the first priority to the museum that holds them, while there exist a number of international conventions by which all illegally obtained museum pieces should be transferred to their original country, many museums are still reluctant or uncooperative regarding this call of justice. We hereby put forward some of our own personal views to try to tackle this problem. And all comments and criticism of this paper are greatly welcomed.

I. An analysis of transferring cultural relics from different types of acquisition

The different backgrounds are: (1) war; (2) political; (3) theft or smuggling; and (4) other conditions of acquisition.

(1) War

War or warring states did not come into existence until there appeared private assets and classes in the human society. Wars are used as a means to settle conflicts or controversies among classes, nationalities, states and political groups, and thus become an utmost fighting mode ever since. The human history of civilization, so to speak, is a one of warring history, and the change of dynasties, the reform of social institutions are all connected with wars as such.

Wars have caused severe disasters to mankind as well as to human civilization. Lots of the human cultural relics have been damaged and many precious pieces of them have been robbed.

For example, the second opium war (1856-1860) was between China and the British and French allied army on the Chinese soil. The British and French allied army occupied Tianjin and Beijing consecutively, and robbed huge amounts of artistic objects; moreover, the British and French allied army barbarically set the Garden of All Gardens of Beijing on fire. Many of the Chinese lost artistic pieces that went into western museums and became the most valuable objects there. Although some of Chinese lost artistic pieces have been returned to China, most of them are still been detained by the museums through various excuses.

Another example is the Napoleon wars fought in Europe in 1799-1815. Since Napoleon adopted advanced tactics, attacked his enemies one by one wisely and made full use of his artillery, the French occupied many states and looted many artistic pieces there. Then they took them all into Museum of the Louvre (changed into the Napoleon Museum at that time). However, Napoleon lost the throne in April 1815 and was punished by a life sentence on a remote island afterwards. Some 5000 artistic pieces from the Louvre were transferred back to the States that originally possessed them. This can be said as one of the earlier cases about returning the stolen property back to their rightful owners.

Still another example, World War II, the biggest war in history, began in 1939 and lasted for several years (1939-1945). The Axis of fascism occupied many countries of Asia, Africa and Europe and ruled cruelly there. At the same time, they took away many precious artistic objects and museum pieces with them so as to strengthen their own museum positions. When the war was over, the once occupied states asked Germany, Italy and Japan urgently to transfer the robbed artistic objects and museum pieces back to them. Although under pressure some of the robbed articles have been returned, more of them are still in the hand of the “robbers” for one cause or another. It has been a tough issue since then.

(2) Political backgrounds

When the Nazi regime took office in Germany in January 1933, it began to rob the Jewish people of their assets and even wanted to exterminate the Jewish nation. There is no doubt that the Nazis brought the artistic pieces robbed from the Jewish people to German museums. While the Germans have returned some of the property to the Jewish people, a number of German museums refused to transfer all the stolen artistic pieces to them with various excuses. Hence, many controversies appeared.

The so-called “cultural revolution” took place in China in 1966 and lasted for ten years. During this time a lot of relics were ruined and some private possessions even brought into local museums.

The administrative office of the Communist Party of China issued a notice in July of 1984, which was originally drafted by Ministry of the United Frontiers and the Group of the Party of the National Political Consultation of China. The document number of the notice was No. 24 (1984). The notice stressed the political side of the seriousness about returning the private possessions to those who once had them including artistic pieces, gems, etc. And it also said that to do the job well was to safeguard the reputation and honor of the party and

the government, to safeguard China's positive international image. It was closely linked with the improvement of the party's morale and the level of civilization of society. Every one should pay due attention to it so that this correction would be realized successfully.

In order to realize the requirement of the notice, local governments at the provincial level were actively engaged in doing the transfer of the objects to their legal owners (though some of them have become precious museum pieces). For instance, The Tianjin Art Museum returned a few Chinese paintings, such as *The Snowy Woods*, *Ke Bo* (a kind of the ancient Chinese big bell) and *Ke Zhong* (another kind of the ancient Chinese big bell) by Fan Kuan of the Song Dynasty to Mr. Zhang Shucheng, which were painted more than 1000 years ago.

The Shanghai Museum returned a vase with beautiful blue clouds on it of the Ming Dynasty to its legal owner, which was made at least more than 300 years ago. All this practice was both kind and considerate, and many legal owners were greatly moved that they decided to donate the returned art pieces back to the museum(s). For example, Mr. Zhang Shucheng contributed all three ancient Chinese paintings to the Tianjin Art Museum.

(3) Stealing or smuggling

At present, the booming market for art pieces greatly stimulates pilfering or smuggling of these objects. The prices are going up constantly and both the stealing and smuggling activities are more active than ever before. As a result, many of the nation's cultural relics, including masterpieces of art, the unique ancient Chinese bronze vessels, and others were lost.

Since the stolen or smuggled objects are basically very precious and old, naturally they have become the most valuable and striking articles within the museum where they located. Many museums refuse to transfer back these precious articles out of their own selfish considerations.

The good news is that a considerable amount of these art pieces have been returned to their original states recently, which is contributed to the ever increasing effort made by a number of countries concerned. For example, the New York Metropolitan Museum showed on February 21, 2006 that it had signed a formal agreement with the Italian government, and that 6 pieces of artwork illegally excavated would be returned back to Italy. In return, the Italians agreed to lend some of their precious museum pieces of the same classification to the New York Metropolitan Museum for a long-term exhibition. It is said that this outcome did not happen until 25 years of negotiation between the two parties had been completed. Again, on July 27 of that year, the Boston Art museum of America agreed to return some of its artistic pieces bought by smugglers from Italy. And on August 1, 2007, the J. Paul Getty Museum agreed to return 40 pieces of artwork to Italy, and a very precious sculpture of Venus was among them.

In June 1988, a few bronze artistic objects were stolen which belong to the Warring States Period dated from ancient China nearly 3000 years ago. The bronze vessel (used for holding grain), the bronze sword, the bronze kettle and the bronze series of bells were among the stolen objects. They were finally transferred to Sotheby's, waiting for auction. Thanks to joint efforts, these bronze artistic objects went back to their hometown of Qu Yuan Memorial (Qu Yuan was a very famous patriotic poet of that time) in Zigui County, Hubei Province of China in May 1989.

On March 4 1976, some sculptures of Buddha that dated from the North Wei Dynasty of ancient China (336-534, AD) were discovered in Boxing, Shan Dong province. Owing to unfortunate man-made destruction, most of them had been lost and only 72 pieces of them were returned. A single stone Buddha figure was stolen in July 1994. It then appeared in Japan's MIHO museum. Under the mass pressure from the media home and abroad, the Japanese museum agreed to donate that Buddha figure to China. On January 9, 2008, it returned home at long last after 14 years' of tough experience and suffering.

(4) Other backgrounds to acquisition

It refers mainly to the returning of museum pieces to the lawful owner(s), such activities are fundamentally based upon social and moral standards.

In February 1989, the natural science museum in Taizhong city, Taipei Province of China bought a wood piece, which used to be a memorial token by the Ye family to memorize their forefathers. The token then became a museum piece there and showed at the exhibition of "The Chinese People's Spiritual Life".

Accidentally, a member of the Ye's family visited the museum and found the token. The family then got in touch with the museum, saying that the token was originally theirs, and for some reason or another, it was lost. The family wishes it to be transferred back to them.

With regard to social and moral standards of the Chinese society, the museum decided to give the token back to the Ye's family. However, for the sake of keeping away any potential judicial troubles in the days to come, the museum asked the family to select a family member to handle the matter with full rights on behalf of his or her family. Before taking the token home, the selected person of the family should sign an agreement with the museum, and one copy of the agreement is to be kept by the museum. Again, the family should cover the expenses occurring from copying the token by the museum. When all this was done, the token could be taken away by the family and deleted from the catalogue of the museum pieces there.¹

II. Suggestions about transferring cultural relics to their original state(s)

Since museum pieces are vital to museums that hold them, they are illegally detained via various excuses and then troubles arouse naturally among nations. The authors of this paper suggest the following ways for dealing with this problem.

1. The related international conventions should be utilized to their full extent so that member countries whose museums had possessed the illegal objects would give back the relics to where they came from.

We would like to stress three major related international conventions, namely, 1) *Convention on banning and preventing the illegal import & export and transfer of ownership of cultural assets* approved by UNESCO in 1070 (generally called *the 1970 convention*, China joined this convention in 1989); 2) *Convention on the transfer of ownership of stolen or smuggled cultural relics as exports* approved by United Society of International Private Law in 1995; 3) *Convention on illegal export of stolen or smuggled cultural relics* approved by United Society of International Private Law in 1995 (generally called *returning cultural relics convention*; China joined it in 1997).

¹ "Reflections on the returning of the token to the Ye's family" by Zhang Chenmei, Bulletin of National Science Museums, No. 181, 2002.

The 1970 convention stipulates that “Countries that joined this convention accept the idea that illegal import/export and transfer of cultural assets is one of the major reasons to cause the dying out of these assets in those countries that once legally had them, and that international cooperation is one of the most effective ways to keep these assets away from various dangers thus caused ... For this purpose, countries that joined this convention would utilize all the means, especially through extinguishing the root of this trade, stopping the present practice and providing necessary help and compensation, to fight against illegal import/export and transfer of cultural assets ... Countries that joined this convention and violate the stipulations to undertake such import/export and transfer of cultural assets are regarded as illegal.” The convention also stipulates “An invaded country’s export and transfer of its cultural assets to other nation(s) under direct or indirect pressure of the conqueror country should also be regarded as illegal.”²

Returning cultural relics convention begins:

This convention is suitable for the following international requirements: (1) requirement for returning cultural relics stolen; (2) requirement for returning cultural relics illegally taken away from the soil of the country that joined this convention”. Chapter 2 of the convention is written especially for stating responsibilities and requirements about cultural relics stolen, and clearly states “Those who are in possession of the theft cultural relics should transfer them back to their legal owners.”³

Because of the great pressure from some European and American countries, the fifth article of the third term adds, “Any country that joined this convention can declare a claim whose time span should be within 75 years, or longer than that time span regulated by the law of that country. A claim made in another country that joined this convention concerning transfer cultural relics from memorial sites, cultural relics spots or public museums of the country that itself is also a member country of this same convention, whose time span is to be regulated by the above stipulation.” This addition provides the judicial basis for those European and American museums in terms of time limit, and sets huge blocks for China, Egypt and the like to get back their cultural relics missed abroad in the past through theft or robbery.

While there exist a few regrets in the *Returning cultural relics convention*, it is after all the first clear expression of the international community that cultural relics missed overseas within the time limit of 75 years should be returned to their original country’s museums or private owners. It provides a judicial foundation for getting back cultural relics missed in the past 75 years. Therefore countries suffering from losing cultural assets should make a full use of this convention, and be actively engaged in getting them back.

On December 11, 2002, directors of 18 museums of America, France, Germany, Italy, Spain, Holland and Russia made a declaration in Munich, Germany *Declaration on the Importance and Value of Universal Museums* (called *Universal Declaration* for simplicity

² Policies and international conventions from the official website of the state bureau of cultural relics of the People’s Republic of China.

³ The Han & Tang Dynasty, cultural relics, international conventions from the official website of the bureau of cultural relics of Shan Xi province, China. <http://www.wenwu.gov.cn/ShowArticle.aspx?ArticleID=464>, visited on Sep. 13, 2006.

afterwards), which aims at providing excuses for their museums to retain what they had illegally possessed in the past. The declaration says

The international museum community shares the conviction that illegal traffic in archaeological, artistic and ethnic objects must be firmly discouraged. However, we must recognize that objects acquired in earlier times must be viewed in the light of the different sensitivities and values, reflective of the 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 the current ones. Over time, the objects so acquired by purchase, gift or partage have become part of the museums that have cared for them, and by extension part of the heritage of the nations which house them. Today we are especially sensitive to the subject of the work's original context, but we should not lose sight of the fact that museums too provide a valid and valuable context for objects that were long ago displaced from their original source. ... Calls to repatriate artifacts that have belonged to museum collections for many years have become an important issue for many museums. Although each case has to be judged individually, we would acknowledge that museums serve not just the citizens of one nation but the people of every nation. Museums are agents in the development of culture, whose mission is to foster knowledge by a continuous process of reinterpretation. Each object contributes to that process. To narrow the focus of museums whose collections are diverse and multifaced would be a disservice to all visitors.⁴

The Universal Declaration met a lot of criticism and refutation when published, even a few European and American museums that enjoy universal preservation value of their museum pieces (such as the Orient Museum in Sweden) expressed different opinions.

Chinese experts also expressed their viewpoints. Mr. Xie Chensheng thought that cultural relics can only be mutually enjoyed, but cannot be possessed in the same way. Mr. Li Xueqin held that focus should be put on the missing cultural relics at the moment, which will help suppress further losing of such objects. Mr. Luo Zhewen pointed out that we should have different policies toward different categories of missing cultural relics. For example, some of them were given as gift to foreign countries; some were stolen or hoaxed away, the missed Dunhuang cultural relics fall into this category; still some were illegally smuggled onto the foreign soil. Mr. Su Donghai wrote several articles to stress the true universal feelings, that is, the respect to a nation and her national culture. The logic of the powerful countries is to strengthen the historic inequity, while that of the pressed countries is to change this inequity. This is a serious matter concerning the cultural integrity of a nation.⁵

⁴ Declaration on the importance and value of Universal Museums "Museums Serve every Nation" by 18 Art Museum directors, December 12, 2002, Wall Street Journal

⁵ "An Exploration into Museum Pieces and the Universal Problem—On the Treatment of Illegal Outflow of China's Cultural Relics", China Museums, No. 4, 2007; Cultural Relic News of China, February 14, 2003; "Cultures Can Be Mutually Enjoyed While Cultural Relics Can Only Possessed By One Country", Cultural Relic News of China, February 21, 2003; Su Donghai "The Powerful Logic and the Universal Feelings", Cultural Relic News of China, March 7, 2003; Su Donghai "Prosperity of the Universal Museums and the Judicial and Moral

However, there is no denying that the publication of The Universal Declaration helped Great Britain to lessen the international pressure it experienced, and that the publication of the document symbolized a big set-back to those countries who wanted to get back their lost artistic pieces, of which the Greeks trying to have the Elgin marbles returned was a typical case.

The International Society of Museums made a declaration to safeguard its position on December 13, 2002, in which it said

The International Society of Museums accepts the idea that we need a different feeling and value perspective toward the museum pieces that were obtained long ago...All the museums across the world serve the same purpose, i.e. to serve the society and help its development, they enjoy a mutual object. This society welcomes dialogues and investigation on the issue of returning cultural relics, and believes that such activities will help to bring about a more balanced viewpoint on this sensitive topic.⁶

The authors of this paper hold that we should use all lawful means possible to get back our lost cultural relics within the frameworks of the 1970 convention and returning cultural relics convention of 1995.

2. Speed up drafting domestic laws to meet the urgent need

We have only two laws of protecting cultural relics, i.e. *Cultural Relics Protection Law of The People's Republic of China*, and *Concrete Provisions for Cultural Relics Protection Law of The People's Republic of China*. But, these two laws have not touched those issues relating to or connected with other countries. This is a great setback because, according to the stipulations of the related conventions, any country that joined the conventions should by law take up the lawsuit of getting back the lost cultural legacies for their rightful owner or representative of the legal owner. Therefore, we must speed up drafting domestic laws to meet the urgent need and provide timely information for our judicial courts.

3. Set up special office(s) to administer the return of cultural property

The Egyptian government set up an independent institution in 2001 which is responsible for getting back the Egyptian lost cultural relics, and more than 300 pieces of these objects have been regained since its establishment. We should follow Egypt's suit to build an office to trace the whereabouts of and get back China's lost cultural property. The office is supervised by the state council and composed of experts from different departments as those of foreign affairs, public finance, taxation bureau, cultural relics, customs office and public security, etc. Funds needed should be appropriated.

4. Let the customs office play a more active role

The customs office enjoys two kinds of functions; it is the last threshold to prevent smuggling of cultural relics abroad, and the first threshold to receive cultural relics regained from outside. The *Convention on the transfer of ownership of stolen or smuggled cultural*

Foundations for Returning Cultural Relics to Their Original Country", *Cultural Relic News of China*, April 25, 2003.

⁶ *Cultural Relic News of China*, February 14, 2003.

relics as exports approved by United Society of International Private Law in 1995 requires any country that joined it to control its foreign trade, hence the role of the customs office is very important.

In the past, the Chinese Customs Office levied a tax on China's lost cultural relics from overseas. Although the amount of the tax money is bracketed, to some extent, it hurts the Chinese museums to be actively engaged in tracing the lost artistic objects. Hence, a stipulation was declared on January 20, 2009 jointly by the Ministry of Finance, the General Customs Office, the State Bureau of Taxation, which was entitled "*Temporary Regulations on Tax-free Museum Pieces That Are Imported for Public purposes by State-owned Preservation Organizations*". It states that all the imported museum pieces for eternal preservation, presentation, and research purposes, etc, which are to serve the public, are exempt from import duty, import VAT; these objects can be gained through accepting donation from foreign donors, claiming for and getting back the lost artwork, or buying back those missing objects⁷. Hence, a more favorable situation about taxation comes into being for receiving the lost museum pieces from foreign lands.

5. Museums of our country should be well prepared to trace the lost relics overseas and try to get them back

In accordance with the related international conventions and the relevant regulations of some European and American countries, anybody who wants to trace the lost relics overseas and to get them back should hand in all the necessary documentation. Hence, museums and archaeological organizations of our country should strictly act according to the relevant laws and regulations, so as to do the job well step by step when receiving new museum pieces, or when new archaeological programs are to be carried out.

Museums of our country should also have a comprehensive bookkeeping system, including files for each museum piece and various ledgers that can provide all the physical and financial information for the art objects. Again, the archaeological organizations of our country should be very careful in sampling the earth, analyzing the chemical elements, drawing the plane graphics, photographing and video recording of the object, etc. All the work should be documented that once some valuable artwork is missing, we can get it back precisely in accordance with the related international conventions.

In addition, we can sign memorandums with the countries related to ensure that when our cultural relics were illegally brought to those countries, it is then their duty to return them back to China.

⁷ Administration Information, Policy Release from the official website of the Ministry of Finance of the People's Republic of China. http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/200902/t20090206_112237.html

PRAGMATIC CONSIDERATIONS OF THE RETURN OF CULTURAL HERITAGE

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ABSTRACT

The return of cultural heritage is a consequence of the illegal exportation of cultural objects. It is an historical problem as well as a realistic one today. In essence, the return of cultural property is a problem pertinent to the interests to both parties, both the giver and receiver. One cannot rely on only the restraint of ethics to solve this problem, or on how strongly one feels, but one must strive to be pragmatic. This paper discusses how to deal pragmatically with the return of cultural property in the real circumstances of today. In conclusion, it is emphasized that paying attention to the entire body of cultural heritage that was illegally exported and the safeguarding of it may be more important and urgent than the return of the cultural property itself.

Key words: cultural heritage, return, pragmatic, equality, dialogue

RÉSUMÉ

Considérations pragmatiques pour la restitution du patrimoine culturel

La restitution du patrimoine est la conséquence de l'exportation illégale de biens culturels. C'est un problème ayant trait autant à l'histoire, qu'à notre réalité contemporaine. La restitution s'adresse aux intérêts des deux partis, autant le donateur que le bénéficiaire. Afin de résoudre cette question, nous ne pouvons pas avoir recours uniquement à l'expression de nos désirs ou à l'éthique, nous devons aussi faire des efforts pour concrétiser la restitution avec un certain pragmatisme. Cette intervention donne des réflexions sur la manière de traiter la restitution par une approche pragmatique dans le contexte actuel. Pour conclure, il est souligné que nous devrions faire attention à l'ensemble du patrimoine culturel qui a été exporté et que sa sauvegarde est peut-être plus importante et plus urgente que la restitution des biens culturels en elle-même.

Mots clé : patrimoine culturel, restitution, pragmatique, égalité, dialogue

RESUMEN

Sobre el pragmatismo de la restitución del patrimonio cultural

La restitución del patrimonio cultural es una de las consecuencias de la exportación ilegal de objetos culturales. Es tanto un problema histórico como un problema real que se manifiesta más que nunca en la actualidad. En esencia, la restitución del patrimonio cultural es un problema de interés nacional. Para resolver esta cuestión no podemos tan sólo recurrir a la expresión de deseos o a la ética: necesitamos esforzarnos para concretar la restitución con cierto pragmatismo. En el artículo se discute cómo manejar de manera práctica la restitución del patrimonio cultural

teniendo en cuenta las circunstancias de la presente realidad. Finalmente, el autor de este documento pone énfasis en la necesidad de tomar medidas para impedir la exportación ilegal del patrimonio y su salvaguarda tal vez más importante y urgente que la restitución del objeto patrimonial en sí mismo.

* * *

The general topic of the 33rd ICOFOM Annual Symposium is 'A New Global Ethics on Deaccession and Return of Cultural Heritage'. Although ICOFOM has divided it further into several sub-topics, in my opinion it is not the best one for the ICOFOM Annual Symposium. The reasons for it are: First, ICOFOM has devoted itself to the study of museum theory, and has its own definite direct and fields of research. The topic of this Symposium is one relating to Ethics, and doesn't fully embody the scholarly goal of ICOFOM. It is a more appropriate topic for the symposium of the Committee of Ethics than the one of ICOFOM. Secondly, the return of cultural heritage is not a new topic, whether in theory or in practice. The topic of this Symposium focuses on 'the Ethics'. To a certain extent, this is the occasion for discussing the principles, and its pragmatic considerations are not prominent enough. Third, within the scope of world, there is a great disequilibrium between museums in different nations and regions. Meanwhile, the return of cultural heritage is a sensitive issue. So, although the topic may make the discussion of the Symposium hotter, it also makes it difficult to reach effective results. Nonetheless, as a researcher of museology, I'm willing to express my own views on the return of cultural heritage, especially the pragmaticity of it.

In the past decades, the return of cultural heritage has been a topic of discussion. Through the joint efforts of UNESCO, ICOM and other organizations, some progresses has been made in many aspects of the return of cultural heritage, such as understanding the demands, organization, laws, institutions, and so on. Meanwhile, people have come to some common agreements on the responsibility and duty which museums should assume in the return of cultural heritage. These common agreements are reflected in several resolutions adopted by the general Assembly of United Nations, and some adopted by the General Assembly of ICOM¹. Among these resolutions, some important thoughts were put forward, for example, the emphasis on the importance and significance of the objects², and appeals for dialogue and co-operation between the different countries³. They have transcended their past difficulties. Moreover, some successful cases have occurred in practice⁴. Therefore, in respecting the cultural heritage, the urgent task is how to deal effectively with the return of cultural heritage in our present frame of knowledge, and not to discuss the obsolete topics such as whether museum has the duty to return cultural heritage, and so on.

The return of cultural heritage has been the result of illegally exported cultural property. During a long time in the past, especially in the colonial times, under the influence of colonial plunder, stealing and illicit traffic of cultural property, a great many cultural objects

¹ C.f.,1.UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970),'Illicit Traffic',<http://www.unesco.org>; 2 'Resolutions adopted by the United Nations General Assembly about Return and Restitution of Cultural Property', 'Return of Cultural Property',<http://www.unesco.org>; 3 'ICOM Ethics of Acquisition (1970)', 'Archives', <http://icom.museum>., 4,'Resolutions adopted by the General Assembly', 'Archives', <http://icom.museum> .

² C.f.,'Resolutions adopted by the United Nations General Assembly about Return and Restitution of Cultural Property '(1983:2/1987:0),' Return of Cultural Property',<http://www.unesco.org>.

³ ICOM Code of Professional Ethics. 'Disposal of Collections:4.4'.Buenos Aires.1986. <http://www.icom.museum>.

⁴ 'Recent examples of successful operations of cultural property restitutions in the world' 'Return of Cultural Property',<http://www.unesco.org>.

left their original environment without the agreement of the nations or of the ethnic groups from where they were taken. This raises a great threat to safeguarding the original significance of this heritage over time. Illegal exportation of cultural objects has made their return problematic. Of course, the return of cultural objects calls attention not only to their illegal export. In the past decades, other reasons are responsible for the phenomenon, such as increased awareness of their cultural heritage among the original nations or ethnic groups, the increasing desire for the cultural expression of political independence, and the explosion of illicit traffic. In this sense, it is not only an historical problem it is also a problem in the real world today. Their solution is not only to expose and criticize the historical issues of colonial times, but also to reply to the urgent tasks of the present.

These twofold characteristics of the return of cultural heritage leads us to the conclusion that, if want to solve this problem, it is necessary to strive for practicality grounded in reality, to be flexible in thinking and planning the problem of return, and develop effective lines of thinking and strategies. In other words, we should not lose sight of history, simply 'Burning history' or 'Turning the page.'⁵ Meanwhile, we should not disregard the complexity of reality for historical reasons. We need to think about both the expression of rights and the possibility of carrying out the action. From a realistic point of view, striving for the practicality is the only feasible way to solve the problem of the return of cultural heritage.

Regarding the return of cultural heritage, striving for practicality, in my opinion, mainly embodies in the following aspects.

First, take the interests of all sides into account and look for a common base of interests.

The problem of the return of cultural heritage involves the interests of the many different sides, including museums. In essence, the return of cultural property is actually a problem pertinent to the interests of the parties. Therefore, to solve the problem, we must give consideration to the interests of all sides and look for the common base. We should not stress only the interests of one side so that we may realize the reciprocity and achieve a win-all in practice. Specifically, we first must pay attention to the requests and interests of the original nations or the ethnic groups. The illicit traffic of cultural heritage has brought great injury to them, injuries that are still felt, including their cultural heritage itself, their culture, feeling, faith, and so on.

The return of cultural property is not limited to considering only the property, it also touches on the political, legal, and ethical respects. Therefore, in paying attention to the requests and interests of the original nations or the ethnic groups, we cannot think only about the cultural view. We should approach it from a wide view, including political, ethical and emotional issues. We should think about the solution to this problem and its effects. At the same time, we also need to consider the requests and interests of museums which house the cultural property now, and take into account that the possibility that these museums have acquired some of them by legal means, such as purchase, donation, etc., without knowing the facts of a case or before the conventions or ethics arose regarding them. It is a objective reality that for these museums, for to a lot of reasons, this cultural heritage has become a part of their collections⁶. We can't turn a blind eye to the fact, like an ostrich puts

⁵ Moira G. Simpson, *Making Representations: Museums in the Post-Colonial Era* (revised edition), Routledge, London. 2001.

⁶ 'Declaration on the Importance and Value of Universal Museums' (Dec. 2002) claims, 'Over time, objects so acquired—whether by purchase, gift, or partage—have become part of the museums that have cared for them, and by extension part of the heritage of the nations which house them.' The first half of this sentence is a fact.

its head in the sand. For these museums, the return of cultural heritage will cause some loss. For example, after the cultural property is transferred, some gaps will occur in museum collections. We should consider if certain compensations are offered for them by some appropriate means. Of course, to do so is not to give tacit consent to the legality of the behaviour of these museums in the past. It is only a consideration on the level of museum operation. Actually, in the case of Kelvingrove Museum in Glasgow, we have seen such efforts⁷. It seems that giving consideration to the interests of all sides is both necessary and workable. In this respect, it is not desirable just to emphasize the universal value of cultural heritage, and refuse any form of solution on the return of cultural heritage⁸. Equally, it is not desirable to neglect the history and reality of the return of cultural heritage, and just to emphasize only the return of them without conditions. No matter the former or the latter, it is the result of how ethics were thought in early times⁹.

Secondly, initiate the conversation among all sides.

The return of cultural heritage depends on the formation of the common base of interests. Constructing this base needs a conversation, not a confrontation. The conversation is another way of striving for pragmatism.

The emphasis on a dialogue is not a new viewpoint for the solution to the problem of the return of cultural heritage. It is the thinking that has been proposed in many documents of international organizations in the past. For example, in the afore-mentioned '*ICOM Code of Professional Ethics (1986)*', there is a similar voice (c.f. footnote 3.) Here, it is stressed that the dialogue must be carried out on the basis of equality. It should go on without any precondition. Only through such an equal dialogue can all sides fully express their own opinions. At the same time, it is only in progressing in this manner that a solution accepted by all sides may be achieved. In fact, investigating those successful cases of the return of cultural property, we can discover that almost all cases were successful on the basis of equal dialogue. Conversely, if one side proposes certain conditions in advance and even refuse any form of dialogue, it does not help to construct the common basis of interests, but also provokes antagonistic sentiments that will be unfavourable to achieving a solution.

Third, each side must shoulder their own responsibility.

The problem of the return of cultural heritage touches upon the interests of many different sides. A solution requires collective efforts from all sides. Each side, especially museums, must assume their own responsibility. This is decided by the nature of museum. Museums are important institutions which acquire, conserve, research, communicate and exhibit the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment. A great volume of cultural property, including that to be returned, is kept in store in museums. As for the return of cultural heritage, museums should take on more responsibility, and make more effort.

However, The latter one of it is worth questioning. The reason is that before the objects are justified to be legal, even if a museum has housed them, these objects shouldn't become by extension part of the heritage of the nations which care for them.

⁷ Moira G. Simpson, *Making Representations: Museums in the Post-Colonial Era* (revised edition), Routledge, London, 2001, P277-8

⁸ Ding, Xin, "A lasting debate on the return of the Elgin Marbles from Athens" *Chinese Cultural Heritage*, no.1, 2004, p.106-111.

⁹ Moira G. Simpson, *Making Representations: Museums in the Post-Colonial Era* (revised edition), Routledge, London, 2001, p. 227.

Clearly, when we stress that each side must assume their own responsibilities, it doesn't mean that they will have an equal share in responsibility. It only means that all sides should do their duty in the light of their ability. There are two reasons for this.

The development of the museums on both sides of the dispute is not balanced. As a whole, the level of development of museums in the developed countries is higher than that in the developing countries. Even among the developing countries, the situation of museums is not identical from one country to another. The disparity of museums in different regions is an objective phenomenon. In this circumstance it is not fit to share equally the responsibility with each other.

Museums in those colonial nations in the past or the powerful countries in the world today hold a great deal of cultural property in their collections. These museums have the ability to complete their collections with more works. Therefore, in present situation, the museums on all sides should do their best to work within their ability. As for the museums in those colonial nations in the past or the powerful countries today, they should investigate the full range of their collections as soon as possible, clarify the ownership of these collections and, on the basis of this examination, and draw up the list of the cultural property to be returned. Even though a few museums in Europe and the United States have made some attempts in this field, it is very limited in time, scope and content¹⁰. In this respect, there is more to be done, such as examining the current laws which hinder the return of cultural property, and so on. Similarly, regarding to the museums in the countries of origin, they must also be active. On the one hand, they should offer the list of the cultural property that was illegally exported in order to complete a full directory of them. On the other hand, in order to receive safely the return of cultural property, they should try to improve the conditions of conservation, and increase their own levels of museum management. On this, maybe we ask the museums of all sides the following question, "as far as the return of cultural heritage concerns, are you ready?" If the answer is negative, all discussions merely lead to idle theorizing.

Fourth, settle the return of cultural heritage step by step.

As everyone knows, the return of cultural property is a complicated problem. Its complexity lies in several different areas, such as scope, field, subject, rights and so on. The complexity means that resolving the problem of the return of cultural heritage must be a tortuous and long process which requires intelligence. It is for this reason that, in the past, the cases which weren't settled after a long time were nothing new.

The case where Greece demands the return of the Elgin Marbles to Greece is a famous one. So, we need to widen the train of thought, and take some flexible measures, in order to resolve the problem of return. We cannot settle all the problems at once. To give a small example, in reference to the rights of the cultural heritage, it will include its initial ownership, rights to use, rights for communication, and so on. In the present situation, the return of these rights can be carried out step by step. In this respect, a good example is the return of cultural heritage from Denmark to Greenland. In this case, after transferring some important collections to Greenland, Denmark is still responsible for their conservation¹¹.

¹⁰ Moira G. Simpson, *Making Representations: Museums in the Post-Colonial Era*(revised edition), Routledge, London, 2001. p 268

¹¹ Gabriel Mille, "The return of cultural heritage from Denmark to Greenland" *Museum International* (Chinese), no. 241/242, May 2009. P 26-31.

It is a wise and pragmatic choice to solve the return of cultural property on a progressive basis.

Of course, as far as the return of cultural heritage concerns, to strive for the pragmaticity is not limited to the above-mentioned four points. However, they are undoubtedly striking and important.

Finally, we still think another problem which has nothing to do with the return of cultural heritage. When we discuss this problem we have to think whether the original environment for cultural heritage – the mother's body of illegally exported cultural heritage – is safe. In the world of today, with its accompanying economic globalization, the cultural exchange between different cultures becomes more and more frequent. Each culture will face the challenge from foreign cultures, and not develop as closely as before. Unfortunately, a few countries carry out their values by means of the superiority of their economy and technology, threatening the cultural security of other countries, especially the ones of the developing countries. In the developing countries, due to influences from abroad, traditional cultures are fading away during the course of modernization. The mother's body of illegally exported cultural heritage is in danger. Therefore, a more urgent task is to initiate the equal dialogue among different cultures more than the return of cultural heritage. Otherwise, once the mother's body of cultural heritage vanished, to where can these cultural heritages be returned? If this is really true, the return of cultural heritage as the problem will no longer exist.

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I V

**Abstracts of
Chinese working papers not included in II and I**

**Résumés des
documents de travail chinois non compris
dans II et III**

**Resúmenes de documentos de trabajos chinos
no incluidos en II y III**

NEW IDEAS ON THE RETURN OF LOST CULTURAL HERITAGE

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ABSTRACT

The loss of cultural heritage, different from cultural heritage abroad by ways of legitimate trade and gift exchange, refers the cultural heritage now abroad as a result of wars, aggression, excavation, and unfair trade. It should have new ideas to cope with the problems and difficulties that arise from the return of lost cultural heritage, by establishing legal instruments. It is the principle that the loss of cultural heritage in countries of ancient civilizations should be returned to them, to maintain their country's cultural identity and cultural sovereignty, to ensure state justice and legitimate rights to this heritage, to uphold the principles and spirit of international conventions, to support world peace, to preserve the good and the beautiful advocated by people around the world, building a harmonious culture and retaining the right to historical memory and cultural rights.

The return of the loss of cultural heritage is in a system with legal, economic, cultural, and diplomatic and many other complex factors. Egypt uses a tough approach, but China uses a comprehensive way of diplomatic, legal and international cooperation, buy-back and accepting donations. In the current Western-dominated international system, it's difficult to recover the loss of cultural heritage. It's hard to recover the loss of a large number of cultural properties during the colonial period, because countries holding the major part of these losses refuse to return them to the country of origin. And public auction of the loss of cultural heritage is a continuation of colonialism. International cooperation between the countries of origin is establishing a systematic and effective structure and combined action network. International cooperation between the country of origin and countries having the major loss of cultural heritage, is making the opportunity of equal dialogue in cultural heritage protection, to eliminate cultural isolation, to promote mutual respect, dialogue and exchange, and building a harmonious culture, creating a new culture.

RÉSUMÉ

Nouvelles idées sur la restitution du patrimoine culturel perdu

Le patrimoine culturel perdu est différent du patrimoine culturel trouvé à l'étranger, arrivé par des voies illégales comme une acquisition ou un don. Cette définition fait allusion au patrimoine culturel qui est à l'étranger par la suite des guerres, des attaques, des évacuations ou des échanges frauduleux. Le musée devrait proposer des idées nouvelles pour gérer ces questions et ces difficultés posées par la restitution du patrimoine culturel perdu en établissant des réglementations légales. Le patrimoine culturel perdu devrait être rendu aux pays de civilisations anciennes pour maintenir l'identité et la souveraineté culturelle du pays, les droits légitimes de la justice de l'état sur le patrimoine culturel perdu, le principe et l'esprit des conventions internationales et la paix mondiale, et pour soutenir aussi les bonnes et belles idées qui nous aident à construire dans le monde une culture harmonieuse qui puisse conserver le droit à sa mémoire et à ses droits culturels.

La restitution du patrimoine culturel perdu est comprise dans un système légal, économique, culturel, diplomatique et dans d'autres aspects aussi. L'Égypte a opté pour une position ferme, la Chine emploie un système qui comprend la voie diplomatique, la voie légale et la collaboration internationale pour rapatrier via des acquisitions légales ou dons. Dans le système international de domination occidentale, il est difficile de rapatrier le patrimoine culturel perdu. Il est difficile de reprendre de nombreux biens culturels de l'époque coloniale parce que les pays qui détiennent ses reliques refusent de les rendre aux pays d'origine. Et la vente aux enchères du patrimoine culturel perdu est une suite du colonialisme. La coopération internationale entre les pays d'origine de ces reliques est en train de construire des réseaux d'action combinés pour travailler systématiquement et efficacement. La coopération internationale entre les pays d'origine et les pays qui possèdent les reliques est en train de réussir à établir un dialogue égalitaire à propos de la protection du patrimoine culturel, dans le but d'éliminer l'isolement culturel, de promouvoir le respect mutuel, le dialogue et l'échange et construire ainsi une culture harmonieuse, en créant véritablement une nouvelle culture.

RESEMEN

Nuevas ideas sobre la restitución del patrimonio cultural perdido

El patrimonio cultural perdido difiere del patrimonio cultural hallado en el exterior a causa de las guerras, los ataques violentos y las evacuaciones o como consecuencia de intercambios fraudulentos. El museo debería proponer nuevas ideas para manejar problemas de esta naturaleza y a la vez, para salvar las dificultades planteadas por la restitución del patrimonio cultural perdido. La justicia, por su parte, debería plantear y ejercer sus legítimos derechos sobre el patrimonio que corresponde regresar al país de origen, de donde fuera arrancado, estableciendo reglamentaciones legales precisas, siguiendo el principio y el espíritu de las convenciones internacionales, estableciendo normativas legales y teniendo en cuenta en forma fehaciente a aquellas personas que luchan juntas para construir una cultura armoniosa, donde seamos capaces de conservar el derecho a la memoria y a nuestra propia cultura.

La restitución del patrimonio cultural perdido está comprendida en un sistema legal, económico, cultural, diplomático y en muchos otros aspectos. Egipto ha optado por una posición cerrada; China emplea en cambio un sistema que comprende la vía diplomática, la legal y la colaboración internacional para repatriar objetos coloniales. En el sistema internacional occidental, resulta muy difícil repatriar el patrimonio cultural perdido. La principal vía de recuperación suele ser el contrabando. Es muy difícil retomar numerosos bienes de la época colonial y devolverlos al país de origen. La venta al mejor postor del patrimonio cultural perdido es una continuación del colonialismo. La cooperación internacional que ha surgido entre los países de origen de las reliquias está construyendo redes de acción combinadas para trabajar sistemática y eficazmente. En este momento se encuentra a punto de lograr el establecimiento de un diálogo igualitario a propósito de la protección del patrimonio, con el propósito de eliminar el aislamiento cultural, promover el respeto mutuo, el diálogo y el intercambio para construir una cultura armoniosa, verdaderamente una nueva cultura.

CHINESE MUSEUMS AND THE RETURN OF THE CHINESE CULTURAL RELICS LOST OVERSEAS

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ABSTRACT

Requisition and returning of the Chinese cultural relics lost overseas is a long-term problem, one that recalls the evolution and the development of culture during human existence. As the guardians of cultural heritage both private museums and public museums can accept the lost relics by the way of purchasing or receiving donations with the support of our national policy. Professionals can carry out Investigation and research of the relics. We should also construct the database of these cultural relics and catalogues and keep renewing them permanently.

Museums with same cultural background should enhance communication and cooperation and learn from each other's experience. Museums of different backgrounds could enhance communication and cooperation under the principle of "sharing the heritages but not the ownership" as suggested by UNESCO, so that we could collaborate to look together for a practical way to protect our heritage.

Key words: Chinese museums, return, information management, cultural heritage

RÉSUMÉ

Les musées chinois et la restitution des reliques culturelles perdues à l'étranger

La question des reliques culturelles perdues à l'étranger est un problème dont la résolution à long terme renvoie à l'évolution du développement de la culture dans l'existence humaine. Les musées privés et publics, en tant que gardiens du patrimoine culturel, peuvent accepter les reliques perdues via l'acquisition (achat direct) où à travers des donations approuvées par les politiques nationales. La recherche au sujet des reliques doit être menée par des professionnels compétants. Nous devrions construire aussi un banc de données de ces reliques culturelles, catalogué et constamment mis à jour.

Les musées ayant ces mêmes traditions culturelles devraient améliorer leur communication et coopérer entre eux pour apprendre les expériences des autres; les musées qui ont des problèmes différents devraient améliorer leur communication et coopérer entre eux selon le principe de l'UNESCO de "partager le patrimoine mais pas la propriété", Tout cet ensemble devrait être coordonné afin de chercher une façon pratique de travail conjoint dans le but de protéger notre patrimoine.

Mots clé: musées chinois, restitution, gestion de l'information, patrimoine culturel

RESUMEN

Los museos chinos y la restitución de las reliquias culturales perdidas en ultramar

La requisa y la restitución de las reliquias culturales chinas perdidas en ultramar es un problema a resolver desde hace mucho tiempo, tanto como lo es el desarrollo de la cultura en la existencia humana. Como guardianes del patrimonio cultural, los museos privados y públicos pueden aceptar las reliquias perdidas ya sea por el camino de la adquisición como al recibir donaciones con el apoyo de las políticas nacionales. La investigación y la búsqueda de las reliquias deben ser realizadas por profesionales, convenientemente capacitados al respecto, que dispongan de una base de datos catalogada y resguardada, actualizada de manera permanente. Los museos con problemas similares deberían mejorar su comunicación para poder cooperar entre sí y aprender de las experiencias de los otros. Aquellos museos con problemas diferentes deberían mejorar su comunicación y cooperar entre sí bajo el principio de “repartir el patrimonio, pero no la propiedad”, como señala la UNESCO. Todo esto, vinculado para buscar una manera práctica de proteger nuestro patrimonio.

Palabras clave: museos chinos, patrimonio cultural, gestión de la información, restitución

THE OBLIGATION OF MUSEUMS FACING THE RESTITUTION OF CULTURAL HERITAGE

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ABSTRACT

The issue of returning cultural heritage to the original country involved numerous museums in heated disputes. Facing the complicated condition of history and reality, it is not rational for both the pursuer and the pursued to regard this issue as a kind of battle for ownership of cultural heritage.

Based on the moral principles of human beings, the related museums should squarely face up the issue, respect the cultural heritage and its creators, engage in self-examination of collection ethics, extricate themselves from the bind of property, adopt active attitudes to fulfill their reasonable obligations, and try to find various ways of cooperating. The process of returning cultural heritage may become the process of cultural exchange between different museums and different countries. Hence, the museum may enhance its own value and promote the world's harmony.

Key words: museums, obligation, cultural heritage, restitution

RÉSUMÉ

L'obligation des musées face à la restitution du patrimoine culturel

La question de la restitution du patrimoine culturel aux pays d'origine provoque des disputes acerbes au sein de nombreux musées. Face aux conditions de l'histoire et de la réalité souvent très compliquées, il n'est pas sensé d'envisager le problème de la restitution comme une espèce de bataille pour la propriété du patrimoine culturel.

En s'appuyant sur le principe moral de l'existence humaine, les musées devraient se mettre en contact, faire face à la question, respecter le patrimoine culturel et son créateur, faire un auto-examen de l'éthique du collectionnisme, extraire des conclusions du thème de la propriété et adopter une attitude active pour accomplir raisonnablement leur obligation en vue de trouver quelques chemins de coopération. Le processus de restitution du patrimoine culturel peut s'initier avec l'échange culturel entre différents musées et différents pays. C'est ainsi que le musée pourrait augmenter sa propre valeur et promouvoir l'harmonie dans le monde.

Mots clé: musées, obligation, patrimoine culturel, restitution

RESUMEN

La obligación de los museos frente a la restitución del patrimonio cultural

La cuestión de la restitución del patrimonio cultural a sus países de origen involucra a muchos museos en acaloradas disputas. Frente a las complicadas condiciones

de la historia y la realidad, no es racional que perseguidor y perseguido vean este problema como una especie de batalla por la propiedad del patrimonio cultural.

Basados en los principios morales de la existencia humana, los museos deberían unirse en el respeto por el patrimonio cultural, producto de la creatividad humana, adoptando una actitud activa destinada a encontrar caminos razonables caminos de cooperación. El proceso de restitución del patrimonio cultural puede comenzar con el intercambio entre diferentes museos de diversos países del mundo.

Palabras clave: museos, obligación, patrimonio cultural, restitución

THE RETURN OF CULTURAL PROPERTY AND THE IMAGE OF THE MUSEUM COMMUNITY

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ABSTRACT

This article discusses the return of cultural heritage and the impact that return – or non-return – has on the perceived image of the museum community. It points out that the return of cultural heritage is conducive to shaping the image of the museum and its role in society. Most past studies have researched the problem from considerations of legislation regarding the ownership of museum property, illegal forms of acquisition and international agreements. Now, as a professional member of the museum community, I would like to discuss the problem from the aspect of image that is projected of the museum community.

The paper examines the issue from three approaches: firstly it proposes to examine the return of cultural heritage in accordance with the definition of museum; secondly, the return is discussed in relation to the educational responsibilities of the museum community; and thirdly, the return must be initiated and carried out in accordance with museum professional ethics. Then the paper points out that the museum's own objective conditions require the return is undertaken and performed in compliance with its understanding of how professionals define the museum, their museum education responsibilities and museum professional ethics. Therefore the return is conducive to building the museum community image.

Key Words: museum, cultural heritage, justice, return, community

RÉSUMÉ

La restitution du patrimoine culturel et l'image du musée dans la communauté muséale

Le thème de discussion sur la restitution du patrimoine culturel trouve son contexte à partir de la perception de l'identité du musée dans la communauté muséale. Il montre que la restitution du patrimoine culturel est indispensable pour construire l'identité de la communauté muséale.

Dans ce document, on a envisagé trois regards différents: d'abord, il propose que la restitution du patrimoine culturel se réalise selon les principes de la définition de musées; en deuxième lieu, il atteste que la restitution est en rapport avec les responsabilités éducatives; et finalement, il affirme que le musée doit agir selon la déontologie professionnelle des musées. Le document signale alors les conditions objectives que le musée demande à la restitution selon les connotations de la définition du musée, des responsabilités éducatives du musée et de l'éthique des professionnels des musées. En conséquence, la restitution aboutit à la construction de la mémoire de la communauté muséale.

Mots clé: musée, patrimoine culturel, justice, restitution, communauté.

RESUMEN

La restitución del patrimonio cultural y la imagen del museo en la comunidad museal

El autor de este artículo hace referencia a la importancia de la restitución del patrimonio cultural para determinar la imagen del museo en la comunidad de museos. Señala que la restitución del mismo es fundamental para recuperar la identidad de cada comunidad.

El texto del documento se ha encarado a partir de tres enfoques diferentes: el primero propone que la restitución -o sea el retorno del patrimonio cultural a su lugar de origen- se realice siguiendo las premisas de la definición de museo; el segundo, considera que debe estar relacionada con las responsabilidades educativas del mismo ya que el museo está llamado a cumplir con los postulados éticos de los profesionales de museos. En consecuencia, la restitución es favorable para la construcción de la imagen de la comunidad museal.

Palabras clave: museo, patrimonio cultural, justicia, restitución

MUSEUMS AND THE PROTECTION OF THE CULTURAL HERITAGE

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ABSTRACT

Human society needs comprehensive and sustainable development, but development and protection have always been in conflict. To handle these contradictions correctly, we must have a profound understanding the scientific concept of development and sustainable development theory proposed by General Secretary Hu Jintao. Cultural heritage is non-renewable, so we must first protect its integrity, and then make a rational plan for the development and utilization of our cultural heritage. At present, the overall awareness of this needs to be communicated; we should actively expand the information about cultural heritage and popularize knowledge of it to raise the awareness of the whole society, leading all human beings to be involved in its protection. The collection and protection of the cultural heritage are considered to be the core functions of museums. Therefore, as a display window of local history and culture, museums have great responsibility to protect cultural heritage. Museums have several functions such as collection, research, display, and dissemination. Museums are bridges for culture exchange between nations. Ensuring the safeguarding of culture within their walls, museums hold an important position on transmitting, promoting and developing the heritage and memory of human civilization; their significance for the continuation of human civilization and maintenance of cultural diversity is no longer put into question.

No matter how brilliant the civilizations we created, none of them could escape the fate of being buried by history without museums. A museum is the materialized history of development. People communicate with history through the relics of civilization, across the barriers of time and space; then they can see our long history of civilization. The benefits are social and economical as well, ensuring the development of social harmony.

Key words: museum, cultural heritage, protection of historical relics

RÉSUMÉ

Les musées et la protection du patrimoine culturel

Les sociétés humaines ont besoin du développement durable, mais le développement et la sauvegarde ont toujours été en conflit l'un avec l'autre. Afin de gérer ces contradictions de manière adaptée, nous devons avoir une compréhension profonde du concept scientifique du développement et de cette même théorie du développement telle qu'énoncée par le Secrétaire Général Hu Jintao. Le patrimoine culturel ne pouvant pas se renouveler, nous devons tout d'abord en respecter l'intégrité, et ensuite faire un plan du développement et d'utilisation de ce patrimoine qui est le nôtre. Maintenant c'est à nous qu'il nous appartient de véhiculer l'information sur notre patrimoine culturel, dans le but de sensibiliser l'ensemble de la société et de créer une responsabilisation de toute la population sur sa protection. La collecte et la protection de notre patrimoine culturel sont le cœur de l'action muséale. Ainsi, en tant que vitrine de l'histoire et de la culture de notre communauté, les musées ont une responsabilité forte dans la protection du

patrimoine. Les musées ont plusieurs fonctions, comme la collecte, la recherche, la présentation, et la dissémination. Les musées sont aussi des ponts jetés entre les pays pour le bien de leurs échanges. En assurant la sauvegarde de la culture entre leurs quatre murs, les musées ont un rôle de premier plan dans la transmission, la promotion et le développement du patrimoine mais aussi dans la mémoire de la civilisation humaine. On ne plus mettre en question leur importance autant pour la continuation de cette même civilisation humaine, que pour le maintien de la diversité culturelle.

Quelque soit l'éclat des civilisations que nous avons créées, aucune ne peut échapper à son destin : être enterrée par l'histoire sans les musées. Le musée, c'est la manifestation de l'histoire et de son développement continu. Les gens communiquent avec l'histoire à travers les restes et les reliques des civilisations. En traversant les barrières du temps et de l'espace, on peut y voir la longue histoire de la civilisation. Les bienfaits qui en découlent sont autant sociaux qu'économiques, et assurent l'harmonie sociale.

Mots clé : musées, patrimoine cultural, protection des reliques historiques

RESUMEN

Museos y la protección del patrimonio cultural

La sociedad necesita un desarrollo comprensivo y sustentable, pero desarrollo y protección están siempre en conflicto. Para manejar estas contradicciones correctamente, debemos comprender plenamente el concepto científico de desarrollo y la teoría que es la base del desarrollo sustentable. El patrimonio cultural no es renovable, por lo cual debemos proteger ante todo su integridad y luego elaborar un plan racional para su utilización. En el momento actual, la preocupación por la información a comunicar nos impulsa a ampliarla al campo del patrimonio cultural y a popularizar sus conocimientos, a fin de despertar a la sociedad en su conjunto, hecho que involucra a los seres humanos en su protección. Tanto la colección como la preservación del patrimonio cultural son consideradas las funciones esenciales del museo. Por lo tanto, al igual que si fuera una ventana de presentación de la historia y de la cultura local, los museos tienen la gran responsabilidad de proteger el patrimonio cultural. A tal efecto, cumplen determinadas funciones tales como coleccionar, investigar, exhibir y difundir dicho patrimonio y son puentes para el intercambio cultural entre las naciones. Al asegurar la salvaguarda de la cultura dentro y fuera de sus muros, mantienen el significativo espacio de transmisión, promoción y desarrollo de la memoria de las civilizaciones, destacando la significación del museo en la continuidad de las mismas como así también la preservación de la diversidad cultural, ya no más en cuestión.

No importa cuán brillantes sean las civilizaciones que hemos creado, ninguna de ellas puede escapar a su destino de ser enterradas por una historia sin museos, porque un museo es la historia materializada del desarrollo. Las personas se comunican con la historia a través de las reliquias que va dejando la civilización, cruzando las barreras del tiempo y del espacio. Sólo así podrán tener una visión de la larga historia de nuestra civilización. Los beneficios son a la vez sociales y económicos y aseguran el desarrollo de la armonía social.

Palabras clave: museo, patrimonio cultural, reliquia histórica, protección

MUSEUM: THE SAFE GUARDIAN OF CULTURAL HERITAGE

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ABSTRACT

According to the definition of the “Convention Concerning the Protection of the World Cultural and Natural Heritage” and the “Convention for the Safeguarding of the Intangible Cultural Heritage”, cultural heritage comprises the tangible heritage and the intangible heritage. All mankind publicly recognizes that the tangible heritage is composed of the historical and cultural relics which have outstanding significance and universal value. The museum is the collection organization of cultural heritage. Along with the globalization of cultural heritage, this paper discusses that museums as the safe guardian of cultural heritage need to do well in the preservation, scientific research, propaganda and education of cultural relics, especially as it impacts on museum action: the questions on deaccession of cultural relics and a new global ethics on the return of cultural heritage in the situation of cultural relics lost from different cultural backgrounds.

From the perspective of global partnerships between museums that build a dialogue between different cultures, strengthening the network of museums with cultural exchange and cooperation between museums in the world makes our global village with all kinds of civilization more harmonious and happy.

Key words: museums, safeguard, cultural heritage

RÉSUMÉ

Le musée : sauvegarde du patrimoine culturel

Selon la définition de la Convention pour la Protection du Monde Culturel et du Patrimoine National et la Convention pour la Sauvegarde du Patrimoine Culturel Intangible, le patrimoine culturel comprend le patrimoine tangible et intangible. L'homme reconnaît publiquement que le patrimoine tangible est tout ce qui est historique et les reliques culturelles qui ont une signification exceptionnelle et une valeur universelle. Un musée est la collection organisée du patrimoine culturel. Ce document discute le musée comme sauvegarde du patrimoine, la globalisation du patrimoine culturel, le besoin de bien travailler à sa préservation; il discute aussi le rôle du musée dans la recherche scientifique et dans la divulgation éducative; il explique spécialement les actions du musée: la question de la restitution des reliques culturelles et l'établissement d'une nouvelle éthique globale sur le rapatriement du patrimoine culturel.

Depuis une perspective globale, une association mondiale de musées construit des dialogues entre les différentes cultures en fortifiant le réseau de entre les musées, l'échange culturel et la coopération des musées du monde entre eux. C'est ainsi que nous aurons des échanges culturels et de la collaboration entre les musées conformant, alors, notre village global, civilisé, harmonieux et heureux.

Mots clé : musée, sauvegarde, patrimoine culturel

RESUMEN

El museo: salvaguarda del patrimonio cultural

Según la definición de la “Convención Concerniente a la Protección del Mundo Cultural y del Patrimonio Natural” y la “Convención para la Salvaguarda del Patrimonio Cultural Intangible”, el patrimonio cultural abarca el patrimonio material e inmaterial. Las reliquias históricas y culturales, reconocidas como patrimonio tangible, tienen una significación excepcional y un valor universal. El museo alberga objetos y colecciones que en su conjunto conforman el patrimonio cultural de la humanidad. Este documento se refiere a la globalización y a la salvaguarda del patrimonio cultural a través de las acciones específicas que lleva a cabo el museo. Hace también referencia al problema de la restitución de las reliquias culturales y una nueva ética global que sirva de sustento a la devolución del patrimonio cultural.

Desde una perspectiva global, una asociación entre museos construye un diálogo entre diferentes culturas, refuerza la comunicación, el intercambio cultural y la cooperación intermuseica. De este modo, haremos nuestra aldea global más civilizada, armoniosa y feliz.

Palabras clave : museo, salvaguarda, patrimonio cultural

ESTABLISH THE CROSS-CULTURE CONVERSATION FROM THE PERSPECTIVE OF GLOBAL COOPERATION: SHARING AND RETURNING HISTORICAL RELICS IN MUSEUMS

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ABSTRACT

Nowadays the world has entered an era of globalization. Under the influence of the growth of economic globalization, culture also increasingly suffers its impact. In the current situation where museums' values, responsibilities and cultural heritage influence all of society, and even the whole world, all of the above are undergoing change this evolving progress. As a cross-cultural media of understanding and exchange, museums should have the courage to take their responsibilities, and assume their role seriously and actively. This article mainly discusses relics in museums that play an important part in the cross-cultural conversation and even in diplomatic affairs, with global cultural exchanging activities carry out more frequently.

Key words: cross-cultural conversation, share, return

RÉSUMÉ

Établir des conversations entre les cultures depuis la perspective globale de coopération : Partager et rapatrier les reliques historiques des musées

Le monde est déjà entré, de nos jours, dans l'ère de la globalisation. Sous cette influence qui tend vers la globalisation économique, la culture, elle aussi, souffre des conséquences de cet impact chaque fois plus intensément. Dans les circonstances actuelles, les valeurs muséales, les responsabilités et les influences culturelles dans toute la société et même partout dans le monde, tout cela est dans un processus de changement. Afin de mieux s'entendre et d'avoir des échanges, les musées devraient, en conséquence, avoir le courage de prendre leur responsabilités, de jouer leur rôle activement et sérieusement. Cet article discute principalement à propos des reliques dans les musées en attachant grande importance à l'échange dans les conversations interculturelles, même s'il s'agit des affaires diplomatiques, avec des activités d'échange global réalisées fréquemment.

Mots clé: conversations transculturelles, partager, rapatrier

RESEUMEN

Establecer conversaciones entre los países desde una perspectiva global de cooperación. Compartir y repatriar las reliquias históricas de los museos

En los últimos años, el mundo ha entrado en la era de la globalización. Bajo la influencia que tiende a globalizar la economía, también la cultura sufre un creciente impacto. Los valores museales, las responsabilidades y las influencias culturales que reflejan las sociedades a raíz de los cambios producidos, obligan a los

museos a tener el coraje necesario para jugar un rol activo y responsable. Este artículo debate principalmente lo referente a las reliquias que se encuentran en los museos, poniendo especial énfasis en el intercambio de conversaciones entre los diferentes niveles globales y aún en asuntos diplomáticos, donde las actividades de intercambio cultural suelen ser llevadas a cabo.

Palabras clave : conversación transcultural, parte, restitución

FEASIBILITY STUDY ON THE “RETURN” OF THE LOST CULTURAL HERITAGE

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ABSTRACT:

The major part of the cultural heritage lost overseas is the movable tangible cultural heritage. In recent years, the international community, especially the larger countries such as China which lost many items of the cultural heritage, must pay close attention to the problem of the “return” of the lost cultural property. The important significance of the lost cultural heritage for the countries of origin is emphasized in this article, then we analyse the feasibility of the “return” of the lost cultural heritage through some successful cases, in particular returns by France to Egypt, by the Metropolitan Museum of Art to Italy, and by the United Kingdom and the Cleveland Museum in the US to China. At last the ways of “return” are discussed: the requirement for information management and agencies to trace and identify the ownership of the cultural property abroad, the application of international instruments and agreements, and understanding the significance of this property to the peoples who have lost it.

Key Words: cultural heritage, loss, return, feasibility

RÉSUMÉ

La viabilité de l'étude sur "Le rapatriement" du patrimoine culturel perdu

La majorité du patrimoine perdu hors du pays est le patrimoine tangible. Très récemment, la communauté internationale, spécialement celle des pays les plus puissants qui ont déjà perdu beaucoup de patrimoine, fait très attention au problème du “rapatriement” du patrimoine culturel tangible. Et on met l'accent, dans ce document, sur l'importance que les pays d'origine attachent à ce patrimoine culturel perdu. On analyse après, la viabilité du “rapatriement” du patrimoine perdu en donnant quelques exemples réussis. Les chemins du “rapatriement” sont discutés finalement.

Mots clé: patrimoine culturel, perte, restitution, viabilité.

RESUMEN

La viabilidad de los estudios sobre el retorno del patrimonio cultural perdido

Lo más importante del patrimonio cultural perdido allende los mares corresponde al patrimonio tangible. En años recientes, la comunidad internacional especializada de los países que perdieron gran parte del acervo presta gran atención al problema de su “retorno”. Este artículo enfatiza el significado de su devolución a los países de origen. Luego analiza la posibilidad de ese “retorno”, ejemplificando con algunos casos exitosos. Finalmente, se discuten las distintas formas de restitución.

Palabras clave: patrimonio cultural, pérdida, restitución, viabilidad.

