

Repatriation as a human rights concern: a familiar refrain of a much needed song?

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Roadmap

Question: In how far is there a continuing legal need for framing the repatriation of sacred objects from museum collections as a human rights issue?

1. Brief note on terminology
2. Mapping existing understandings of the relationship between human rights & cultural heritage -> consequence for repatriation
3. Existing approaches motivating use of human rights
4. Continuing relevance of using human rights approach to repatriation of colonial collections

Terminology

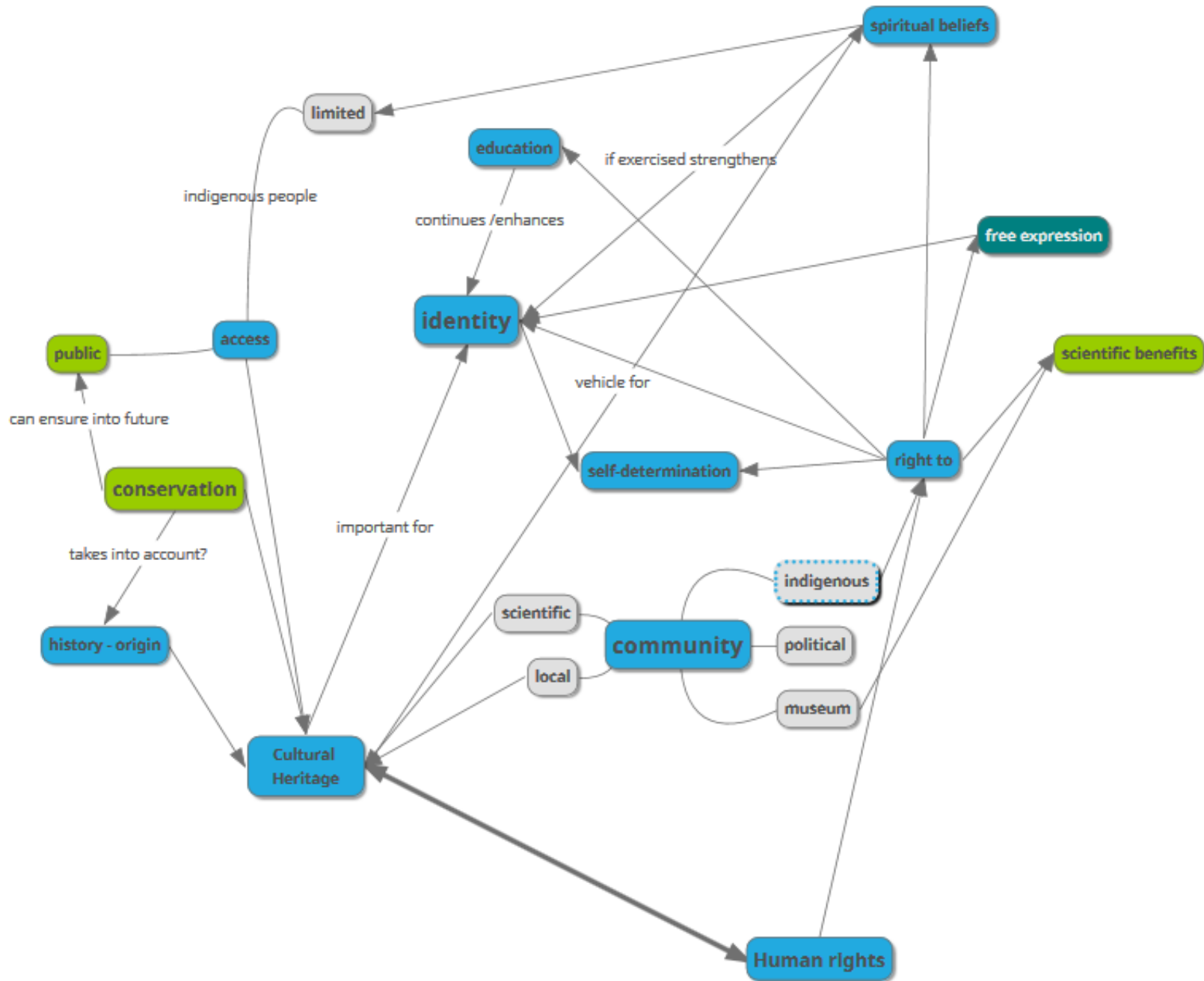
- **Repatriation** to denote return of cultural heritage to descendant source community. Repatriation can be international or intra-national.
- **Cultural heritage**, encompassing tangible and intangible forms of heritage, with **culture** being understood broadly in the sense of UNESCO Declaration on Cultural Diversity and Art.23 GC HRCee.
- **Colonialism** to refer to both phenomenon of European colonization and settler colonialism.



Terminology – Indigenous Peoples

"Indigenous communities, peoples and nations are those which, having a **historical continuity with pre-invasion and pre-colonial** societies that developed on their territories, consider themselves **distinct from other sectors of the societies** now prevailing in those territories, or parts of them. They form at present **non-dominant sectors of society** and are **determined to preserve, develop and transmit to future generations** their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems."

J. R. Martínez Cobo





Mapping the relationship between cultural heritage and human rights

- Role of cultural heritage for ensuring the protection of human rights & role of human rights for heritage protection (Janet Blake)
 - ‘Rights relating to cultural heritage are inherent in right to cultural heritage’ [Art.1(a) Faro Convention]
- Role of heritage for human rights → consequences for protection/management (general level)
 - Cultural heritage necessary for cultural identity (including linkages to other human rights such as education, freedom of expression, freedom of assembly) [authors i.e. C. Bell, A. Dussias, Y. Donders, V. Napoleon, F. Lenzerini, B. Paterson, L. Prott, A.F. Vrdoljak etc.]
 - Cultural heritage for the exercise of religion/ spiritual beliefs
 - Role of cultural heritage for self-determination [L. Little Bear, Vrdoljak etc.]
 - Role of returning heritage for the protection of human rights [W. Echo-Hawk, S. Harjo, R. Tsosie etc.]

Cultural Identity

- Right to cultural identity = Component of Art.27 ICCPR and Art.15(1) ICESCR, importance of cultural heritage for cultural identity recognized by Special Rapporteur in the fields of cultural rights, CDESCR, UNESCO, CoE Faro Convention etc.
 - In terms of needing access to heritage for identity formation and continuity
 - tool of learning and transmitting,
 - link to family life (HRC Hopu et al v France)
- For indigenous peoples contextualized in UNDRIP [i.e. Art.12(1) right to use & control ceremonial heritage, right to repatriation of ancestral remains] and ADRIP [entire section on cultural identity]



Cultural Identity

Consequences of human rights dimension of cultural heritage for heritage protection/ management:

- states obliged to ensure different access dimensions in legislation, consequences also for funding, composition of decision-making body etc.
 - This includes diverse access requirements by minorities, indigenous peoples [UN SRCR 2011 access].
- For colonial collections:
 - ensure that their existence does not contribute to continued cultural rights violations [adapted, general argument made on continuing effects of past land takings by Francioni].
- Heritage actors = crucial agents in the implementation of cultural rights framework in general and right to identity in particular. Actions have direct influence on enjoyment of human rights at home and abroad.
 - Incorporate human rights norms into code of ethics more explicitly?



Exercise of Traditional Beliefs

- Freedom of religion Art.18 ICCPR, contextualized in i.e. Art. XVI ADIR
- Role for heritage protection
 - Human right of indigenous peoples to use and control objects [not limited to objects currently within community → dislocated material → for intransigent claims state under duty to prevent third parties from interfering with right]
 - Right to repatriation of ancestral remains
 - Right of private access to sacred sites [including sites protected by heritage status]

Self-determination

- A.F. Vrdoljak: Cultural self-determination – link to right not to be submitted to ethnocide – Declaration San José
- Ethnocide, according to the declaration
 - “means that an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, where collectively or individually. This involves an extreme form of massive violation of human rights and, in particular, the right of ethnic groups to respect for their cultural identity, as established by numerous declarations, covenants and agreements of the United Nations, and its Specialized Agencies.
- Role of heritage: possibility to freely determine how to protect and transmit heritage preventative measure.

Role of repatriation for human rights protection

- Intranational – one of the available measures for states to implement cultural rights.
 - Depending on importance of object -> extent of available measures decreases
- International: no extraterritorial obligations.
 - But raises question how public institutions should best interact with increasing migration and migration of communities to within their jurisdiction whose heritage is in museums.
- General obligation to preserve cultural diversity (importance highlighted i.e. Art. 1(d), 5(e) CoE Faro Conv.)
 - reparation = strengthening diversity?

Reasons for adopting human rights approach

1. better implementation of cultural rights obligations within a jurisdiction,
2. May enable means of redress for historic injustices (in the case of both international and intra-national repatriations) that is more focussed on contemporary inequality in the area of cultural rights,
 1. Why Redress? Dislocation of colonial heritage occurred in framework of cultural genocide [see i.e. Special Rapporteur Bennoune, 2016]
3. it incorporates existing knowledge in the two fields on comparable or linked problems.

Continuing relevance of human rights

➤ For states

- A way to deal with colonial responsibilities that takes contemporary inequalities into account
- Partial redress
- Intra-national repatriations: one way to implement cultural rights obligations

➤ For museums

- Be more in line with role of museum as social agent
- Also reflecting service to community component [dep. on understanding of community of course]
- Incorporation of human rights impact of work helps in concretizing ethical guidelines and ensure approach that respects human dignity

Continuing relevance of human rights

- For indigenous rights
 - Indigenous peoples well aware of need, were original actors claiming respect for rights so this need not be evidenced.
 - More about the need to highlight to non-indigenous audiences continuing need to implement indigenous rights, including cultural rights, still confronted with implementation gap, even in countries with significant experiences in repatriation.
 - US recent country visit Special Rapporteur
 - UNESCO World Heritage Site Chaco Canyon
 - Access to sacred/ culturally relevant sites
 - problems in energy and resource development and cultural rights
 - Canada – SCC decision in Grizzly Bear Spirit Case
 - Limitations in access
 - Problematic understanding of traditional beliefs
 - Also problematic earlier decision on cultural heritage policies and constitutional competences [Kitkatla Band v British Columbia 2002]

