

# Cultural Property and the International Cultural Property Society

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Cultural property goes back a long way. It is probably fair to say that it originated with the beginnings of human creation, the earliest material and intellectual expressions of mankind. And as soon as there was cultural property, there likely was dispute, although in a most primitive form. The destruction, supplanting, and taking of another group's cultural creations may not unreasonably be thought of as the earliest form of cultural property debate.

Self-consciously dealing with cultural property came much later. Historically, cultural property was first thought of as spoils in war. Taking the material goods of an enemy as trophies in conquests was the rule in the ancient world. Dominance over or the eradication of other cultures was also viewed as a natural benefit of war. Regulation of such conduct was only thought useful to avoid negative consequences. Thus there was concern that since the taking and triumphal display of another culture's art provided no military benefit, but could undermine military discipline and might provoke reprisal from angry gods, some limitations might be appropriate. By the Middle Ages and Renaissance in Europe, there were some limits on the taking of cultural property, at least from neighboring Christian states. But it was not until the grand conquests and takings of Napoleon, the rise of nation-states, and the increased likelihood of destruction in modern warfare that there were concerted efforts to regulate cultural property through national laws and international treaties.

Over the past half-century, cultural property and cultural differences have become increasingly important and have emerged as the subject of multidisciplinary inquiry with ever-widening dimensions. Unlike in the past, when war and economic and political forces generally shaped attitudes and approaches to cultural property, cultural differences and relations are now everywhere considered subjects in need of discussion. From news reports to scholarly study, matters involving past cultures, indigenous peoples, cultural preservation, restitution, museum collections and dis-

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play, tourism, intangible cultural property, national and community property and policy, cultural diversity and identity are all aspects of cultural property discussions. In addition, matters such as cultural dominance and imperialism, the effects of colonialism, multiculturalism, commercialization, globalization, terrorism, religious practices, and the effect of international economic and political bodies are now viewed as involving differences of culture and their interrelation, and thus, in its broadest sense, as having a connection to cultural property.

This expansive approach to cultural property is new and developing. Following the horrendous destruction and taking of cultural property in World War II, there was a marked increase in efforts to adopt international standards for conduct in war through the Hague Convention and its Protocols—which clearly have been of limited success as evidenced by recent conflicts and cultural conflagrations. Changes in the world after the war also affected cultural property. Increased travel and tourism, and the growing interest in and economic value of art and other forms of cultural expression increased the demands on cultural resources, often to disastrous effect. At the same time, there was the unraveling of colonialism. With once-subjugated nations becoming independent there was heightened awareness of the loss of cultural property and its need for political identity and national recognition. The importance of museums and national collections in newly independent states resulted in efforts to regain cultural property and to retain what remained. In the international political arena, these new nations turned to other countries and international organizations such as UNESCO for assistance. Explicit accounts of looting, most notably Clemency Coggins's report of the illegal excavation of Mayan artifacts and their reappearance in American museums, supported these efforts. The consequences were the 1970 UNESCO Convention and other international instruments and recommendations to deal with problems attendant on the growing interest in and need for cultural property.

Scholarly efforts and literature at the time reflected this increase in interest. John Henry Merryman created the first law school course concerned with the new field, and, along with Paul Bator, wrote seminal articles that focused discussion on the issues of trade and retention, which were then the focus of contention between rich acquisitive nations and poor source nations seeking to stem the loss of their patrimony. By the 1990s interest and issues had burgeoned, and Professor Merryman created the International Cultural Property Society, the sponsor of this Journal, to further the reasoned discussion of all issues, aspects, and perspectives on cultural property. This remains the purpose of the Society and its Journal.

While it is difficult to encapsulate a broad and growing field like cultural property, an attempt to generalize is perhaps not inappropriate now that Cambridge University Press will be publishing the Journal after a two-year-hiatus. The most important change seems one of context. As noted, the field developed first in response to the adverse effects of war, and then as a result of the growing political, economic, and cultural forces affecting cultural property. Since the 1970s the primary focus has been the claims of nations and archaeologists for repatriation and control of cul-

tural property together with the frequently conflicting claims of museums and collectors for access to it. To many of us in the field, the passage of time seems only to have hardened positions, with the debate becoming increasingly emotional, allowing little room for change or improvement. Antiquities have dominated the discussion with archaeologists' interests and national claims of ownership attaining the dominating position. Yet few think the basic situation improved or the underlying issues resolved. Rather, now that the parameters of debate are clear, all are learning to live with the status quo, as otherwise unacceptable as that may be. While there now seems to be less blatant abuse of cultural property laws, it is not clear that there is less looting of archaeological sites, only a sense of increasing if unpalatable stability.

At the same time, many of us sense the rumblings of change—not from advances in old debates, but from a broadening of context, interest, and approach to cultural property. Attention has increasingly focused on intangible cultural property. Anthropologists studying current cultural differences, rather than archaeologists studying past cultural remains, appear to be garnering a greater role in cultural property discourse, and the voices of cultural critics, heritage experts, cultural administrators, tourist concerns, and of small, previously unnoticed indigenous and other communities have entered the fray. The claims of indigenous peoples to their non-material heritage, the use of intellectual property law by multinational corporations to appropriate local knowledge for commercial use, the effect of globalization on cultural diversity and identity, the recognition of a need to better understand and make political room for minority interests, and increasing awareness of how the law itself embodies cultural values and so can affect comprehension and resolution of cross-cultural issues have all come to the fore and broadened the debate.

In this new environment the claims of nations, archaeologists, and collectors to antiquities are less prominent and tend to be seen in a new light. The focus now appears not to be about who should have what, but how cultural property is best understood and approached. An example may be a shift in the perennial debate surrounding the Elgin Marbles, the most famous and irresolvable of cultural property disputes. In the past the issues have been whether Greece had a legal claim to their repatriation, then whether it had a moral one and whether propinquity and concern for identity and continuity should ultimately lead to their return. In the most recent discussions surrounding Greece's request for their return for the 2004 Olympics, the focus shifted to whether a new museum in Athens or their continued exhibition in London would provide the most appropriate context for understanding their role in world and European culture. That is, there appears to be a move away from exclusive national, historical, legal, and even scientific interest to the nature and role of culture itself and with it a broadening of concerns. This reflects what in other areas has been termed the multicultural debate. Discourse and context, increased awareness of the role of culture, and how to best present and appreciate cultural property have become more prominent. The result: a more global, wider interest analysis than before and increased appreciation for culture as such, with less focus on the past and greater consideration of ongoing cultural needs and benefits.

While much of this was part of the old debate about national versus international interests, aspects of this new approach would be lost if viewed in terms of prior debates.

This broadened view of cultural property is not without its problems, which all in the field will eventually have to confront. Foremost for the Society and its Journal is whether in this enlarged interpretation cultural property remains a discrete field with sufficiently focused subject matter to be covered by a single publication. It is after all a long way from its legal beginnings and the essentially legal focus of the Journal's earlier incarnations. Perhaps the only answer to this is to wait and see the results. But this would ignore the numerous factors that induced the Society to broaden its and the Journal's scope. These include: greater recognition of the importance of intangible cultural property; the need to broaden the context and framework for discussing cultural property issues; the lack of progress in the traditional, essentially legally based approach to cultural property; and the possibility that a stringently legal approach may preclude consideration of cross-cultural and other issues that are only poorly, if at all, able to be articulated within the framework of a particular legal system. Again, perhaps an answer to whether such an expanded approach to cultural property is useful will be determined only in time by practical results. These may show that cultural property is best approached separately through the numerous disciplines that touch upon it and discretely by way of the varied topics and issues it broadly contains. Even so, there are good reasons to see if a wide variety of approaches and subjects can be contained within a single publication. First, until now the Journal has been the only forum for discussion of all aspects of cultural property, and however complex and multidimensional a topic, it is undoubtedly valuable to get all discussants together to seek common and mutually useful discourse. Second, if an all encompassing approach to cultural property is not possible, default to separate approaches and components would seem best to follow failure rather than anticipate it, lest the potential benefits of broad, interdisciplinary inquiry not be fully realized.

Another issue that arises in light of a broadened approach to cultural property is whether this traditional term and its use in the Journal and Society's names remain appropriate. The term "cultural property" tends to embody a static view of culture and to focus on legal claims to tangibles as a culture's property. This is contrary to an expanded view of the field and its concern with intangibles, cultural interrelations, and the need to understand separate cultural traditions. It also tends to minimize what is generally viewed as the hallmark of cultural property: its constitutive relation to the nation or people whose cultural expression it is. Thus "cultural heritage" better marks the basic underlying connection and sense of right or belonging between a cultural group and its identifying cultural symbols and products. The continued use of the term "cultural property" involves more than the fact that it has been in the name of the Society and Journal, and is now, so to speak, their heritage and grounds for good will. Basic to the original naming of the Society and Journal was the desire to provide a setting congenial

for discussion and debate of all perspectives and points of view and to be hospitable to all interested parties and their concerns. While “cultural property” is not a neutral term, it still may be less likely than “heritage” or other terms to evoke any one side or bias and so more suited for the name of a Society and Journal dedicated to fairly presenting all aspects of the debate.

Finally a word to our past subscribers, institutions, and readers who have waited patiently for the Journal’s reappearance as well as to our new subscribers and readers: Thank you for your past support; we will do our utmost to obtain your new and continuing support. As indicated by the image of the phoenix on the cover, the Journal’s republication is intended to herald a rebirth that rises directly out of its past as well as a renewal that reflects the changes that have occurred in the field. We hope that you will find that the new Journal serves your interests as well if not better than in the past, that it maintains or surpasses its prior standards and achievements, and that it speak to and for new voices, concerns, and parties, while continuing to well serve its past subscribers and readers, and so be a better, more inclusive forum in the future.