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**Lockean and Cultural Property concepts of  
property do not oblige museums to  
repatriation artefacts: A critique of using  
Property Claims to defend Repatriation.**

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This dissertation asks the question of how ownership over property in museums is decided. It concludes that for a range of candidate concepts of property, none of them oblige museums to repatriate artefacts unless we weaken Young's theory to repatriate through how much artefacts are valued by a culture. However, this dissertation rejects the Ownership Argument as a defence for repatriation. To do this, I will be considering three options of how we understand 'property' through three scholars: Locke, Young and Thompson. I will discuss the difference between cultural internationalism and cultural nationalism to flip the question, and attempt to defend a view that museums should retain the artefacts under their possession. Importantly, I am not anti-repatriation, I am, however, arguing that a common articulation for pro-repatriation does not work in a range of cases.

To do this dissertation justice, this work has been interdisciplinary, exploring museums, law, applied philosophy, applied ethics, epistemic and metaphysical concepts, to discuss the ways in which repatriation is defended through property. It must be noted that property theories are in vast abundance, however, to keep the project manageable, I have decided to not include prominent philosophers such as Nozick, Hobbes, and Rosseau. Although, given that the three concepts I discuss do not work, it seems unlikely that a different version would due to similar objections.

## **0. Repatriation or Restitution?**

This dissertation could have used two key terms for the concept: repatriation or restitution. 'Repatriation' seems to imply that something will be sent back to a state or country, which can be difficult to defend if there is no relevant country or state to return said object back to, or on the other hand, if there are too many countries or states with equally weighted claims to said object.

Whereas 'restitution' implies that something lost or stolen would be restored to its proper owner or to be recompensated for a loss (Roehrenbeck, 2010; Perez, 2011; Arvanitis & Tythacott, 2016), the literature (Godwin, 2020; Matthes, 2017; Snowball, Collins and Nwauche, 2021; Lekakis, 2013;

Powell, Garza, and Hendricks 1993; Bauer, 2008; Cohan, 2004) tends to use ‘repatriation’ as their term of choice, so I will employ this term as a critique of this concept when it is used in conjunction with the Ownership Argument.

Both terms are problematic. ‘Repatriation’, because the country of origin may never have or may no longer exist and ‘restitution’ because there is an implication that something of equal value could be substituted for these artefacts. Throughout this dissertation, I will use the term that has been used by the scholar at hand thus, I will use both terms as they are used interchangeably and not necessarily as expressed above.

### **1. Repatriation and the Ownership Argument**

A common argument (Woldeyes, 2019; Ponkshe 2022) for the return of antiquities is the following:

(OAP1) Some objects possessed by British museums are not the rightful property of those museums.

(OAP2) Those objects are the rightful property of some other entity.

(OAP3) One always ought to return property to its rightful owner.

(OAC1) So, those objects possessed by British museums ought to be returned to those other entities.

This will be known as the Ownership Argument. I will attempt to make this argument more precise and evaluate it. I will conclude that regardless of the range of ways we can make this argument precise, it is not a sound argument. I will begin by considering three options for understanding ‘property’: Lockean property, Young’s cultural property and Thompson’s cultural property.

To begin, we should consider what makes the argument imprecise to begin with. The concept of repatriation in conjunction with the Ownership Argument is problematic epistemically, morally, and historically.

To illustrate these problems, we can look at the Kohinoor. The Kohinoor is currently in the possession of the Crown Jewels of the Royal Family of the United Kingdom and was last worn set in the late Queen Elizabeth II's crown for her coronation in 1952. The first verifiable record of the diamond comes from a history by Muhammad Kasim Marvi of the 1740s Invasion of Northern India. Marvi notes that the Kohinoor as being one of the many stones on the Mughal Peacock Throne that Nader Shah looted from Delhi. The diamond switched between hands and various empires before most recently being given to Queen Victoria after the British East India Company's annexation of Punjab in 1849. Today the diamond is on public display in the Jewel House at the Tower of London (Dalrymple & Anand, 2016).

Various governments including India, Iran, Pakistan, Afghanistan and even the Taliban insurgency have all claimed ownership of the Kohinoor and have demanded its return since India gained independence in 1947. For example, Pakistan claim that the Kohinoor was originally from the area of Panjab that is now part of Pakistan (Khan, 2016). The Taliban demanded the return of the Kohinoor following the claim that the diamond, before being surrendered to Queen Victoria by Prince Maharajah Dalip Singh, was in the possession of the Afghan royal family and that it had been stolen from them (Harding, 2000). The British Government rejects these claims by insisting the gem was obtained legally under the terms of the Last Treaty of Lahore. The Kohinoor has been possessed by key historical figures such as Ranjit Singh, Gulab Singh and Shah Jahan at different point.

This example illustrates some of the issues with the argument that the Kohinoor should be repatriated because it is owned. Epistemically, we do not know who first owned it, and because of

the historical record we cannot be accurate in our line of succession. A moral concern is to do with the transfer of possession rights; even in the case where we know who owned the Kohinoor and at what point, does this possession confer ownership? If the Kohinoor was stolen or traded between empires, which empire has the better claim? Ontologically, we are concerned with the fact that polities that have an ownership claim no longer exist. For example, the Afghanistan Monarchy was exiled in 1971, as they no longer exist, can the bloodline still claim what their ancestors once owned? A historical concern is that if ownership can change, how can we be sure of what was a rightful acquisition of an antiquity. Even if we agree with the claim that the British Government's claim is from an illegitimate transfer, since our knowledge of history is written by the victors, or lost through time, it is difficult to track who owned what, at what time.

By exploring these issues, we can see that the simple Ownership Argument is not concrete and to defend repatriation through ownership we must explore a different view of property.

## **2. Lockean Property theory**

The first way we will attempt to make the Ownership Argument precise is to view property as Lockean property (LP) (Bennet & Locke, 2017). This can be summarised by the following standard form:

(LP1) Every man has a right to own his person.

(LP2) Every man has a right to own the labour of his person.

(LP3) Every man has a right to own that which he has mixed the labour of his person with (Day, 109)

Day objects that we can accept LP2 but reject LP3, which makes this argument invalid. He states that the issue with LP3 comes from the idea that there is a moral right to the exclusive use of

which one has mixed their labour in (109). Regardless, if we use this concept of property in the Ownership Argument it would like this:

(LPa1) Some objects possessed by British museums are not the rightful LP of those museums.

(LPa2) Those objects are the rightful LP of some other entity.

(LPa3) One always ought to return LP to its rightful owner.

(LCa1) So, those objects possessed by British museums ought to be returned to those other entities.

If we understand property as LP, then LPa2 is false and thus the argument is unsound because of a metaphysical ‘matter of fact objection’ and the epistemic objection. For the metaphysical objection, it may be that an artefact is owned by someone, but it is indeterminate who owns it. We may know that it belongs to someone, but because we do not know *who* then it seems unreasonable to assume that we can return this. The epistemic objection is that we cannot know who owns something, then we must object LP2 because we do not know the rightful owner, and since ought implies can, LCa1 does not follow.

LPa3 in the LP Ownership Argument is difficult, if not impossible, to execute. These antiques were made throughout history and the labourers who created them are no longer alive, we cannot simply return them to them. If we were to give these antiques to the labourer’s descendants, we are faced with a logistical issue of figuring out who owned these antiques originally and how we should transfer property. In other words, we could consider how property would be transferred according to Locke. Locke’s definition of property is that which cannot be taken without the proprietor’s consent (Tully, 1980, 132), when it comes to inheritance, Locke sees goods as familial and belonging to them all (133), which could cause some complications as Locke rejects the rights



of the individual in favour of the rights of the family unit in terms property. To view it this way means that *one* person is not able to decide on the inheritance of such property and it must be decided as a full unit. However, this is difficult to accept because simply put, the political matters of a family would affect the way in which inheritance and the transfer of rights would be viewed by different members. If there is discord between a family, then which family member's opinion should be taken in account?

Therefore, it is implausible to accept the Ownership Argument on Locke's definition of Property. Locke's conception of inheritance struggles to be coherent with the idea of repatriation, if we were to repatriate in this way, it would be almost impossible to have a consensus on what should happen to artefacts.

### **3. Cultural Property and James Young**

The second way we will attempt to make the Ownership Argument precise is through Young's concept of cultural property (CP). A culture is often said to own CP, this would include things that have been produced or created by a culture. Items of historical, ritual, or religious significance, artworks and more can all be considered a part of CP (Young, 2007, 111) (2012). Therefore, when we look at antiquities, we are thinking about them from the lens that these items are owned by the culture in which they were created. This definition is however tentative, as the definition of culture is a point of contention philosophically, although many academics use CP in this way (Coleman, 2006; Speer, 2013; Pokorny, 2002; Roehrenbeck, 2010; Wilkinson, 2015).

When discussing CP, there are several different concepts used to defend having a claim on this sort of property. Some of the most common ones are discussed by Young, as inheritance, traditional practices, and collective knowledge all of which he rejects in favour of simply evaluating the value that CP can provide for a culture. In this section, we will look at these different instances

that have been rejected by Young and consider if we can evaluate CP's value in theory and practice.

### **3a. Inheriting Cultural Property.**

Under this view, the suggestion is that cultures can inherit property. This version of the Ownership Argument would look something like this:

(IP1) Some objects possessed by British museums are not the rightful CP of those museums.

(IP2) Those objects are the rightful CP of some other entity or their inheritors.

(IP3) One always ought to return CP to its rightful owner.

(IC1) So, those objects possessed by British museums ought to be returned to those other entities.

This seems straightforward as a claim, being that CP would follow in the ancestral line. However, Young is concerned that this is not as uncontroversial as it seems because a culture is seldom able to provide a will in which they were named beneficiary of said CP (113). While the absence of formal documentation does not undermine a culture's claim, it can become very tenuous without such documentation. For example, if we were to inherit something based on the testamentary wishes of the previous owner, these wishes are often unknown, non-existent, or dubious. There is concern in how CP can be legitimately transferred, given that normal property transfer mechanisms don't apply.

Young also considers items that were not owned by as a culture as a whole, for example a medicinal bowl owned by a family. In many cases, the presumptive beneficiary no longer exists or cannot be identified. In the case of the Parthenon Marbles, the state of Athens ceased to be an independent

city-state in 338 BCE, religious communions, families, clans and more have all become extinct or no longer exist, and perhaps we can assume that things that belonged to them at the time of their existence were expected or wished to be inherited by members of their culture. However, Young argues that the claim that previous owners would have under certain circumstances, have intended that the members of their culture become owners of such property is baseless speculation. As it could be just as likely that some persons or groups would have wanted their property to pass to those who would have made the best use of their property (113).

Furthermore, the claim that the people of the past would have intended that a culture, as a whole inherit, a property seems false. The Athenians would have never wished the Spartans and Thebans to inherit the Parthenon Marbles, even though all three were part of the Greek Culture, they were enemies. Considering this, the Athenians were more likely to wish that the Parthenon Marbles be destroyed or taken by some other entity rather than fall into the ownership of their enemies.

When considering all these problems with the concept that CP can be inherited, it makes sense to reject this claim as it does not seem to work. If a culture claims to own some CP through inheritance, then their claim must be based on testamentary wishes of several people, and for this claim to go untested, it is important that there be a level of evidence supporting this claim. This creates a wider problem for the Ownership Argument, that the claim that CP can be inherited is vital to the understanding of how ownership rights are transferred. As in this understanding of CP IP2 is false and so, to repatriate there must be some presently existing culture to which an item belongs, however, if the expectation is that this CP is owned due to inheritance, this damages the Ownership Argument.

### **3b. Traditional Practices**

Traditional practices are a slightly different type of CP, such as stories, songs, and other types of intellectual property. The practices include an acceptance of the collective ownership of certain practices. The view would look something like this:

(TPP1) Some objects of intellectual property possessed by British museums are not the rightful CP of those museums.

(TPP2) Those objects are the rightful CP of some other entity.

(TPP3) One always ought to return CP to its rightful owner.

(TPC1) So, those objects possessed by British museums ought to be returned to those other entities.

It may seem a little unclear on how museums could retain intellectual property, however in my opinion, through stories or songs, where these have been acquired without the permission of a culture, it is possible to have this type of retainment. There cannot be physical property without the intellectual property of creating it, therefore the antiquities in museums are intellectual property embodied. Young is sceptical on whether traditional practices often establish a culture's claim on property. The concerns with these types of practices are that they can be very common and often to honour practices we must look to the past and the laws and institutions that were present then. However, by doing so, we could be ignoring the current laws and institutions which is counterproductive. Furthermore, the origins of such practices do not immediately give them ownership over it. As Jazz and Blues were developed by African Americans but the royalties were owned to those who wrote and performed the songs and not all African Americans (116).

The concerns raised by Young in this passage are both brief and complex. On the one hand, it seems intuitive that practices that are apparent and present in a certain culture is their CP. Nonetheless, there is a complexity here on the lines we can draw on what practices are owned by

whom. Another concern that Young does not discuss is the possibility that two cultures who have had or do have very similar practices, and where the concept of ownership lies here. For example, many cultures believe in polytheism, should their practices or beliefs be similar or the same to other cultures, it does not seem right to divide these practices. Ancient Romans and Ancient Greeks were both polytheistic cultures, and similarly believed that Gods and Goddesses were anthropomorphic, which means the stories told could be quite similar in nature (Dillon, 2019). Especially as stories were told through word of mouth, these stories could have been collated, confused, or adapted to be quite similar, the intellectual property behind these stories are often told within artefacts such as vases or tapestries in museums. Therefore, we are again unable to defend CP through this concept of traditional practices, it is too weak of an argument, as we are rejecting TPP2.

### **3c. Collective Knowledge and Collective Property**

The last concern made by Young is that a culture is often said to be the collective owner of some CP because it is not considered the original product of a single individual or identifiable group of individuals (116). This view would be expressed as below:

(CKCPP1) Some objects possessed by British museums are not the rightful CP of those museums.

(CKCPP2) Those objects are the rightful CP of some collective.

(CKCPP3) One always ought to return CP to its rightful owner(s).

(CKCPC1) So, those objects possessed by British museums ought to be returned to the collective it belongs to.

Through this view, something becomes collective property because it is a collective product. This concept seems accurate when we can see this be the case. For example, the Pyramids of Giza were not built by one person, therefore it would hold as collective property. However, when there is a claim that something such as a work of art is collective property, this seems doubtful, and as Young puts it “[doubt] that claim that an artist’s use of the traditional knowledge of his culture makes his work a collective product and consequently, collective property” (116). These concerns are built on two bases, the first being that not every member of a culture has something to do with the production of artworks. For example, not everyone who interacted with 17<sup>th</sup> Century North German culture contributed to the tradition that made Bach’s music. The second base being that it is the individuals flare and personalisation which gives such artworks aesthetic value. Thus, to put something as collective property seems to dismiss the work put in by the individual.

These concerns that have been presented by Young give us much to consider. It is simply the case that we cannot just make something ‘collective cultural property’ as it can undermine the work and significance of these items. While this is not the case for all things that have been deemed ‘CP’ this is the case for items of individual significance. The Ownership Argument, when understood as involving collective property, is unsound. While one could argue that there is collective appreciation or value placed on something, it is illogical to assume that appreciation necessitates ownership.

### **3d. Young’s Alternative**

Young argues that the basis of a culture’s claim on CP can simply be the great value that some property has for members of a culture (120). This view would be:

(YP1) Some objects possessed by British museums are not the rightful CP of those museums because those objects are not of great cultural value to these museums.

(YP2) Those objects are the rightful CP of some other entity of whom values that object.

(YP3) One always ought to return CP to its rightful owner if it is of great value to them.

(YC1) So, those objects possessed by British museums ought to be returned to those other entities.

Young argues that the conclusion that a culture has not inherited a right to property and therefore has no claim on it *at all* is occasionally false. In his argument, Young makes the claim that only when something has a very high degree of value for the culture will the cultural significance principle be able to over-ride all the other principles that govern the ownership of CP. Sometimes, the members of a culture ought to own property simply because it is so important to the wellbeing of the culture (123).

Owner's ought to ensure that scholars have full access to works with a high degree of aesthetic value and some CP has such high value that everyone ought to have access to them. The 'cultural significance principle' is guided so that when an item of CP has aesthetic, historical or other value to the members of some culture, then the culture has some claim to the ownership in question (122). The strength of the ownership claim is proportional to the value the CP has for the members of the culture. Alongside this principle, to decide the location of CP we should also account for the rights of purchasers, finders, and makers as well as the preservation of CP. Therefore, if a culture does not have the resources to preserve valuable items, then their claim on a property could be temporarily suspended.

Young goes on to express that the suggestion that a culture has claim on artefacts it finds valuable is sometimes attacked by a means of *reductio ad absurdum*, and that this suggestion leads to the conclusion that every item of CP ought to be returned to its original culture, or its closest surviving culture. The concern is that this would mean that every Monet ought to return to France, every Haida carving to the Queen Charlotte Islands and every shard of Attic pottery to Greece (122). However, Young's argument does not seem to really be subject to this *reductio*. I think that

Young's argument can be defended because it seems nuanced enough to argue that not *all* Monet's would be that significant to French culture and that there is no need for *all* of them to be returned. The important ones, that hold significant value to the French should return, not all. Therefore, it may be that Young is responding to a concern that doesn't seem to hold much weight on its own.

The cultural significance principle as such only relates to tangible CP and not intellectual property. Furthermore, to conclude that some things can be considered CP based on value is a difficult principle. It is hard to discern how much value cultures applies to artefacts and how to measure this. Claims come from emotion and can be politicised, which eventually overcomplicates an already complex situation of what is CP.

#### **4. Cultural Nationalism and Cultural Internationalism**

So far, the idea of CP cannot make the Ownership Argument sound, does this mean that there could be reasons presented by CP that could argue to leave antiquities in British museums? Cultural Internationalism is one such view that would enable the concept of CP to defend museums retaining CP. However, Cultural Internationalism is implausible, and I will now explore why, by explaining Cultural Nationalism and Internationalism and the objections I have to these concepts.

##### **4a. Cultural Nationalism (CN)**

CN holds that CP belongs within the borders of the nation where it was created (Jaderojananont, 2017). Within the Ownership Argument this would follow as:

(CNP1) Some objects possessed by British museums are not the rightful CP of those museums.

(CNP2) Those objects are the rightful CP of some other entity, i.e., the entity which controls the territory where it was originally created.



(CNP3) One always ought to return CP to its rightful owner.

(CNC1) So, those objects possessed by British museums ought to be returned to those other entities.

#### **4b. Cultural Internationalism (CI)**

CI is the view that CP belongs to the global community, and the country with the better resources to care for another country's CP should retain possession (1).

(CIP1) Some objects possessed by British museums are not the rightful CP of those museums.

(CIP2) Those objects are the rightful CP of the global community.

(CIP3) One always ought to locate CP to whichever country can be most prepared to care for it.

(CIC1) So, those objects possessed by British museums ought to be kept by those who can care for the CP.

#### **4c. CN vs CI**

If we are to agree with the CI view, then this would block OAC1 that British museums ought to return property, since the global community owns them, which means no nation has a better claim over others. Therefore, the CP in question may as well remain in Britain. Obviously for a defence of repatriation this view is incompatible, however, it is problematic for even more reasons.

Firstly, the view seems extremely patronising. There is concern to what constitutes as a country having 'better resources' as a reason to retain CP. This seems to be a difficult premise to accept, as instead of retaining another countries' CP, there could be a movement to equip countries with

the resources they need to retain their CP. It is also unclear on what is meant by care or resources, if we are simply thinking about preserving history, then all countries could be equal on this front. This view seems to presuppose a fixed economic world order, where some countries have the resources and others do not. However, this is a contingent situation, Britain could become ill-equipped to care for antiquities. So, this does not solve where antiquities should be located, and we have no principled way of deciding which location we should prefer.

It also seems barely coherent to say that something is owned by the global community. How did we acquire it as a community and how can we all own something, if there is no one who doesn't own it? We couldn't give it away or lose it as a global community which means the idea of CP being retained this way seems confusing. Furthermore, because there is no land that is 'the global community', the argument still stands that wherever that CP is, that country will have a higher level of control over that CP than any other country.

James Cuno, a leading proponent of the CI view argues that "antiquities are the cultural property of all humankind [...] and antiquity knows no borders" (2008). While antiquities need to be protected from looting, Cuno rejects that antiquities should be repatriated as such, as it will lean into nationalistic identity politics, and instead we should broaden international access to antiquities and restore the system where source countries could share newly discovered artifacts in exchange for archaeological help. However, I find this opinion misguided as such, the concept that antiquity knows no borders is controversial because, while museums are "ensuring accessibility to global heritage" (32) this does not mean that nation-states are not or cannot. The crux of the matter is that the desire of repatriation or restitution lies within a desire to obtain what cultures hold as part of their identity or heritage, this is a deeply political matter which is difficult to manoeuvre, but this does not make it impossible for nation-states to uphold the values that museums do, as I will discuss later in section 6.

Cuno's ideas of an encyclopaedic museum seem distant at best, while it is easy to theoretically state that the items in a museum are part of global heritage and therefore should be all collated as such, it is very unlikely that the museums who hold these artifacts would part with them to establish another museum in a different part of the world. As identified by Cuno, this is a highly sensitive political issue and nations will not part with items that give them leverage.

Lastly, even if we agree that CP is held by the global community it does not then follow that it should then be held by the nation where the best resources are as it collapses the argument that CP should simply be left where it is. A common anti-repatriation argument often goes like this:

(ARP1) Some objects possessed by British museums are not the rightful CP of those museums.

(ARP2) Those objects are the rightful CP of some other entity.

(ARP3) Not all CP can be repatriated or repatriation may damage the CP.

(ARC1) So, those objects possessed by British museums ought to remain where they are to reduce to possibility of damage.

However, if we accept the CI view which rejects repatriation and it turns out that the country with the best resources would be elsewhere, then these two anti-reparations arguments clash with each other.

On the other hand, CN is problematic when considering the way in which geographical topography and the historical changes of 'rulers' and how this is difficult for a repatriation argument. For example, the geographical land now considered modern day India was not always considered the 'borders' of India. Even as recently as pre-1947, Pakistan was considered part of India. India has been invaded roughly two hundred times (Kiprop, 2018). To what extent can people who descend from the invader's ancestors lay claim on the heritage that is also claimed by

modern day India? As a nationalistic view, we can only assume that national identity matters to this claim. However, is it the nationality of the current occupiers of the land, the occupiers that were there before said antiquity, those who occupied the land when it was created or those who occupied the land throughout historical conquest that truly own said CP? Furthermore, the accuracy of borders and boundaries hold the same problems that were discussed in Section 1.

The problems with both the CI and CN views have been deliberated in depth, with careful consideration of the political repercussions of attempting repatriation in this way, it cannot be achievable through these views.

## **5. Janna Thompson**

So far, CP cannot make the Ownership Argument sound, thus maybe we should consider CP conferring restitution only in certain circumstances. This is what Thompson argues for, but again, her arguments are not compelling.

Thompson argues that to claim restitution, the CP that was taken needed to be missed or demanded at the time of removal. She states that the right to claim some restitution ceases if the peoples from whom the artefact was taken no longer exist, (2003, 254) but even the existence of the group does not equate immediate restitution as the claim could diminish overtime as it ceases to become central to one's existence. This claim, put forth by Waldron and explored by Thompson seems to argue that if there was no requirement for the return of said CP and as the peoples adjust to no longer having said property, they are owed no more than an apology. There is no requirement to return this property (1992).

This argument would fit into the Ownership Argument like this:

(TP1) Some objects possessed by British museums are not the rightful CP of those museums.

(TP2) Those objects are the rightful CP of some other entity, who missed said object at the time of removal.

(TP3) One always ought to return CP that was missed when it was removed to its rightful owner.

(TC1) So, those objects possessed by British museums ought to be returned to those other entities.

Thompson argues that a “collectivity’s right to restitution does not last forever” (255) and goes on to explain that groups change their practices, and new things take priority when different objects take on meaning. However, I do not think that this is a strong argument for why a group’s right to restitution can decrease or vanish. It seems illogical to argue that if a practice is no longer practiced it is not important. For example, if a group was using an antiquity for an important part of their culture and as technology improved, they managed to enhance their antiquity, this does not make the original less important. There is still value in its historical impact and as original templates. They should not need to be in use to be considered valuable. Furthermore, Thompson’s consideration that CP can be adopted by another group seems to be dangerously accepting of cultural appropriation, which extends another issue of how can CP significant or sacred to a group when another can easily adopt it? It seems to allow for the dissolution of individual, unique groups with distinctive cultural practices. Thus, I disagree with this assessment, it cannot be that other cultures are able to simply adopt other CP as theirs. I do agree that CP blends and the borders we hold now were not always the case, for example, the partition of India in 1947 divided the state of Panjab in half. Therefore, certain cultural practices can be found on both sides of the border in India and Pakistan, and certain practices will blend. However, just because it has been adopted by someone else, it does not remove the claim the previous possessors had over CP.

Thompson's claims on what counts as rightful restitution boils down to how the CP was acquired in the first place. Thompson's example of the Icelandic manuscripts that were returned by the Danish following what was 'voluntary transfers' in the early 18<sup>th</sup> century compared to the return in the 19<sup>th</sup>, is an example of a return that is not 'restitution' because the manuscripts were given willingly and were not the CP of the community at the time of the sale, but it was only later that it acquired symbolic importance (256). Thompson claims that a claim to CP cannot be made retrospectively and that this return was simply given as an act of generosity or compensation instead. Thompson goes on to explain that artefacts such as the Parthenon Marbles were not protested when they were removed and only became an important national symbol later. However, I find this argument difficult to support, it seems illogical to argue that the value of something cannot be understood retrospectively. For example, Vincent Van Gogh's art was only appreciated posthumously, following Thompson's argument his art would only have value if it was valued when it was made.

Thompson defends her theory from objections. The first being that had the group not been oppressed people then they would have been able to engage with the needed self-reflection that would have led them to recognise something as CP and to deny them restitution because they were oppressed adds insult to injury. To which Thompson argues that this argument depends heavily on non-factual statements to which there is no evidence, we have no way of knowing for sure if the Greeks would have valued the Parthenon Marbles had they not been oppressed by the Turks (256). However, this response does not seem satisfactory because it could easily go in the other direction, surely if there is fair enough speculation that they would not have valued the Parthenon Marbles, there is also enough to say that they would have.

The second argument that Thompson defends herself against is the idea that artefacts can belong to a collectivity even when their members are not yet aware of this fact. Thompson states that some people believe that their nation existed before its people developed a national consciousness,

and that some artefacts belong to the nation simply because they express national qualities or aspirations. However, Thompson argues that we cannot establish when an artefact counts as an expression of a particular national essence (257). I find this response easier to defend. Thompson highlights that it is a myth that a nation will have a continuous essence that can be traced back to its primeval community, these concepts are not stagnant.

This discussion of Thompson has not provided us with an adequate argument as to why we should repatriate in this way, therefore maybe we should reconsider the reasons behind anti-repatriation.

## **6. Museum and Ties**

A concern for anti-repatriationists is that artefacts should remain in museums simply because museums are protectors of values that transcend the rights of CP, including restitution (Thompson, 257). This argument rejects OAP3, that one ought to always return CP to its rightful owner. However, it seems inexact to suppose that by acceding to some demand's museums are embarking on a course that will make it impossible for them to serve the purpose for which they were created. For example, the values of education, advancement of knowledge, and aesthetic value are a part of the museums purpose. These 'human values' if taken as values with greater value than the act of restitution, would have huge implications. The idea that some things can be considered the 'property of mankind' suggests that the protection of such artefacts should be the primary consideration in this item's treatment and location (258). This can be concerning, for if a government was to deny the right to restitution because of this it could be accused of violating rights that are constituted through being a claimant to CP. However, I find this argument tenuous at best, I do not think these values overrule the right to restitution simply because there is nothing that means that these values cannot be upheld in another nation or another location. The values of education and advancement of knowledge are strong reasons as to why museums are so valuable to humanity, however, in museums you are only allowed to interact with the artefacts visually and

orally, there is no or very minimal tactile learning. This leads me to the conclusions that these values could be upheld simply with pictures, videos, and text regarding these artefacts. There is no true need to have these artefacts in person except for perhaps aesthetic value. However, aesthetic value is one of the values that I believe can be held in the location of the CP claimants, it is not necessary to refuse restitution due to these values.

After looking at all these distinctions another concern must be taken into consideration. If we determine that the argument is simply tied and there is equal argument on both sides, why does the British museums still retain these antiquities? If we cannot decide where an artefact should be returned, do the museums simply keep them? For example, if the Kohinoor is equally claimed by India, Pakistan, and Afghanistan and no one has a greater claim, how do we decide this?

This concern is particularly difficult for pro-repatriationists, simply because this concern makes it harder to argue for repatriation as a concept because this minimises the whole effort of CP being returned to where it is most appropriate. It is important to consider that defending repatriation in theory and in practice are two very different circumstances. In fact, the British Museum Act of 1963 dictates that Museum Trustees are legally bound by fiduciary duty to preserve the Museum's collection and dispose object only in extremely specific and unusual circumstances (Godwin, 2020, 147). Which means that the Museum is unable to repatriate unless Parliament amends the Board of Trustee's legal obligations and excuses them from their fiduciary duty *and* the Board wishes to repatriate (148), this is a deeply political matter of which the complexities don't allow us to come to an easy or direct conclusion. This political matter is deepened by the ethical discussion surrounding whether the legal complications are just a protection to allow museums support anti-repatriation (Colwell, 2015; Pearlstein, 1996; Taliaferro, 2016; Thomas 2016; Gazi, 2014; Bienkowski 2015; Anderson, 2004).

## **7. Conclusion**



When it comes to the concept of repatriation and restitution, I am inclined to support it. Simply speaking, it seems natural to assume that the CP of a culture should be with them. However, I believe that the reasons to repatriate may not lie in the concept of property rights. To defend repatriation, there must be some other argument that seems solid enough to support it. Throughout this dissertation, neither Locke, Young nor Thompson presented a sound argument, there were enough objections to their arguments that has a pro-repatriationist searching in a different direction.

However, the only possible way to accept any of the theories put forward could be by weakening the conclusion and using Young's argument in section 3d that perhaps not *every* piece of CP should be returned but the most culturally appropriate, the ones whose value can be seen through the continued requests for repatriation. For example, the Parthenon Marbles have become a global point of contention, it is obvious that even cultures outside of Greece can see the value of them being repatriated back to Greece.

Therefore, our final argument may instead be:

(P1) Some objects possessed by British museums are not the rightful CP of those museums.

(P2) Those objects are the rightful CP of some other entity of whom values that object.

(P3) One always ought to return CP to its rightful owner if it of great value to them.

(C1) So, those objects possessed by British museums ought to be returned to those other entities.

In conclusion, repatriation cannot be defended by property claims, unless we weaken the conclusion so that we accept the repatriation of only *some* antiquities. However, it seems incomplete

to accept this conclusion. To defend repatriation, we must do by some other means and not through property.

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