

Repatriation, Reconstruction, and Cultural Diplomacy in the Digital World

The repatriation of cultural treasures has been very much in the news of late. Francesco Rutelli, the Italian minister of culture, has been engaged in intensive negotiations with leading museums in the United States concerning the return of cultural artifacts that he has characterized as having been “looted” from Italy. The Metropolitan Museum of Art in New York City, the Boston Museum of Fine Arts, and the J. Paul Getty Museum in Los Angeles, among others, have agreed to return a number of these artifacts as part of broader agreements for the loan of other artifacts and for collaborations on research.

In these and similar negotiations, the international community is struggling with the framing of what amounts to a statute of limitations and a set of dates before which artifacts can be regarded as having been taken “fair and square.” Key demarcation dates involve the 1972 UNESCO convention on cultural heritage and a 2001 treaty between the United States and Italy (one of about a dozen treaties the United States has signed with other nations in this area over the last decade). Of course, international resentment is timeless. The activities of Napoleon Bonaparte, for example, remain controversial to this day among some nations. And despite the successes of the Italians (successes that ironically involve some Greek materials), Greece has not yet been successful in its call for the return of the Elgin Marbles (which the Greeks now pointedly call the Parthenon Marbles) from the British Museum.

Repatriation is a controversial issue not only between traditional nation-

states. In the United States, for example, the Native American nations have long called for the return of their cultural patrimony, leading to the passage of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990. Repatriation is also an important theme in the discussions between the Native American nations and the Smithsonian Institution’s National Museum of the American Indian. Fundamentally, the NAGPRA legislation called for the return to the tribes of an array of materials—such as cultural objects and human remains—from scientific and cultural heritage institutions in the United States. Importantly, this issue involved not just the ownership but also the treatment of these artifacts, which were often viewed as sacred—and thus subject to view only by specific audiences or in specific contexts; indeed, some are intended to decay naturally rather than be preserved permanently.

The legal and moral issues of repatriation and cultural heritage are complex and contentious, but they are not my focus here. My concern here is with stewardship and scholarship. At some point, cultural heritage belongs to everybody, and everybody shares some obligation to exercise responsible stewardship over it. In addition, although ownership of specific artifacts is real and sometimes contested, there is no copyright dimension: current possession of these ancient public-domain artifacts does not convey

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control over images that have been made of the artifacts (though the owner of an artifact can of course limit the making of new images, or exert contractual controls over the use of these images, by restricting physical access to the artifact, and some museums do this).¹ It is in this spirit of collective stewardship that I hope museums, before signing off on any repatriation agreements, will capture extensive and detailed digital documentation of the contested objects and release this documentation onto the Internet—along with documentation of the rest of

their collections, of course.

Museums are primarily concerned with original, authentic objects. But digital surrogates can serve adequately for many scholarly and educational purposes. We have made great strides, not only technically but also economically, in our ability to digitally document cultural materials—both in two and now, increasingly, in three dimensions through the creation of surrogates. Although artifacts have historically been documented mainly by photographs, digital surrogates include not only digital photographs but also high-resolution laser scans of sculptures and buildings, multi-spectral imagery, and other data sets. Indeed, these digital surrogates offer scholarly opportunities that would be effectively impossible with the original artifact, and they are becoming, in effect, complements to the actual artifact. As these collections

of surrogates have grown and become broadly accessible through the Internet, they are changing the nature of museums by making much more of the museums' collections visible and available for study, even though there's no space to put the collections physically on public display.

In an age of repatriations, cultural memory organizations can (and, in my view, often should) still make available high-quality surrogates not only of their holdings but also of materials that they no longer hold—or, for that matter, of materials that they have never held. Indeed, there's an emerging argument that

to be elaborated in its own right.

And as we have been reminded yet again by the looting of the National Museum in Iraq, good documentation of a collection is an essential prerequisite to trying to recover stolen artifacts. In recent years, digital surrogates have been used to enable cultural reconstruction programs intended to replenish the looted or destroyed national cultural heritage of nations like Iraq or Afghanistan. The Afghanistan Digital Library, hosted at New York University, aims to collect digital versions of works published in Afghanistan from 1870 to 1930. In fact, we are also

tural materials, not just in their libraries and archives but also in their museums—museums of anthropology and history as well as museums of fine arts—and in more specialized collections such as ethnographic studies that may be held at the individual faculty, departmental, or research center level. Much of this is rare, unique, irreplaceable; in at least a few cases, ownership of the materials has been contested by other nations or cultural groups. These cultural treasures are part of the immense body of scholarly evidence and cultural history that is slated, gradually but inevitably, to be digitized over the coming decades. The mandates for responsible stewardship, the pressures for repatriation, and the potential to contribute to the reconstruction of the available cultural record are all part of the difficult calculus of priorities for and demands upon very limited resources for digitization. Funding agencies, recognizing the diplomatic and cultural dimensions, are making funds available for targeted digitization programs. Indeed, decisions made regarding choices about digitization priorities will be one of the ways in which colleges and universities will build up their capital, and the capital of the nation as a whole, for cultural diplomacy in a digital world.



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responsible stewardship calls for the creation and *distribution* of high-quality digital surrogates as a way of providing a social “insurance policy” against disasters that could damage or destroy irreplaceable treasures—whether held in museums, library special collections, or archives. Total catastrophe should no longer be acceptable. And leaving aside the imperatives of stewardship, there are independently compelling reasons to make such surrogates broadly available simply to advance the core institutional mission of supporting scholarship—but this is a separate argument that deserves

seeing preemptive collaborations being formed to replicate endangered rare materials, perhaps most notably the British Library's Endangered Archives Programme, which has been underwritten by the Lisbet Rausing Charitable Fund. Although all of these efforts are relatively modest in scale, they point toward a future in which cultural heritage, enhanced by digital surrogates, may perhaps be more robust, less concentrated, and less vulnerable than when it was represented only by physical collections of artifacts.

U.S. colleges and universities hold in trust enormous treasure-houses of cul-

Note

1. For out-of-copyright objects (in the United States, typically including those created pre-1923), there can be a separate copyright in a photo or other reproduction of such works if there is sufficient creativity involved; in general, however, the case law seems to suggest that if the intent is simply to document, that additional layer of copyright is at best very thin. See, for example, the case *Bridgeman Art Library v. Corel Corp.* But the legal situation here is still murky, particularly internationally.

In the case of images that document sacred cultural objects originating from living societies, such as the Native American nations, additional complexities arise. These societies may consider their objects—or images documenting them—suitable for viewing only by specific individuals or in specific contexts. Here there's a clear conflict between cultural traditions and scholarly interests, and as I understand it, the solutions negotiated for the images are based on mutual respect and goodwill rather than on any actual legal framework such as copyright, at least in the United States; NAGPRA was about artifacts.



Clifford Lynch is the Executive Director of the Coalition for Networked Information—and wishes to note that he is not an attorney.