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## INTRODUCTION

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Truganini's story must stand . . . for all those that will never be written, but live in the folk memories of the descendants of the victims . . . In recent years however both sides, black and white alike, have become aware increasingly of the continuing colonial crime, the locked cupboard of our history.<sup>1</sup>

On 4 December 1997, the necklace and bracelet of Truganini came back to Tasmania.<sup>2</sup> These cultural objects were the first ever returned to Tasmanian Aboriginals by a museum anywhere in the world. The items were acquired by the Royal Albert Memorial Museum, Exeter in 1905. The museum commenced negotiations for the return with the Tasmanian Aboriginal Centre in 1994 because it was aware the objects had belonged to 'Truganini, a determined survivor of the harsh treatment endured by Tasmania's Aboriginal communities in the 19th century'.<sup>3</sup> For the British collector, the necklace and bracelet no doubt represented a trophy taken from Truganini, the last 'full-blooded' female Tasmanian Aboriginal.<sup>4</sup> For the Tasmanian Aboriginal delegation, the restitution was an assertion of their people's right to self-determination. It was also an opportunity to put asunder the popular belief that the genocidal policies of colonial authorities had been successful in Tasmania.<sup>5</sup>

This book considers the processes of removal and return of the cultural objects from occupied communities during colonisation. These processes are located within the broader contexts of the development of international law, the growth of museums and the altering relations between European and non-European peoples from the nineteenth to the twenty-first centuries. They are examined through the prism of Anglo-American colonialism, which has played an aggressive role in the collection and commercialisation of non-European cultural heritage. It concentrates on the significant influence exercised successively during the last two centuries by British, US and Australian governments and museums upon international law and museum policy concerning the restitution of cultural objects.

<sup>1</sup> B. Smith, *1980 Boyer Lectures: The Spectre of Truganini* (Sydney, 1980), p.10.

<sup>2</sup> M. Pos, Cheers ring out as Aboriginal relics find their way home, *The Hobart Mercury*, 5 December 1997, p.3.

<sup>3</sup> J. Legget, *Restitution and Repatriation: Guidelines for Good Practice* (London, 2000), p.19.

<sup>4</sup> R. Brain, *Into the Primitive Environment: Survival on the Edge of our Civilisation* (London, 1972), p.29.

<sup>5</sup> See Memorandum submitted by the Tasmanian Aboriginal Centre Inc., in Seventh Report of Select Committee on Culture, Media and Sport (1999–2000 HC 371), vol.3, Appendix 58.

**Rationales for restitution**

The return of cultural objects has been a perennial preoccupation of international law and an issue for museums since their establishment. During the last decade, public and academic interest has intensified at the international and national levels with the increased variety of claims. Despite this intensity of interest, there has been little analysis undertaken of the rationales for restitution and their relation to each other.

This book proposes a framework that delineates three rationales for restitution:

First rationale: sacred property – the principle of territoriality and the link between people, land and cultural objects.<sup>6</sup>

Second rationale: righting international wrongs – the reversal or amelioration of discriminatory and genocidal practices.

Third rationale: self-determination and reconciliation – amalgamation of the preceding rationales to enable self-determination and reconciliation.

Each rationale promotes the renegotiation of relations between the claimant community and museums, and redefines the role of museums generally. Furthermore, each type of claim has elicited differing responses from international law and national legal systems. This framework highlights the importance of restitution of cultural objects in ensuring the continued contribution of all peoples to the cultural heritage of all humankind, a significant purpose driving contemporary international initiatives in this area.

The link between people, territory and cultural objects is a recurring connection made in international law since the early nineteenth century. From the Congress of Vienna in 1815 to the mid twentieth century, victorious European Powers sanctioned the restitution of cultural objects to territories restored following the collapse of empires. However, this recognition of the need to return ‘spoliations appertaining to those territories’ following independence did not extend necessarily to the dismantling of their own empires in the late twentieth century.<sup>7</sup>

The first rationale exposes the connection between physical possession of people, land and cultural objects made by the occupier and the occupied during colonisation. For the occupier, its military and economic strength enabled its museums to possess the cultural objects of all peoples and territories of the empire. For the colonised peoples from whom these objects had been removed, this dispossession of cultural objects signified loss of control of land, resources and identity. Consequently, reclaiming these cultural objects became central to their assertion of autonomy from the metropolitan power. The resultant overlapping and competing interests of multiple communities in the same cultural objects (and territory) necessarily renders this rationale problematic.

<sup>6</sup> Hamilton to Elgin, 15 October 1815, cited in A. Smith, *Lord Elgin and his Collection* (1916) 36 *Journal of Hellenic Studies* 163 at 332.

<sup>7</sup> Note 15, *Memoir of Lord Castlereagh [to Allied Ministers]*, Paris, 11 September 1815, PRO FO 92/26, 115 at 119; *British and Foreign State Papers*, vol.13, 215 at 216; and *Parl. Deb.*, vol.32, ser.1, p.298 (1816).

However, in several ways this rationale was significantly compromised in international law with the ascendancy of the State as its exclusive subject. The principles of State succession, most international instruments sanctioning restitution of cultural objects, and various peace treaties since the First World War, all nominate the State as the subject. As will be explained, experience has shown that indigenous peoples and minorities within and across States cannot necessarily rely on national governments to protect or return their cultural heritage.

The second rationale was prompted by recognition of the harm and violence that a State can perpetrate on its own nationals, occupied peoples and their cultures. During the mid twentieth century, the international community sanctioned the restitution of those cultural objects systematically confiscated by fascist regimes as part of their discriminatory and genocidal campaign against certain groups. The Nazi campaign had been the inevitable endgame of race-based theories, which informed the assimilation policies of metropolitan powers and settler States.

Restitution between and within States became a means of reversing or ameliorating these policies and practices. Allied governments recognised that when perpetrators strove to eliminate people because of their ‘race, religion, nationality, [or] ideology’, they usually destroyed or removed their cultural manifestations.<sup>8</sup> Restitution of cultural objects to individuals or representatives of the targeted group was one way of addressing the ‘eternal silence’ created in the collective memory of a nation and humanity by assimilation and genocidal policies.<sup>9</sup> It also facilitated the rehabilitation of these groups and ensured their continued contribution to the cultural heritage of all humankind. This is an early marker of the transition within the international community from policies promoting cultural Darwinism to cultural pluralism.

In the late twentieth century, there was a reawakening to the ongoing dispossession and loss suffered by Holocaust survivors and their heirs. These claims serve to highlight that the beneficiaries of policies of violence and confiscation were not only its immediate instigators but also museums throughout the world. European and North American States and their museums have gradually looked inward at the complex histories of these objects, their collections and their collecting practices to ‘right historic wrongs’ – and expunge the taint of possessing objects that were removed in such circumstances.<sup>10</sup> Equally, it has led to a growing appreciation that restitution includes ‘moral restitution that is accomplished by confronting the past honestly and internalising its lessons’.<sup>11</sup>

The third rationale emerged from the claims pursued by newly independent States and indigenous peoples during the decolonisation period onwards. Their efforts to

<sup>8</sup> Military Government for Germany, US Area of Control, Law No.59: Restitution of Identifiable Property, (Law No. 59), Military Government Gazette [Germany, US Zone, Issue G], No.10, November 1947; and (1948) 42(supp.) AJIL 11.

<sup>9</sup> M. Lachs, Address at Thirtieth Anniversary Celebration for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1984, in UNESCO, *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict* (Paris, 1984), p.13.

<sup>10</sup> Department of Culture, Media and Sport, Press Release 84/2000, 13 April 2000.

<sup>11</sup> E. Bronfman to US President, 15 December 2000, in US Presidential Advisory Commission on Holocaust Assets, *Plunder and Restitution: Findings and Recommendations and Staff Report* (Washington DC, 2000).

recover cultural objects stored in metropolitan and national museums are firmly tied to the articulation of the legal right to self-determination and cultural development in international law. Indigenous peoples reject any limitation on their exercise of the right to self-determination. Included in such a right is the return of land, tangible and intangible cultural heritage. They contend that the right to self-determination is not an act, but a process involving the negotiation of political, economic, social and cultural arrangements providing autonomy within and across States.

Indigenous peoples also argue that reconciliation between indigenous and non-indigenous peoples cannot properly take place without moral restitution – the acknowledgement of policies and practices of discrimination, assimilation and genocide and their effects on individuals, peoples and cultures. These claims for restitution of cultural objects incorporate and expand upon elements of the first and second rationales. They confront foundational principles of disciplines and institutions initially established to justify European colonial and commercial expansion; principles gradually internalised and accommodated by successive States during the last two centuries. Indigenous peoples challenge the international community, States and their non-indigenous inhabitants to ‘respect’ peoples, narratives and laws independent of their own and existing side by side with them. Their claims for restitution of cultural heritage, nationally and internationally, are an essential component in fuelling this process of remembering by the dominant culture and of enabling their own people to exercise self-determination. This rationale has also moved restitution from a physical act of return to a process which is redefining what, why, how and where return occurs.

### Parameters

During the late twentieth century, Anglo-American legal scholarship concerning the international protection and restitution of cultural objects was coloured by the ratification and implementation of instruments, like the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention).<sup>12</sup> Consequently, studies have been often framed within the free-trade agenda, with the interests, concerns and arguments of parties broadly divided between ‘source’ States and ‘market’ States.<sup>13</sup> Central tenets of this discourse have been undermined by the gradual uptake of the Convention by the major art-importing countries.

In the last few decades, an acknowledgement of and engagement with the restitution claims of indigenous peoples by settler States, like the United States, and former colonial powers, like Britain, has led to a recalibration of the debate. These developments have been reinforced by a re-emergence of the claims of Holocaust survivors and their heirs, and a reaffirmation of these States’ role in past restitution and cultural reconstruction efforts. This is a role that various UN bodies like UNESCO have sought to continue throughout the intervening period. These claims

<sup>12</sup> Paris, 14 November 1970, in force 24 April 1972, 823 UNTS 231; and (1971) 10 ILM 289.

<sup>13</sup> See J. H. Merryman (ed.), *Thinking about the Elgin Marbles: Critical Essays on Cultural Property, Art and Law* (The Hague, 1999).

have strengthened once again the link between restitution and the right of a group to determine how its culture is preserved and developed; and the importance of ensuring such a right, for the benefit of the cultural heritage of all humankind.

These multifarious claims highlight that the protection and return of cultural objects cannot be confined to a sub-category of international law, despite the rhetoric of the restitution debate during the decolonisation era. Such a strategy served merely to neutralise these claims and ignored the collecting histories of former metropolitan museums and other colonial agents. Rather, as this book illustrates, the issue of restitution of cultural objects has ‘converged and diverged’ at various times with major areas of the discipline, including State succession, international humanitarian law, State responsibility, human rights and self-determination.<sup>14</sup> Equally, the restitution programmes of the preceding two centuries can not fit neatly into present-day legal categories which have been articulated, and in some cases codified, only in recent years.

Furthermore, I contend that the apparently disparate character of present-day claims should not serve as the basis for their treatment in isolation from each other. Indeed, it is a central contention of the proposed framework of rationales that a thread unites these claims. It is contained in the promotion by the international community of the protection of ‘the cultural heritage of all humankind’.

The notion of the ‘common heritage of mankind’ has been a guiding purpose for the protection of cultural objects and sites in international law. However, three variant, often competing, extrapolations of this phrase have emerged since the early nineteenth century. Each interpretation conveys a distinct agenda for the preservation and development of cultural objects in international law.

The requirement that the international community should honour and protect significant objects and sites for the benefit of the arts, sciences and ‘the improvement of the human race’ was famously enunciated by French archaeologist Quatremère de Quincy during the pillage of Rome by Napoleonic forces in the late eighteenth century.<sup>15</sup> He based his plea ‘not as an inhabitant of this or that nation’ but ‘as a member of this universal republic of arts and sciences’.<sup>16</sup> Like their forebears, many archaeologists and anthropologists today rail against the destruction and illicit removal of cultural objects from their context because of the damage it does to knowledge and learning.

During the course of the nineteenth century, the collecting frenzy of European empires and their settler States led to the rise of museums within the collective national imagination. By the end of that century, there was a concomitant rise in the protection of museums and their collections during armed conflict in International

<sup>14</sup> Personal communication, Vittorio Mainetti, Institut Universitaire de Hautes Etudes Internationales, Geneva, 18 February 2005 (observation concerning protection of cultural heritage in international law generally).

<sup>15</sup> *Lettres au général Miranda sur le préjudice qu’occasionneraient aux arts et à la science le déplacement des monuments de l’art de l’Italie* (1796), cited in C. de Visscher, *International Protection of Works of Art and Historic Monuments*, *US Documents and State Papers*, International Information and Cultural Series, No.8, June 1949, Washington, 821 at 824.

<sup>16</sup> Visscher, ‘International Protection’, 824.

Law. This protection, afforded by the international community, was grounded in their importance to the furtherance of universal learning in the arts and sciences.

From the late nineteenth century, proponents of free trade and equal access to the resources and labour of non-European peoples extended their reach to include their 'cultural resources'. Anglo-American States argued that these territories and resources were the 'common benefit of all mankind' and no group had 'a right to withhold them if they cannot or do not desire to develop them themselves'.<sup>17</sup> This duty became the second arm of the 'sacred trust of civilisation' which governed colonial relations during the late nineteenth and early twentieth centuries.

The notion of cultural objects as the common right of mankind is still advocated by participants in the international art trade. They argue that market forces enable such items to gravitate towards those peoples and institutions best able to ensure their preservation, accessibility and research potential. However, this gravitational pull necessarily ensures their ongoing centralisation in the former metropolitan capitals of Europe and North America, which are the current centres of the international art market.

Following decolonisation, newly independent States seeking the (re)constitution of their national cultural patrimony also defined cultural objects as cultural 'resources'. These States demanded the restitution of cultural objects that had been removed by their former colonial occupiers in order to pursue their national cultural and economic development. These interpretations of the common heritage of humankind as the common right of mankind have influenced international law for the protection and restitution of cultural objects in a manner detrimental to the interests of indigenous peoples and minorities. Indeed, indigenous peoples consider the application of the broader international law concept of 'common heritage of mankind' to their cultural heritage as a surreptitious and renewed form of colonisation.<sup>18</sup>

Nonetheless, indigenous peoples and other groups within and across States advocate a positive role for the international community in the protection, restitution and development of their cultures. It is suggested this role is espoused in the phrase: 'the cultural heritage of all mankind'. In the shadow of the discriminatory and genocidal policies of fascist regimes during the 1930s and 40s, the phrase was reformulated within the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) thus:

[D]amage to cultural property belonging to any peoples whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.<sup>19</sup>

<sup>17</sup> J. A. Hobson, *Towards International Government* (New York, 1915), pp.138–41.

<sup>18</sup> See N. Roht-Arriaza, Of Seeds and Shamans: The Appropriation of Scientific and Technical Knowledge of Indigenous and Local Communities, in B. Ziff and P. Rao (eds.), *Borrowed Power: Essays on Cultural Appropriation* (New Brunswick, 1997), p.255; and J. Blake, On Defining the Cultural Heritage (2000) 49 ICLQ 61 at 69–71.

<sup>19</sup> Second recital, Preamble, Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, in force 7 August 1956, 249 UNTS 240.



This preambular recital was not simply the culmination of a century-long effort to codify the protection of cultural objects for the benefit of humanity, in the face of their possible destruction during war. Instead, its eloquent enjoiner flags the renunciation of cultural Darwinism in favour of cultural pluralism. It will be shown that this Convention is grounded firmly in related contemporary initiatives including the post-Second World War Allied restitution policy and programme, the war crimes trials, the Convention on the Prevention and Punishment of the Crime of Genocide (1948 Genocide Convention) and the international human rights framework.

The 1954 Hague Convention aims to ensure the contribution of all peoples and their cultures – not cultural objects and monuments *per se* – for the benefit of all humankind. At the close of the Second World War, the Allied restitution programme reinforced a growing awareness of the need for a people to possess cultural objects of significance to them, in order to ensure their continued contribution to the culture of the world. Indeed, this sentiment is reiterated and elaborated upon by indigenous peoples in the 1993 Draft UN Declaration on the Rights of Indigenous Peoples<sup>20</sup>; and the wider international community in the 2001 UNESCO Universal Declaration on Cultural Diversity.<sup>21</sup> The phrases, ‘cultural heritage of all mankind’ and ‘common heritage of all mankind’ are used interchangeably through the book. The latter is not intended to invoke the general principle of international law, but instead, this specific usage is contained in recent multilateral instruments covering cultural heritage.<sup>22</sup>

The clash of understanding cultures and their protection, as encountered by the removal of cultural objects, is further encapsulated in the tensions between the terms ‘cultural heritage’ and ‘cultural property’.<sup>23</sup> The entry of an increasing number of States into the international community in the last half-century has meant that the notion of culture and its modes of expression have also widened in international law. For this reason, the term ‘cultural heritage’ is able to encompass a wide range of cultural manifestations from the transient, perishable and movable through to the immovable. The term ‘cultural property’ places emphasis on the property law aspects of cultural expressions. It reaffirms notions of ‘resources’, ‘corporeality’, thereby privileging one characteristic of the object often to the detriment of others.

The term ‘cultural object’ is used throughout this book. Although not value-neutral, it does evoke the primary concern of this study, that is the return of movable physical manifestations of the culture of an occupied people. The ability of a cultural object to be physically possessed and moved gives rise to the central questions of

<sup>20</sup> See second and third recitals, Preamble, draft UN Declaration on the Rights of Indigenous Peoples, approved 26 August 1994, UN Doc.E/CN.4/Sub.2/1994/56; and (1995) 34 ILM 541.

<sup>21</sup> Paris, 2 November 2001, UNESCO Doc.31C/44/Rev.2, Annex; (2002) 41 ILM 57.

<sup>22</sup> See M. Frigo, Cultural Property v. Cultural Heritage: A ‘Battle of Concepts’ in *International Law?* (2004) 86(854) IRRC 367 at 377.

<sup>23</sup> A. Przyborowska-Klimczak, Les notions de ‘biens culturels’ et de ‘patrimoine culturel mondial’ dans le droit international (1989–90) 18 PYIL 51; L. V. Prott and P. J. O’Keefe, ‘Cultural Heritage’ or ‘Cultural Property?’ (1992) 1 IJCP 1 307; R. W. Mastalir, A Proposal for Protecting the ‘Cultural’ and ‘Property’ Aspects of Cultural Property under International Law (1992–93) 16 FILJ 1033; and R. O’Keefe, The Meaning of ‘Cultural Property’ under the 1954 Hague Convention (1999) 46 *Netherlands International Law Review* 26.

removal and return. The focus is primarily, though not exclusively, on the material culture of the Asia Pacific region which experienced significant cultural losses during successive waves of European colonialism.

As explained in Part Three, the restitution claims made by indigenous peoples have emphasised the interrelation between return of land, ancestral remains, cultural objects and traditional knowledge. However, the return of skeletal remains and intangible cultural heritage is only discussed when it has bearing on the overall debate concerning the return of cultural objects in general. The repatriation of ancestral remains, in particular, involves an array of historical, political, ethical and theoretical issues which fall outside the scope of this present work.

During the nineteenth century, European colonial and commercial expansion into non-European territories was facilitated by various disciplines including international law and anthropology. These disciplines, and European colonial practices, were rationalised along scientifically sanctioned lines. Central to this rationalisation was the espousal of a unilinear progression of civilisation from the most primitive state to the most advanced (European) culture. The ascendancy of cultural Darwinism saw all peoples and their cultures placed along a trajectory that judged them in relation to Christian, European society – the ‘standard of civilisation’. Under the ‘sacred trust of civilisation’, it became the obligation of metropolitan powers to facilitate the ‘development’ of non-Europeans in order to attain this ‘standard’. It was assumed indigenous peoples would either vanish or be assimilated into this advanced stage of civilisation.

Public museums, especially universal survey museums (or world museums) established in various metropolitan capitals through imperial (economic and military) strength, became crucial to these processes. It has been observed that the ‘basis’ of such ‘great national museum[s]’ is ‘de-contextualisation’.<sup>24</sup> Cultural objects gathered from every corner of the globe were centralised in museum collections, that is the ‘space without place’.<sup>25</sup> Drained of their context, these objects became vessels for the mythologising of the dominant (imperial, national) culture. Central to such mythologising was the (Western) standard of civilisation, and the assumed inevitability of European domination.

Claims made by occupied peoples for the restitution of cultural objects housed in imperial museums are integral to their assertions of political and cultural autonomy and the reversal of the centralising practices of metropolitan powers. The entry of non-European States into the society of nations has gradually whittled away the overt manifestations of the scale of civilisation. However, the principles and practices that fuelled it have been internalised, redefined and perpetuated by these newly independent States. It is my contention that many States replicated, on a smaller scale, the methodologies of their former colonial occupiers by seeking to unify all peoples within their territorial boundaries, and within the boundaries of a national identity. Today, indigenous peoples and minorities within and across States continue

<sup>24</sup> R. Anderson, Director of the British Museum, in Seventh Report of Select Committee on Culture, Media and Sport (1999–2000 HC 371), vol.2, Q631–Q632.

<sup>25</sup> L. Althusser, *Montesquieu, Rousseau, Marx* (London, 1972), p.78.



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to challenge these forces established for the purpose of (European) colonial and commercial expansion. Essential to their efforts is the re-contextualisation of these objects. And museums have a vital role to play in this process.

From its earliest days, museums were assigned two, often competing, roles: (i) education of the general populace; or, (ii) as a storehouse of unique and authentic objects for the purview of the connoisseur and scholar.<sup>26</sup> By the mid twentieth century, the second role was firmly entrenched amongst most Western museum professionals. In addition, they promoted the conception of museums as recording objectively historic processes, whilst themselves being removed from them: ‘time without duration’.<sup>27</sup> However, by the late twentieth century the museum itself became an object of historical and critical analysis.<sup>28</sup> These studies, and the critical re-evaluation of related fields of anthropology, and art history and theory, have fuelled an increasing awareness of the role of these institutions and disciplines in the promotion and representation of race, difference and power within the colonial project.<sup>29</sup>

In the late twentieth century, these re-evaluations were refined and elaborated upon with the restitution claims of newly independent States and indigenous peoples. They have facilitated the undermining of Western perceptions of the alleged passivity of colonised peoples in the face of the arrival of Europeans and have caused reassessment of the place of cross-cultural influencing.<sup>30</sup> These claims, together with those of Holocaust survivors, have revealed the complexity of collecting practices and the life histories of cultural objects.<sup>31</sup> In addition, they have challenged the assumed physical and theoretical boundaries of museums and their purpose. The museum’s role of educating the general public is increasingly being emphasised and utilised.

Each of the three parts of this book focus on a specific museum as a case study: the South Kensington Museum (now Victoria and Albert Museum), London; Museum of Modern Art and the Museum of Primitive Art, New York; and the Australian Museum, Sydney. Each institution is representative of a type of collection or museum which embodies the particular period under investigation. Unravelling the layers of meaning in archival material, contemporary texts and recent historical works inscribed in and around their collections offers rich insights into colonialism’s culture and the complex role these institutions continue to play in the shifting legal,

<sup>26</sup> See D. F. Cameron, *The Museum, a Temple or the Forum* (1971) 14(1) *Curator* 11.

<sup>27</sup> Althusser, *Montesquieu*, p.78.

<sup>28</sup> See P. Vergo, *The New Museology* (London, 1989); I. Karp and S. Lavine (eds.), *Exhibiting Cultures: The Poetics and Politics of Museum Display* (Washington, 1991); E. Hooper-Greenhill, *Museums and the Shaping of Knowledge* (London, 1992); A. E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven, 1994); T. Bennett, *The Birth of the Museum: History, Theory, Politics* (London, 1995); and C. Duncan, *Civilising Rituals* (London, 1995).

<sup>29</sup> See G. W. Stocking (ed.), *Objects and Others: Essays on Museums and Material Culture* (Madison, 1985); J. Clifford and G. E. Marcus, *Writing Culture: The Poetics and Politics of Ethnography* (Berkeley CA, 1986); J. Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art* (Cambridge MA, 1988), pp.189ff; S. Hiller, *The Myth of Primitivism: Perspectives on Art* (London, 1991); and K. Biddick *et al.*, *Aesthetics, Ethnicity and the History of Art: A Range of Critical Perspectives* (1996) 78 *Art Bulletin* 594.

<sup>30</sup> See N. Thomas, *Entangled Objects: Exchange, National Culture and Colonialism in the Pacific* (London, 1991); and N. Thomas, *Colonialism’s Culture: Culture, Anthropology, Travel* (Cambridge, 1994).

<sup>31</sup> See I. Kopytoff, *The Cultural Biography of Things: Commodification as Process*, in A. Appadurai (ed.), *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge, 1986), p.64.

economic and political geography of the early twenty-first century. Two of the three collections, the V&A and MoMA, came into existence during the relevant periods and this study benefits from the historical, political and theoretical concerns driving their establishment. The Australian Museum is chosen as an exemplar of an institution and collection established during a period of intense colonial activity which is endeavouring to reinterpret its role in the present.

International law, and national laws, governing the restitution and protection of cultural objects is informed by, and in turn informs, the work of professionals, policymakers and scholars in numerous fields. To concentrate exclusively on international law pertaining to restitution would be to tell only a fraction of the story. These museum case studies serve to illustrate the intimate role museum professionals play in the development of international law in this area. Equally, the changing relations between museums and the peoples whose material cultures are represented in their collections reveal that colonised peoples are not simply passive objects of scientific study or aesthetic appreciation. Cross-cultural influences have taken place between these communities from the first point of contact until the present day.

A central theme of this work is the physical and theoretical colonisation of non-European peoples by Western colonial powers from the early nineteenth century, and its ongoing manifestations and legacies to the present day. As noted, it concentrates on the impact of the Anglo-American colonial project on the removal and return of cultural objects from the early nineteenth century onwards. This form of colonialism is significant because of the dual purpose that it purported to pursue: unfettered commercial expansion; and the 'civilising mission' to colonised peoples. As will be explained, these aims shaped significantly the fate of cultural objects of colonised peoples and their protection and restitution in international law during the preceding two centuries.

In the last decades of the twentieth century, scholars examined how the colonial relationship dictated by the interests of the imperial power and influenced by colonised peoples infected every knowledge system.<sup>32</sup> The scientific predilections of these knowledge systems, as defined during the nineteenth and early twentieth centuries, were essential to the perpetuation of a scale of civilisation along which all humanity's cultures were ranked. Haunted by ideas of 'sameness' and 'difference' between the colonised and coloniser, this scale was crucial to the European imaginings of non-European peoples.<sup>33</sup>

Imperial powers characteristically sought to centralise possession and control of colonial territories, peoples, resources and their cultural objects within the metropolitan centre. This extended to knowledge systems, formulated or redefined to facilitate European colonialism, which gradually assimilated or excluded competing modes of understanding. The imperial power's knowledge systems were (re)presented as universal and normative. A crucial and insidious component in the perpetuation of

<sup>32</sup> See E. Said, *Orientalism: Western Conceptions of the Orient*, (London, 1978); and E. Said, *Culture and Imperialism* (London, 1993).

<sup>33</sup> See M. Foucault, *The Order of Things: An Archaeology of the Human Sciences* (London, 1994); and M. Foucault, *The Archaeology of Knowledge* (London, 1972).