

**CULTURAL PERPETUATION:  
REPATRIATION OF  
FIRST NATIONS CULTURAL HERITAGE**

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I. INTRODUCTION

The repatriation of cultural objects is a sensitive issue to Indigenous Peoples\* throughout the world. Despite attempts to create laws to protect the rights of Indigenous Peoples respecting their cultural heritage, Indigenous Peoples have not been overly successful in obtaining possession of objects.

Museums and other institutions have played an important role in the preservation of cultural objects and have potential for educating other cultures about Indigenous Peoples' cultures. However, at least to some extent, in their rush to preserve what they perceived were the "dying races" and their history, museums and other institutions have hastened the demise of these cultures through the removal of objects that were integral to our cultural survival.<sup>1</sup> Therefore, I believe some form of restitution to Indigenous Peoples is necessary to help rebuild our cultures. The current approach has often been to return those objects that are seen as "culturally significant" to the relevant indigenous group. The determination of what is "culturally significant" has sometimes been unilaterally made by the museum or institution in possession of the relevant object, with very little input from Indigenous Peoples themselves.

Repatriation of cultural objects undermines the *raison d'être* of museums: the collection and protection of objects to achieve cultural preservation. Therefore, repatriation has led to ambiguity and conflict

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\* I use the term "Indigenous Peoples" throughout this article. I prefer capitalization of this term where used as a proper noun. I use the term "First Nations" to include all Indigenous Peoples of Canada: aboriginal, Métis and Inuit.

<sup>1</sup> R. Clements, "Misconceptions of Culture: Native Peoples and Cultural Property under Canadian Law" (1991) 49 U.T. Fac. L. Rev. 1 at 11.

between Indigenous Peoples and museums. Repatriation raises questions about the appropriate care and ultimate disposition of not only those objects in sensitive collections, but *all* kinds of objects created by people from other places and times.<sup>2</sup> There are four main arguments advanced by museums attempting to retain cultural objects in their collections.<sup>3</sup> First, museums claim that they have a duty to preserve and display objects for the benefit of the public. Second, museums fear that to open the floodgates would deplete their collections. Third, museums claim that even if they engaged in repatriation, disputes and doubts as to appropriate tribal ownership prevent repatriation. Lastly, museums continue to raise their legal title to objects as justification for retaining cultural property.

The far-reaching implications of repatriation have made legislative changes difficult to attain worldwide. Recently there have been legislative changes and constructive agreements in Canada, the United States and Australia. These have been instigated, for the most part, by international legislative provisions. This paper limits discussion of repatriation to First Nations cultural objects and looks to agreements and reports such as the United Nations *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*<sup>4</sup> and the Canadian *Task Force Report on Museums and First Peoples*.<sup>5</sup> I will argue that the move towards First Nations control of cultural perpetuation programs has instigated recent constructive agreements and reports between First Nations and museums and other institutions.

In my view, repatriation can fill a cultural gap in many First Nations communities; a gap created by the removal of cultural heritage from First Nations. I will examine First Nations conceptions of cultural property to show the importance of cultural objects in current cultural perpetuation programs. Although there are different conceptions of cultural objects, I will draw upon examples from Haida Gwaii<sup>6</sup> to

<sup>2</sup> P. H. Welsh, "Repatriation and Cultural Preservation: Potent Objects, Potent Pasts" (1992) U. Mich. J. Law Reform 25 at 847.

<sup>3</sup> These assertions are found throughout the literature. For example, see T. Boyd & J. Haas, "The Native American Graves Protection and Repatriation Act: Prospects for New Partnerships Between Museums and Native American Groups" (1992) 24 Ariz. State Law L.J. 253, and M. Ames, *Museums, The Public and Anthropology* (Vancouver: University of British Columbia Press, 1986).

<sup>4</sup> UN ESC, Commission on Human Rights, 45th Sess. *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, E/CN.4/Sub.2/1993/28 [hereinafter *Protection of Cultural and Intellectual Property Study*].

<sup>5</sup> *Task Force Report on Museums and First Peoples* (Ottawa: Assembly of First Nations & Canadian Museums Association, 1992) [hereinafter *Task Force Report*].

<sup>6</sup> "Haida Gwaii" is the name which the Haida Nation has given to the island group named by the British explorer George Dixon as the "Queen Charlotte Islands." The name Haida Gwaii

provide a conceptual framework for my discussion of repatriation from a First Nations perspective.

I will then examine the concept of museums and common rationales for their existence in order to show that they are no longer appropriate to present First Nations cultures. Rather, the appropriate context for the presentation and education of the public in First Nations cultures properly lies with First Nations—in cultural centres managed and controlled by First Nations.

## II. FIRST NATIONS CULTURAL HERITAGE

An outline of First Nations' and museums' positions in the repatriation debate reveals a conflict between these parties. The compromises evident in legislative definitions given to "cultural property" or "heritage" illustrate these conflicting positions. It is convenient, then, to begin with a discussion of the importance of cultural objects to First Nations.

### A. FIRST NATIONS CONCEPTIONS OF CULTURAL PROPERTY

Given the wide cultural diversity among First Nations, it is difficult to give a single definition of cultural property from a First Nations perspective. Although various legislative definitions have been used from time to time, these do not accurately reflect the meaning that First Nations give to such objects. The problem with many existing legislative definitions of cultural property is that they reflect a Eurocentric dichotomy between animate and inanimate objects. This perspective indicates a belief that mankind controls both the possession of inanimate objects that do not possess life and the destiny of non-human objects that do possess life (such as the Earth and her natural "resources"). This perspective obviously excludes First Nations' conceptions of "inanimate objects and natural objects." Our conceptions recognize that cultural objects possess their own spirits and the creator of these objects is only a medium through which our ancestors speak. This fundamental belief is explained by Robert Davidson, a prominent Haida artist:

The Haida word for mask is *nijanguu*, which means "to copy." So when I make a mask, it's actually copying an image or an idea from the spirit world. I believe that we're connected to the supernatural or spirit world through our minds. When I create a new mask or dance or image, I'm a medium to

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translates literally to "Islands of the People" and its etymological root is the original Haida name for Haida Gwaii, "*x̱aaydlaa gwaayaay*," which means "Islands hidden from view" (from the spiritual beings).

transmit those images from the spirit world. . . . Masks are images that shine through us from the spirit world.<sup>7</sup>

Upon their creation, (and conceivably prior to their physical creation) ceremonial cultural objects such as Northwest Coast masks, rattles, dance blankets and regalia possess an independent "life." The creation of these objects represents an unbroken connection to the spirit world—to the spirits of the past, present and the future. The use of these "objects" in ceremonies provides a definite conduit to the knowledge of the past and the future and is an integral part of the meaning and sacredness of cultural objects:

When I began to explore the artform, I didn't realize how closely it was connected to the culture and ceremony. You cannot separate the art from the ceremony. For me, first came the artform, second came song and dance, third came the integration of the artform with song and dance. The fourth I am just starting to understand, and that is ceremony: I feel that it is a very large and important part of being Haida.<sup>8</sup>

In the First Nations worldview, cultural objects do not exist in a vacuum. Cultural objects are inextricably linked with ceremony. The raising of a major cultural object, a totem pole, demonstrates the mutual relationship between cultural objects and ceremonies:

When the totem pole finally stood up in the air, I realized what was really happening. It was the reawakening of our souls, our spirits. It was the reconnection with the values that still existed, with some of the innate knowledge that was demonstrated on that day. There is a lot of knowledge that can only be expressed in terms of ceremony. The totem pole became the medium through which to transfer that knowledge, knowledge that you cannot get out of a person by interviews. . . . The totem pole caused an incredible change in my life, in my understanding of ceremony, of what art means to the people.<sup>9</sup>

Cultural objects are of vital importance to First Nations in the preservation and perpetuation of our cultures. Cultural objects are our connection to the spirit world, to the knowledge of our ancestors and to the future. Cultural objects are gifts from the spirit world that cannot be owned by museums, other institutions or individuals. These gifts have been provided to us for the perpetuation of our ceremonies, identity and culture.

<sup>7</sup> R. Davidson & U. Steltzer, *Eagle Transforming: The Art of Robert Davidson* (Vancouver: Douglas & McIntyre, 1994) at 96.

<sup>8</sup> *Ibid.* at vii.

<sup>9</sup> *Ibid.* at 25.

## B. ASSUMPTIONS ABOUT FIRST NATIONS

Given the "sacredness"<sup>10</sup> of these objects, extreme respect is paid to the manner in which these "objects" are handled, and by whom. There is apparently some doubt in the literature as to the sacredness accorded by First Nations to these objects. For example, some curators, anthropologists and archaeologists are of the view that First Nations have recently begun to handle cultural heritage with care and have learned this standard of care from museums and art dealers.<sup>11</sup> While this may be true in some instances, it is definitely not a universal truth. This viewpoint fails to take into consideration a number of factors that may have contributed to an erroneous conclusion. First, this viewpoint fails to consider that the use of these objects in potlatches was illegal under s. 3 of *An Act to Amend the Indian Act, 1884*, which prohibited potlatches. This section was not repealed until 1951. Second, this viewpoint fails to consider that many ceremonies "went underground" or evolved into different ceremonies that were not illegal. Through these underground and evolved ceremonies, First Nations retained many of the elements of the original ceremonies and many of our value systems.<sup>12</sup>

Finally, it is an accepted fact that anthropologists and archaeologists, in their race to "preserve" "traditional" ways of life and objects, neglected the "post-traditional" period. From this retrospective, paternalistic approach to First Nations cultures, it is understandable that anthropologists would assume that they could preserve culture. Therefore, even if cultural objects were neither used ceremonially nor taken care of by First Nations,<sup>13</sup> it is important not to make assumptions about the respect that First Nations have for cultural objects.

<sup>10</sup> *Supra* note 2 at 837. I reject the use of the term "potent" advocated by Peter H. Welsh. Mr. Welsh prefers this term so as to arrive at a more neutral stance than the term "sacred," which is associated with religion. He states that the use of sacred can be a powerful political tool, "especially when it reinforces mainstream society's stereotypes of Native Americans as mystical and spiritual" (*ibid.* at 858). I believe his rationale for using "potent" is his personal belief that objects can gain or lose "potency" over time, and that the use of "sacred" requires a continuity of religious belief. Cultural objects certainly *do not* lose "sacredness" over time, if anything they gain sacredness. I prefer to use "sacred" to emphasize the importance of spiritual connection to both other living things and objects.

<sup>11</sup> M. Ames, *supra* note 3.

<sup>12</sup> For example, memorial feasts and headstone raising ceremonies survived the forces of Christianity and Indian agents, and have evolved back into memorial potlatches and end-of-morning ceremonies.

<sup>13</sup> It is interesting to note the difference between the way in which First Nations and anthropologists/museologists handle cultural objects. Anthropologists handle a cultural object very clinically, and admire it for its "cultural significance," while First Nations handle a cultural object with ease, and admire it for its beauty, practicality, and the ingenuity in which it was created on the one hand, and with the utmost respect for its spiritual/ceremonial significance on the other hand.

### C. RE-EDUCATION OF MUSEUMS AND OTHER INSTITUTIONS

The correct viewpoint is that all cultural objects taken from First Nations are sacred because they preserve an aspect of First Nations' cultures. Since Haida cultural objects were embellished with "art" (crests and legends) or were created for European trade, they are "legal" documents of both pre-contact and post-contact Haida culture:

Each piece preserved in these museums is a document of our once rich culture. When you look at each masterpiece, you can see that it crystallizes all the experience of the artist who made it. It is a documentation of the time in which he lived.<sup>14</sup>

Museologists, anthropologists and archaeologists should not make assumptions about the sacredness of cultural objects to First Nations. Education is required about First Nations perspectives of cultural property. This should lead to legislative changes and to "new relationships" between First Nations and museums.

Another area where museums and other institutions require education is with respect to First Nations standards of disposition. Museologists and anthropologists should respect requirements of "destroying" First Nations objects after their use in a ceremony. An example of such a cultural object is the mask created especially for a Haida End-of-Mourning ceremony:

[W]hen my aunt and uncle died, we had a mourning ceremony for them. The idea for a mourning ceremony came from the black Frog mask that my brother Reg had carved to end the mourning for the Edenshaw longhouse that burned down. I made portrait masks for my aunt and uncle to bring them back from the spirit world, and it worked. . . . The masks brought to mind incomplete ideas and thoughts about those people, and bringing them back one more time helped us to complete our life with them so that we could let them go.<sup>15</sup>

"Destroying" such masks completes the circle of mourning and is the last step in the ceremonies. "Destroyed" is not the proper concept here — rather, the object is returned to the spirit world through fire. Fire in the Haida world view, as far as I have come to learn from elders, is a connection to the spirit world: a conduit to send things to or feed those who have departed to the spirit world; it is also a safe place to dispose of personal effects.

From a First Nations perspective, development of respect for First Nations cultures is the principal area of concern; it should exceed the

<sup>14</sup> *Supra* note 7 at 15.

<sup>15</sup> *Ibid.* at 98-99.

concern accorded to science or "cultural preservation." This is particularly true with respect to objects that should never have been displayed in museums, for such objects should only be used in ceremonies and be seen in these ceremonies by a limited range of persons. This may be a troublesome concept to the general public, but it is not unlike the respect accorded holy objects kept in churches. These are the first objects that should be repatriated without any questions as to how or whether these objects will be disposed of. It is encouraging to learn that some recognition of the inappropriateness of collecting certain objects can be found in literature.<sup>16</sup>

#### D. SUMMARY

First Nations conceptions of cultural objects, the relationship between ceremony and cultural objects, the fact that cultural objects are legal documents of First Nations cultures, and the need to respect First Nations methods of use and disposition of objects are all rationales which support the view that the future of cultural objects remains to be determined by the appropriate First Nation, and not by outsiders to that culture.

### III. MUSEUMS AND OTHER INSTITUTIONS

#### A. THE COLONIAL CONTEXT OF MUSEUMS

An important aspect in considering the role of museums is to consider the context from which the concept of the museum emerged. Historically, every culture that was not part of European culture was encouraged to assimilate through the myth of "civilization."<sup>17</sup> However, recognizing the beauty of cultural objects and the status that these objects could impart towards the "adventurist image,"<sup>18</sup> indigenous cultural objects were in high demand by Europeans:

The missionaries and the government tried to change the Haida without trying to understand who we were. But that our art intrigued the white man is evident from the great collections housed in museums around the world.<sup>19</sup>

<sup>16</sup> *Supra* note 2 at 345. Welsh observes the "growing awareness that collection of cultural property has occurred which reflects the collectors' cultural predispositions and personal desires, without necessarily serving the needs or objectives of the people from whom the materials originated. Some of this reconsideration makes it obvious now that some kinds of objects should never have been collected by museums in the first place."

<sup>17</sup> I borrow the myth terminology from D. Quinn, *Ishmael* (New York: Bantam, 1992).

<sup>18</sup> Ames, *supra* note 3 at 7.

<sup>19</sup> *Supra* note 7 at 15.

Objects were dislocated from First Nations through sale or trade,<sup>20</sup> sometimes in unconscionable bargains, and sometimes through outright theft. Once the "public museum" was born, it was more convenient to present "exotic and dying cultures" in museums, rather than to encourage the public to actually visit such cultures. Museums were then a means to facilitate separatism and assimilation.

The collection of the heritage of Indigenous Peoples then required justification, the primary justification being the importance of scientific research. This rationale was implicitly rejected by the *U.N. Study of Treaties, Agreements and Constructive Arrangements with Indigenous Peoples*,<sup>21</sup> in its finding that "[C]laims to scientific truth have often been made in order to legitimize vested interests. Museums and other institutions have justified their presence<sup>22</sup> and have advocated cultural nationalism<sup>23</sup> through several rationales. First, museums claim that public museums are *the* appropriate institutions to preserve cultural objects and to reflect and promote the "truth" in the study of these objects. Second, museums have recently advocated the need for increased public access to their collections.<sup>24</sup> I will consider both the truth and the access rationales to show that they have not changed the colonialistic context of museums.

## B. THE "TRUTH RATIONALE"

The "truth rationale" is discriminatory in that it is premised on the belief that anthropologists, archaeologists and such are the proper group to define the "truth" of First Nations cultural objects.

Throughout Haida history there have always been Haida argillite carvers and engravers in Skidegate and Massett,<sup>25</sup> but in the last century

<sup>20</sup> The Haida experience of the early trade for sea otter pelts and cultural objects has been well documented and reveals that the Haida were astute and enthusiastic traders. See generally, D. Cole, *Captured Heritage: The Scramble for Northwest Coast Artifacts*, (Vancouver: Douglas & McIntyre, 1985) and R. Fisher, *Contact & Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: University of British Columbia Press, 1977).

<sup>21</sup> *Study of Treaties, Agreements and Constructive Arrangements with Indigenous Peoples*, UN ESC, 45th Sess., UN Doc. E/CN.4/Sub.2/1992/32 (1992) [hereinafter *Study of Treaties*].

<sup>22</sup> Ames, *supra* note 3 at 8.

<sup>23</sup> J. H. Merryman, "The Public Interest in Cultural Property" (1989) 77 *California Law Review* 339 at 363, quoted in Clements, *supra* note 1 at 22-23. "Cultural nationalism" refers to the need to preserve cultural heritage for the benefit of the public, rather than for the relevant First Nation.

<sup>24</sup> Ames, *supra* note 3 for an overview of the history of museums and their growth from private collections into public institutions, "owned," controlled, and for the benefit of the public.

<sup>25</sup> See A. Jonaitis, "Traders of Tradition: The History of Haida Art" in *Robert Davidson: Eagle of the Dawn* (Vancouver: Douglas & McIntyre, 1993), and M. Crosby, "Construction of the



there had been hardly any indication left of the incredible totem poles, longhouses and ceremonies which were once prevalent among the Haida:

At this time, the art was at a low ebb. There was no evidence anywhere in the village of the once great culture that I came from. All we had were photographs. Many things, boxes and masks and rattles and drums, had been lost in house fires over the years. Some things had been left in abandoned villages after the epidemics and the people's embrace of the new white culture. Other things had been either stolen or bought by museums. Finally there was less artistic activity, so nothing had been made to replace what was lost. . . . The very first Haida ceremonial mask that I saw being used was a brown paper bag during one of the dance practices for the raising of my first totem pole in Massett in 1969. Naanii was doing what we call a Q'awhlaa, a spirit dance. She felt awkward without a mask to wear, so she asked someone to get her a brown paper bag from the kitchen. She cut eye holes in the bag, put it over her head and did the dance. I call that time period the brown paper bag era.<sup>26</sup>

But in the Northwest Coast for example, where ceremonies are once again very common, it is very possible that after the Potlatch prohibition<sup>27</sup> had been repealed in Canada and the influences of Christianity considerably lessened, that the presence of old objects may have been<sup>28</sup> very instrumental in the reconstruction of traditional ceremonies.

This hypothesis is strengthened when one considers that this could have been a very real possibility even as late as thirty years ago. There were then elders still alive from the last century who had participated in ceremonies prior to the influences of Christianity.<sup>29</sup> For example, in 1970 my maternal great-grandmother passed away when she was estimated to have been 109 years of age. *nanaay* Susan Williams was born in 1861, prior to the establishment of Christian churches and ministers at the consolidated Haida villages of Skidegate and Massett.<sup>30</sup> *nanaay*

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Imaginary Indian" in S. Douglas, ed., *Vancouver Anthropology: The Institutional Politics of Art* (Vancouver: Talonbooks, 1991).

<sup>26</sup> *Supra* note 7 at 18, 27.

<sup>27</sup> Section 3 of *An Act to Amend the Indian Act, 1884* was repealed in 1951.

<sup>28</sup> I state this only as a possibility since in my home community there were not any cultural objects from old ceremonies or old "art objects." Although ceremonies are now more prevalent in Skidegate, these ceremonies could have been reconstructed with more precision had objects from Haida heritage been present. In the 1970s, a museum was constructed on the Skidegate reserve, which provided an initial link to Haida heritage.

<sup>29</sup> There are numerous books written on Haida history, such as J. R. Swanton, *Contributions to the Ethnology of the Haida* (New York: AMS Press, Inc., 1975).

<sup>30</sup> An Anglican church was established in Massett in 1876; see W. H. Collison, *In The Wake of the War Canoe* (Victoria: Morriss Printing Company Ltd., 1981). A Methodist church was estab-

Susan lived at the now-abandoned villages of Skedans and New Kloo until the age of 36: she relocated to Skidegate with the rest of the village in 1897.<sup>31</sup> She was a song-custodian for Skidegate, together with the late Henry Young. *nanaay* Susan carried with her over 100 songs that were recorded by interested family members and ethnographers; most of these songs are still being used in Skidegate. Unfortunately, the dances were not recorded or remembered in great detail since all of the ceremonial regalia in Skidegate had been removed during her lifetime.

The creation of Masset's first totem pole in ninety years—in 1969 by Robert Davidson—provides a further example of how important cultural objects are to First Nations communities:

The inspiration that drove me to carve my first totem pole came when I was making my rounds at Massett, visiting the elders with whom I'd made friends over the years. At one home, to my surprise, there was a group of elders in the living room. It turned out they were holding a prayer meeting. Their own ways had been taken away from them, and all they had was a prayer meeting, a way that was foreign to them. All the meaning in their lives had been taken away from them—their identity, culture and beliefs—and been replaced by Christian ideals. . . . My grandparents' generation had only heard stories about the proper way to raise a totem pole, but they knew there was a protocol to it, that certain ceremonies had to be done. When you create an occasion like a totem-pole raising, it sparks memories; people remembered more and more details about what they'd been told about raising totem poles. The elders became excited: they started singing songs, they started dancing a few dances that they knew. About two weeks before the pole was to go up, Tsinii told me that I, as carver, had to tie all my carving tools around my neck, then chant and dance around the pole before it was raised.<sup>32</sup>

A similar link to elders was created in Skidegate in 1979 with the raising of a house frontal pole carved by Bill Reid. A Haida youth dance group was formed in response to that event and they danced at the pole raising and longhouse opening potlatch.<sup>33</sup>

The absence of cultural objects in Haida communities has meant that those involved in ceremonies have had to take a haphazard approach to the renewal of these ceremonies:

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lished in Skidegate in 1884: see T. Crosby, *Up and Down the North Pacific Coast by Canoe and Mission Ship*, (Toronto: Missionary Society of the Methodist Church, 1914).

<sup>31</sup> Crosby, *ibid.*

<sup>32</sup> *Supra* note 7 at 21-22.

<sup>33</sup> The Skidegate Haida Dancers was formed by Mabel Williams to educate the youth to Haida dance and the making of ceremonial regalia. This group danced at numerous feasts and potlatches on Haida Gwaii and throughout the province. Recently, a new group *Hlvagilda* Dancers, lead by *Guujaaw*, was formed and serves the same function.

Often I'm blindly and intuitively collecting pieces of information. I feel that I'm putting a puzzle back together, but I don't know what the puzzle is. For example, the first mask I made to be danced was Q'awhlaa. One of the elders came up and said, "That mask has eagle feathers on it." So I put eagle feathers on it. The more we danced with these masks, the more details the elders remembered.<sup>34</sup>

While First Nations may not know all the pieces of the puzzle, our participation in finding the "truth" of cultural objects is a large step away from colonialism and towards self-determination. Both of the examples of totem pole raisings show how the presence of significant cultural objects resulted in cultural perpetuation. This supports the proposition that if cultural objects had not been removed from First Nations, then perhaps elders could have played an even greater role in cultural preservation, which would have been more "truthful" than that of any outside museum or anthropologist.

In contrast, "anthropologists' characterizations of culture increasingly are recognized as insufficient representations of peoples' lives."<sup>35</sup> Anthropological knowledge is insufficient primarily because it is missing the knowledge that can only be obtained through experiencing the ceremonies or practices in which cultural objects are used:

Then I started to understand the freedom one has in expressing these dances. The art actually had more freedom that I'd been led to believe by anthropologists—with all due respect to anthropologists. . . . Anthropological knowledge and actual experience are two different things. . . . Once I became more confident making masks, the masks led me into ceremony, the very sacred part of being Haida or of being human. When I started to sing Haida songs and do the dances, when I started to be involved in ceremony around 1976 and 1977, I realized that was where the art came from and that was where it belonged. It gave the art a whole new meaning for me.<sup>36</sup> . . . We can now create new images for the anthropologist to study, but this time they can ask questions from living artists, rather than speculate, and reinterpret other anthropologists' ideas. This brings a story to mind about a student of anthropology. When I was talking to this person, she brought up the subject of an article that she had written, a paper on the chiefs' headdress dance, and she had incredible theories on the symbolism of the eagle down rising through the air as the dancer spread the down, connecting the earth to the sky, etc., etc. Anyway I asked the only question that came to mind: "have you

<sup>34</sup> *Supra* note 7 at 27.

<sup>35</sup> *Supra* note 2 at 837.

<sup>36</sup> *Supra* note 7 at 28, 27.

ever seen a headdress dance?" "No!!!" "Then how can you write a paper on the headdress dance?"<sup>37</sup>

The truth rationale is simply a "mask" to hide the fact that museums removed all cultural objects from First Nations communities and thus created a cultural gap. This has prevented any meaningful participation of First Nations in cultural preservation. On one hand, preserving one's own culture is an expression of human rights, while working to preserve someone else's culture without their input or participation is, at best, paternalism.<sup>38</sup> For these reasons, I reject the "truth rationale," and agree with the finding of the *Study of Treaties* that, "it must be recalled that no one individual sub-discipline or school of thought can pretend to hold the ultimate truth."<sup>39</sup>

### C. THE "ACCESS RATIONALE"

The "access rationale" attributes importance to public education about cultural objects, regardless of whether this results in the death of a culture or not. This education has frequently been provided in a "vacuum" apart from the proper cultural setting.<sup>40</sup> Even though museums claim that they play an important role in serving not only the general public, but in serving First Nations themselves, this role has been increasingly questioned.

The most important reason for returning collections to First Nations is the "cultural renaissance" that First Nations are now experiencing. Although traditions, ceremonies, songs, dances and the artform have been a persistent part of First Nations communities, we are now in an era when First Nations have shed the constraints of Christianity and Canada's legal system. First Nations are now free to be proud of our heritage and to look forward to the future with optimism. The Haida Nation has reached a point where Haida children are born into the open practice of our culture, and are being raised speaking the Haida language. Nothing can be more important than the education of Haida

<sup>37</sup> R. Davidson, "The World Is As Sharp As The Edge Of A Knife" in *Robert Davidson Exhibition "A Voice From the Inside"* (Vancouver: Hemlock Printers Ltd., Gallery of Tribal Art, 1992) at 7.

<sup>38</sup> *Supra* note 2 at 839. This paternalism is visible in cultural preservation efforts embarked upon by museums, in that frequently non-First Nations' view First Nations as "belonging" to them, or as part of the "national heritage." I recall visiting the Royal British Columbia Museum in Victoria in 1991, and overhearing the clerk at the gift shop say that the artwork a customer was examining was made by "our local Indians."

<sup>39</sup> *Study of Treaties*, *supra* note 21 at 10.

<sup>40</sup> See generally, Ames *supra* note 3, chapter 4 ("How Anthropologists Stereotype Other People"), for a discussion of the various types of museum displays and their limitations, and the current evolution to include others' perspectives in these displays.

children in their own culture, while any education of the general public in the Haida culture is of secondary importance.

Haida people have ignored the debates in the Northwest Coast art history discourse and have continued to redefine who we are in the same way our ancestors did: we are continuing to live our culture and are expanding the artform, creating new ceremonies or giving new meanings to old ceremonies:

The Haida artform is a highly developed one. It is very disciplined and very precise, very stylized, but it also has a lot of room for innovation and creativity. . . . The inspiration for my pieces comes from ceremonial and personal experience. The biggest challenge today is to give meaning to the artform, meaningful to us Haida, so we can relate to it. It is no different from when our grandparents inherited knowledge from their elders and gave meaning to that knowledge.<sup>41</sup>

However, this cultural renaissance is missing an important link: the cultural objects of our ancestors. A principled approach to "cultural renaissance" requires that "masterpieces" of our ancestors be present in Haida cultural centres.<sup>42</sup>

#### D. SUMMARY

Museums have undeniably played a role in the preservation of Haida cultural objects housed in museums around the world. This role of museums has been recognized by Haida artists in the past:

"What is it to be Haida?" This was the big question. I didn't know. Then I started to go to museums and saw for the first time art done by my ancestors, art beyond my wildest dreams, art I did not understand, art whose purpose I did not know. I discovered that there was more than argillite totem poles. There were carved rattles, carved bowls, carved speaker staffs, carved paddles, carved and painted canoes. I saw photographs of ancient Haida villages, with many totem poles lining the fronts of the villages. . . . The museums opened my eyes. It was exciting to see what a high standard could be achieved with the Haida artform, and it challenged me to raise my own standards.<sup>43</sup>

<sup>41</sup> *Supra* note 7 at vii.

<sup>42</sup> In April 1995 Robert Davidson donated a major collection of his work to the Old Massett Village Council, Haida Gwaii for display in a cultural centre in Old Massett. The purpose of the donation was to provide inspiration to artists, and for the establishment of a cultural centre in Old Massett. The collection is held in trust at the Queen Charlotte Islands Museum in Skidegate, Haida Gwaii until such a centre is established. This is a further example of First Nations taking control of cultural perpetuation.

<sup>43</sup> *Supra* note 7 at 18.

Lately the work of anthropologists has also been viewed with ambivalence, notwithstanding that "anthropologists' contributions to knowledge about the cultures of the world and their efforts to combat racist interpretations of cultural difference are regarded highly."<sup>44</sup> Museums and other institutions have preserved cultural objects, but have not preserved First Nations cultures. This may be explained by museums' lack of appreciation of both the pervasiveness of cultural objects in First Nations lives and their importance to the continuance of ceremonies, language and traditional ways of life. The pervasiveness of Haida cultural objects in Haida culture is explained by Robert Davidson:

It is said that language is the key to a culture. In the Haida language, as in those of many First Nations here in the Americas, we do not have a word for art. So for lack of a better word, I will borrow the English word "art." We Haida were once surrounded by art. Art was one with our culture. We had art that was sacred, brought out only for certain ceremonies. We also had art that was on permanent display, validating our place in the world. Art is our only written language. It documented the histories of our families; it documented our progress as a people. Throughout our history, art has kept our spirit alive. Now art is helping us to reconnect with our cultural past. It is also helping to bridge the gap of misunderstanding between our culture and yours.<sup>45</sup>

Both the truth and access rationales are questionable, and other rationales are equally questionable.<sup>46</sup> The benefits of these rationales may be realized if they are extended to First Nations to increase our access to collections and increase our input into the interpretation of collections. The *Study of Treaties*<sup>47</sup> recognizes the insufficiency of cultural preservation efforts by museums and advocates the view of Indigenous Peoples that museums should be used to strengthen respect for identity and cultures, rather than being used to justify colonialism or

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<sup>44</sup> J. Clifford, Introduction to *Writing Culture: The Poetics and Politics of Ethnography* 1 at 6-7 (James Clifford & George E. Marcus, eds., 1986), quoted in Welsh, *supra* note 2 at 837.

<sup>45</sup> *Ibid.* at vii.

<sup>46</sup> For example, see Professor Ames' rationale for the retention of cultural objects in foreign institutions, *supra* note 3 at 46. He gave the example of an exhibit of traditional Salish sculpture and engraving on loan to the University of British Columbia's Museum of Anthropology, and of his own disappointment in the responses from Salish elders. Because many of the elders expressed sadness at seeing the spirits of the objects encased in glass, he suggested that it may have been better to have kept the objects in foreign museums than to bring sadness to elders. He does not consider the possibility of returning the objects to the elders, or even to removing the objects from enclosed glass displays. Although the U.B.C. Museum of Anthropology owed a duty of care to the foreign institution, it failed to recognize a duty of care to the creators of the objects. A simple solution, aside from advocating repatriation, would have been to permit the Salish elders to view these objects in private, without the glass cases.

<sup>47</sup> *Study on Treaties*, *supra* note 21.

disposition.<sup>48</sup> In fact, this view has resulted in a fundamental shift in contemporary cultural preservation programs: First Nations are taking control of cultural preservation efforts.<sup>49</sup> The totem pole raisings in Massett and Skidegate demonstrate how cultural knowledge is passed through cultural objects, but more importantly, they were the first steps towards Haida people taking control of the perpetuation of Haida culture.

### III. CONSTRUCTIVE AGREEMENTS

There is a substantial growing body of academic literature on cultural property; much of this is premised on the belief that museums and academic specialists have a permanent and valuable role to play in new partnerships with First Nations.<sup>50</sup> Such a perspective undoubtedly comes from the museum community. While some of the discourse invites museums to open doors to the First Nations perspective, the balance of power is maintained in favour of museums. The concept of a new relationship suggests repatriation, but does not necessarily encourage the creation of First Nations cultural centres (managed by First Nations), nor of increased First Nations working in existing museums.

Indigenous representatives from around the world shared their concerns about the protection of the cultural and intellectual heritage of Indigenous Peoples with the UN Working Group on Indigenous Populations. These submissions resulted in the *Protection of Cultural and Intellectual Property Study*,<sup>51</sup> which examined various kinds of intellectual and cultural property, such as songs, ethnobotany, "art," cultural objects and human remains. It also made certain recommendations for the preservation of this heritage. The *Protection of Cultural and Intellectual Property Study* was not a comprehensive global survey of problems and possible solutions, however information was obtained from various indigenous nations, peoples and organizations from the United States, Australia, Canada and South America. The *Protection of Cultural and Intellectual Property Study* recommended that Indigenous People strive

<sup>48</sup> *Protection of Cultural and Intellectual Property Study*, *supra* note 4 at 23.

<sup>49</sup> The classic "Canadian" example of this statement is the U'Mista Cultural Society in Alert Bay, as well as the Nuyumbalees Society at Cape Mudge. In Kwakwaka, "U'Mista" means "to have been returned." See generally B. Shein "Playing, Pretending, Being Real" (Spring 1987) *Canadian Art* 76-81 and C. Henderson, "Secret Precious Things: Repatriation of Potlatch art" (May/June 1981) *Art Magazine* 74-70. A more current example is provided by the on-going efforts in both Skidegate and Massett, Haida Gwaii to establish cultural centres and to begin comprehensive inventories and repatriation of Haida cultural objects.

<sup>50</sup> For example, see Welsh *supra* note 2.

<sup>51</sup> *Supra* note 4.

towards self-determination and greater control of their cultural heritage. Given the recent numerous lobbying efforts at the United Nations, Indigenous Peoples have been able to gain the support of the international community regarding the inhumane treatment they have received in their countries. Although the declarations of UNESCO and the Working Group do not have the force of law, they do have a strong moral suasion on UN member states.<sup>52</sup>

The trend of developing "new relationships" between those who have traditionally held power and Indigenous Peoples can be attributed to a shift towards increasing support of Indigenous Peoples. Governments, and other institutions who hold positions of power in the repatriation debates—such as museums—have been quick to say that they have been acting "morally and ethically" towards Indigenous Peoples. Museums have been encouraged to take advantage of the opportunities from these new partnerships:

I believe that repatriation offers museums a tremendous opportunity to participate in cultural preservation efforts initiated by native peoples. To take advantage of this opportunity, however, museums must reconsider their long-standing perceptions of cultural preservation with that of native peoples. Lacking such reconciliation, the cultural preservation efforts of all interested groups will be frustrated.<sup>53</sup>

In other words, museums are realizing that they should cooperate with First Nations groups if they want to retain the majority of their collections. This is an important realization that has developed along with the trend of First Nations taking control of cultural perpetuation efforts. In my view, the new partnerships will only be advantageous in the long run if states, and other institutions such as museums, reconsider and revise their traditional roles.

The recommendations of both the *Protection of Cultural and Intellectual Property Study* and the *Task Force Report* have attempted to identify the concerns of both Indigenous Peoples and museums, but they do not go far enough. In order to respect the human dignity and inherent rights of First Nations, First Nations should not be required to prove that an object is an "integral part" of our culture or that it is "culturally significant." Respect for First Nations views of cultural property re-

<sup>52</sup> A specific example of moral suasion is the Sandra Lovelace case, and the effect of the United Nations Commission on Human Rights (UNCHR) declaration upon the legislative changes to the Indian Act. Commission on Human Rights, *Report of the Human Rights Committee*, 36 U.N. GAOR Supp. (No. 40) 166, U.N. Doc. A/36/40 (1981). The UNCHR upheld Sandra Lovelace's right to her cultural heritage and native band membership.

<sup>53</sup> *Supra* note 2 at 848.



quires that the onus be on museums to refute the importance of the object to the First Nation, which is important, rather than proceed on the presumption that the interests of science and "national heritage" prevail over that of the cultural survival of First Nations.

I view the new partnerships between museums and Indigenous Peoples not only as a vehicle to further First Nations claims, but also as an opportunity for non-First Nations institutions to protect their interests while at the same time gaining praise for their "moral and ethical initiatives." This is evident in the distinction made between existing legal rights and moral obligations<sup>54</sup> in the *Task Force Report*. This distinction effectively preserves the presumption that First Nations lack title to cultural property and fails to reconcile the property concepts of First Nations with Western systems of laws. Until this reconciliation is done, new partnerships between museums and First Nations will not adequately address the questions raised by repatriation, since the basis of repatriation will remain firmly in the Western world view.

#### IV. CONCLUSION

Although the legal rights of First Nations are still uncertain, the co-management of cultural heritage should be one that empowers First Nations' strategies of self-determination. Recent legislative reforms in the United States<sup>55</sup> reflect this new approach to cultural preservation and may provide for the application of tribal laws in cultural heritage disputes.<sup>56</sup> The complexity and cultural sensitivity of repatriation issues demand that governments and museums reassess their positions in relation to First Nations' cultural property before a meaningful and effective cooperative relationship can be created to resolve issues of management, access, care and custody.<sup>57</sup>

The *Protection of Cultural and Intellectual Property Study* and the *Task Force Report* are correct in encouraging a movement away from litigation and towards extra-judicial negotiations. However, I agree with the observation made by Professor Catherine Bell—that museums must reassess their perceived legal entitlement and not assume that they hold the balance of legal rights to cultural property.<sup>58</sup> Although a strict legal

<sup>54</sup> C. E. Bell, "Repatriation of Cultural Property and Aboriginal Rights: A Survey of Contemporary Legal Issues" (1992) 17 *Prairie Forum* 313 at 317.

<sup>55</sup> *Native American Graves Protection and Repatriation Act*, Pub. L. No. 101-601, 104 Stat. 3049 (1990).

<sup>56</sup> *Chilkat Indian Village IRA v. Johnson* (1993), 20 *Indian Law Reporter* 6127.

<sup>57</sup> *Supra* note 54 at 330.

<sup>58</sup> *Ibid* at 317.

analysis rarely favours First Nations' rights,<sup>59</sup> greater consideration of tribal ownership could lead to a resolution of ownership issues in favour of First Nations groups. Of course, the primary issue is often whether non-indigenous persons can shed their eurocentric spectacles and understand the essential meaning of cultural property from a First Nations' perspective, and in turn, whether they can reconcile this view with private property concepts.<sup>60</sup> In my view, it is undeniable that such a reconciliation would prove that First Nations have legal rights to cultural objects in repatriation disputes.

As we near the year 2000, we realize that the process of acquiring cultural objects from the Northwest Coast began over two centuries ago. If museums desire to conduct themselves "morally and ethically" then they should begin to return cultural objects to First Nations. There are literally thousands of Haida cultural objects in museums such as the Canadian Museum of Civilization (Ottawa), Royal Ontario Museum (Toronto), the McCord Museum (Montreal), the Smithsonian Institution (Washington, D.C.), the Chicago Field Museum (Chicago), the National Museum of the American Indian (New York), the American Museum of Natural History (New York), the University Museum (Philadelphia), and Museum Für Völkerkunde (Berlin), to name a few. Only a handful of cultural objects exist on Haida Gwaii. It is not unreasonable for each museum to *begin* by contributing *at the very least* one significant cultural object to each First Nations community so that First Nations would have a small link to our cultural past.<sup>61</sup> But this is not enough. Museums can truly act morally and ethically if they consider returning to First Nations the thousands of objects which are kept in storage and are never displayed to the public.

In the past museums have been involved in cultural preservation programs through the "rescue" and preservation of cultural heritage. To some extent, First Nations are thankful for the preservation of these objects and for the exposure of cultural objects to the general public. There is still room for a limited role by museums in presenting the richness of our culture through the display of cultural objects, but the

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<sup>59</sup> The main and obvious criticism of litigation of First Nations' rights is the win/lose outcome of litigation. Another criticism of strict legal analysis is the failure to consider other world views, especially those of First Nations.

<sup>60</sup> It is noteworthy however, that not all First Nations had strictly communal rights to property. In the Northwest Coast for example, individual clans owned "resources," songs and ceremonies (the latter two being the most important forms of property).

<sup>61</sup> This is precisely what Robert Davidson recommends. There is such an abundance of museums and other institutions around the world which hold Haida cultural objects that this would be a substantial start towards cultural centres in Haida Gwaii. (Robert Davidson, 1995: personal communication).

role of presentation and preservation of First Nations cultures must now rest with First Nations. The ultimate control and management of collections of First Nations' heritage properly lies with First Nations themselves. Museums now have an opportunity to participate in cultural *perpetuation*, and this is exactly what repatriation offers to museums and other institutions. Returning collections to the appropriate First Nations will help to ensure the survival of First Nations cultures and, upon the creation of First Nations-controlled cultural centres, will mean that some of these collections could be presented in the natural and appropriate context by their rightful "owners."

