INTERNATIONAL DIMENSIONS

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In this era of cultural diversity, the international regime for protecting and sharing cultural property is as relevant to the legal community as it has been for the traditional art community. "Multiculturalism" is not merely a political expedient for ethnically diverse countries such as the United States. This concept implicitly recognizes that while democracy marches across the globe, it re-invigorates ethnic and cultural, if not nationalistic, ties. Moreover, the specter of global democratization should not presuppose that ancient, almost subliminal, cultural ties of a racial, ethnic, linguistic or religious nature will completely yield to emerging geo-political alliances. Indeed, mankind's common cultural heritage has long been enriched, if not defined, by Alexander the Great's plundering battle cry; where victorious armies loped away with friezes, statues of gods, sculptures and entire libraries, monuments and other prizes that signified the cumulative patrimony of conquered peoples.

Today, however, the battlefield is no longer the relevant front in the fight to preserve man's common heritage. Rather, the contemporary war is being waged against the illicit import, export, and in numerous instances, outright theft of significant cultural property. Tensions have heightened in recent years between art-import countries in the West and art-source nations in Africa, Latin America, and Asia, that have been victimized by pillage and illegal trade. The increasing trend among these art-source countries has been to invoke international law not only to protect their patrimony from ongoing illicit trade, but also to seek restitution and/or the return of cultural objects taken during earlier eras.[1]

The circumstances by which native peoples in Africa, North America, South America, Asia, and other colonized lands were deprived of vast amounts of their cultural property, now reposed under foreign stewardship, are strikingly similar.[2] In addition to protecting the common cultural heritage, these formerly subju-

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[1] Teresa T. McGuire, *African Antiquities Removed During Colonialism: Restoring a Stolen Cultural Legacy*, 1990 DET. C.L. REV. 31, 32.

[2] *Id.*

gated peoples have important interests in restoring their own cultural legacies and in the return of objects that express their unique identities.[3] These nations are calling for the return of cultural property removed during colonial domination, as well as items that are unlawfully exported from their boundaries and briskly traded in the United States and Europe.[4]

Much of the credit for what we understand to be the modern legal framework for protecting legal properties is due some of these countries. These countries should be recognized not because they have made clear technical contributions, but because they provided the impetus or the catalyst for the dialogue that we now characterize as multiculturalism. In addition, their emerging roles in the transnational law of cultural relations have both expanded the contours of international relations and formed new definitions of "cultural property."[5] Today, the illicit movement and trade of such property is the number one threat to the cultural heritage of all countries. In response, the international community is moving progressively, albeit not fast enough by some accounts, through a national, regional and transnational regime which includes multilateral legislation, import-export regulation and several species of bilateral agreements.[6] Thus, the international legal community has established a progressive framework for protecting cultural property, and much of the activity for the rest of this decade and into the next century will be done not only by lawyers, but by historians, archeologists, museum officials, and other individuals involved in promoting multiculturalism.

This modern framework, though relatively recent, did not evolve in a vacuum. Rather, certain developments, which both expanded the definition of cultural property and enlarged the means by which countries protect their heritage, provided the im-

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[3] *Id. See generally* 31 MUSEUM (1979) (discussing viewpoints of former colonial powers and former colonized countries, particularly in Africa and Asia, on the issue of restitution and return of cultural property).

[4] *See generally* EMIL ALEXANDROV, INTERNATIONAL LEGAL PROTECTION OF CULTURAL PROPERTY (1979) (discussing the necessity to update the system of protecting international cultural property); Alan Marchisotto, Note, *The Protection of Art in Transnational Law*, 7 VAND. J. TRANSNAT'L. L. 689 (1974) (discussing the efforts of several nations to stem the flow of artworks to foreign owners). *See also*, James A. R. Nafziger, *An Anthro-Apology for Managing the International Flow of Cultural Property*, 4 HOUS. J. INT'L L. 189 (1982) (discussing how current statutory devices intended to protect cultural property have adversely affected the very works they were intended to safeguard).

[5] *See generally* Gael M. Graham, *Protection and Reversion of Cultural Property: Issues of Definition and Justification*, 21 INT'L LAW. 755 (1987) (discussing the need for a liberal and malleable concept of cultural property to determine which objects are protected).

[6] McGuire, *supra* note 1, at 45-48.

petus for this movement. One example was the successful bid for independence by formerly colonized peoples of Latin America, Asia and Africa.[7] Their political liberation brought heightened cultural awareness, which in turn led many of them to enact nationalistic export controls to stem the flow of their cultural property to the West.[8] Unfortunately, as traditional artifacts became less available to meet market demand, the illicit siphoning of objects from art-source countries to import markets in Europe and the United States escalated. At the same time, these former colonies found a voice in the United Nations and used that voice to proffer a series of strident resolutions that demanded, *inter alia,* the unconditional return of cultural property that embodied their national heritages.[9] Thus, the rules for protecting cultural property shifted from the historical context of warfare, as codified in the Hague Conventions,[10] to that of illicit peace-time trafficking.

During this period of cultural awareness, the 1970 United Nations Educational, Scientific and Cultural Organization ("UNESCO") Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[11] ("1970 Convention") was enacted. The 1970 Convention was the culmination of ten years of effort and

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7 Marchisotto, *supra* note 4, at 689-90.

8 *Id.*

9 *See, e.g., Return or Restitution of Cultural Property to the Countries of Origin,* U.N. Doc. A/36/L.22/Rev.1/Add.1 (1981) (draft resolution discussing the importance of cultural property and encouraging countries to promote the return of cultural property to the country of origin). In particular, see *Restitution of Works of Art to Countries Victim of Appropriation,* G.A. Res. 3187, U.N. GAOR, Supp. No. 30A, at 9, U.N. Doc. A/3187 (1973), which "*[a]ffirms* that the prompt restitution to a country of its *objects d'art,* monuments, museum pieces, manuscripts and documents by another country, without charge, is calculated to strengthen international cooperation inasmuch as it constitutes just reparation for damage done." *Id.* (emphasis in original). This language was subsequently toned down in 1975 in later resolutions by omitting terminology calling for prompt restitution without charge and just reparation. *See* James A.R. Nafziger, *International Penal Aspects of Protecting Cultural Property,* 19 INT'L LAW. 834, 843 (1985) (analyzing the application of penal law to various treaties and agreements governing the flow of cultural property beyond national boundaries).

10 Convention with Certain Powers on the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803, 1824, T.S. No. 403; Convention with Other Powers on the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 2307-08, T.S. No. 539; Convention on the Protection of Cultural Property in the Event of Armed Conflict, *opened for signature* May 14, 1954, 249 U.N.T.S. 240 (effective Aug. 7, 1957) [hereinafter 1954 Hague Convention]. The Hague Conventions of 1899 and 1907 established an international code of behavior with regard to warring nations and adopted certain rules against cultural plunder. McGuire, *supra* note 2, at 36-37. Similar provisions in both treaties prohibited an invading army from pillaging and made confiscation of or damage to cultural structures and objects subject to penal sanctions. *Id.* The 1954 Hague Convention, however, was the first international agreement that treated cultural patrimony as its main focus, albeit in the context of armed conflict. *See, e.g.,* 1954 Hague Convention, *supra,* at preamble, para. 4, arts. 3, 7, 9, 18 and 19.

11 Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter 1970 Convention].

was the first major instrument to mandate active, continuous interstate cooperation to protect cultural property.[12] Presently, it remains the primary instrument used in protecting cultural property.

This Treaty obligates member states to establish a system of domestic import-export certification and controls, supported by the regulation of museums, dealers, and other traders. These are designed to prevent illicit trafficking and the unlawful acquisition of cultural property by otherwise reputable entities.[13] Some activist provisions permit the parties to call on one another whenever their patrimony is threatened by pillage or smuggling.[14] Property stolen from museums or public monuments must be returned, while items stolen or illegally transported after the Treaty's entry into force are recoverable upon demand by the source country, so long as it pays just compensation to good faith purchasers.[15]

Arguably, however, the 1970 Convention has been only marginally successful because few art-importing countries—the United States and Canada being the major exceptions—that form the chief markets for cultural works have ratified or acceded to the Convention.[16] Moreover, in some instances the Convention raises more questions than it purports to resolve. For example, the Treaty expressly seeks to protect the state's individual cultural heritage, but at the same time a country's cultural heritage may be comprised under the treaty not only of indigenous expressions of genius, but of items which originated in other countries that are now "found" in a state due to any number of lawful transactions.[17] Specifically, cultural products that are legitimately traded, purchased, acquired as gifts, or discovered by authorized excavation may now constitute a part of a signatory's own cultural heritage.[18] Such has been the long-standing position of Great Britain (which, at last tally, was not a party to the

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12 *Id.* arts. 2, 5-8, 10, 12-14 and 16.

13 *Id.* art. 7(a). This Article requires the parties "[t]o take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention." *Id.*

14 *See, e.g., id.* art. 9. This Article provides that any party "whose cultural patrimony is in jeopardy from pillage of archeological or ethnological materials may call upon other States Parties who are affected" to carry out the necessary concrete measures, including the control of exports, imports, and international commerce in the specific materials concerned. *Id.*

15 *Id.* arts. 7(b)(i) and 7(b)(ii).

16 McGuire, *supra* note 2, at 48 n.119.

17 1970 Convention, *supra* note 11, art. 4(b).

18 *Id.* arts. 4(c)-(e).

1970 Convention) with respect to Greece's frequent and ongoing demands for the return of the Elgin Marbles.[19] Great Britain also continues to resist Nigerian pleas for the return of certain bronze and ivory artifacts from the Benine Kingdom, which flourished from the thirteenth through the nineteenth centuries.[20] Thus, the 1970 Convention, by defining cultural heritage on the basis of territoriality, has unintentionally opened the door for multiple states to claim the same object without addressing how such claims will be resolved.[21]

Moreover, the recovery provisions of the Convention tend to favor the so-called art importing countries. For example, Article 7 of the Convention expressly limits recovery of cultural property stolen from museums and other public institutions to "important" cultural patrimony that has been duly catalogued and inventoried at that institution.[22] Since the 1970 Convention does not mandate an international inventory system, however, states are free to devise their own categories of "important artifacts." For instance, most Western countries have had a long tradition of museum institutions, which utilize a system for taking inventory of their collections. Historically, these institutions measured the "importance" of cultural property by standards of commercial value.[23]

In contrast, formerly colonized countries were typically deprived of their patrimony under circumstances which precluded them from keeping inventory of even their most significant items. Most of these objects were and are not art in the individualistic sense; rather, they are communalized, often functional, expressions of a collective culture. These objects were typically used in religious, birthing, and other ceremonies, such as the coronation of kings in the Ashante culture, or even the transfer of a stool.[24] Many of these items are priceless and thus cannot be valued in terms of commercial worth. Most developing countries, however, have belatedly begun to take inventory of what remains of

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19 SHARON ANNE WILLIAMS, THE INTERNATIONAL AND NATIONAL PROTECTION OF MOVEABLE CULTURAL PROPERTY: A COMPARATIVE STUDY 1, 9 (1978). The Elgin Marbles involve the famous dismembered pieces of the Greek Parthenon which were taken from the historical monument in the 18th century by Britain's Lord Elgin and removed to London. The government of Greece continues to petition for their return. *Greece Wants British to Return Elgin Marbles,* N.Y. TIMES, Apr. 18, 1982, at A10.

20 McGuire, *supra* note 1, at 43.

21 Graham, *supra* note 5, at 774-75.

22 1970 Convention, *supra* note 15, art. 7.

23 *See* McGuire, *supra* note 1, at 41-45 (discussing the looting and sale of African cultural property) and at 59-61 (discussing the cost of effecting restitution).

24 *Id.* at 42 n.86.

their significant cultural stock.[25]

Similarly, recently enacted import-export controls are another means to protect cultural property, but their effectiveness is not yet certain.[26] Most countries, regardless of whether they are UNESCO members or whether they are art-source or art-importing countries, have export regulations that require a certificate of authorization before exportation.[27] These regulations, however, vary greatly from country to country. African states, for example, have a noticeable paucity of such regulation. Where countries have enacted import-export controls, such as in Nigeria and Ghana, enforcement is reputedly lax.[28] In contrast, Mexico's legislation, which prohibits the export of any art object not exempted by the president and which vests in the state ownership of all pre-Columbian artifacts, is considered among the most aggressive and the most restrictive of such regulations.[29]

In any case, the nearly universal problem with these regulations is that art-source countries fail to precisely define and identify objects or categories of cultural properties that are likely to turn up as contraband in importing countries.[30] Thus, self-limiting definitions of cultural property challenge not only the efficacy of the existing protection regime, but also the current efforts to implement this concept of multiculturalism into a new regime. In 1972, the United States, an art-importing country, enacted a statute that prohibits the import of certain pre-Columbian antiquities without export certification and subjects the contraband to customs seizure and return without compensation to the country of origin.[31] Yet, even this customs law only regulates immobile or immovable sculptures, murals, monumental architecture, or pieces thereof, as defined, not by Mexico or the pre-Columbian successors, but by the United States Secretary of Treasury.[32]

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25 *Id.* at 59. The significance of this delay will be discussed *infra* in text accompanying notes 33-61, which studies the obstacles in using penal sanctions to recover cultural property.

26 *Id.*

27 *Id.*

28 *Id.* at nn.131-35, 173-81 and accompanying text.

29 *Id.* at n.129 and accompanying text. *See also* Comment, *New Legal Tools to Turn the Illicit Traffic in Pre-Columbian Antiquities,* 12 COLUM. J. TRANSNAT'L L. 316 (1973) ("It thus appears that Mexico is unwilling to retreat from the approach of placing stringent statutory controls on the export of national art treasures. Every pre-Columbian item now belongs to the nation and no such item may now be exported.").

30 McGuire, *supra* note 1, at 47-48.

31 Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals, Pub. L. No. 92-587, 86 Stat. 1297 (1972) (codified at 19 U.S.C. §§ 2091-2095 (1988)).

32 19 U.S.C. §§ 2091, 2095 (1988).

Similarly, the National Stolen Property Act[33] is applicable to foreign art objects exported in contravention of a country's laws[34] and imposes criminal sanctions where the theft was done "knowingly."[35] Rarely, however, have United States courts applied the Act to stolen cultural products.[36] Due to the definitional and regulatory deficiencies discussed previously, few such actions are ever instituted. An important 1989 case is illustrative. In *Government of Peru v. Johnson,*[37] the Peruvian government claimed ownership of eighty-nine artifacts seized by U.S. Customs from the defendant, Ben Johnson.[38] Evidence indicated that Johnson had purchased the items in good faith, but this fact was not fatal to Peru's claim.[39] Additionally, the plaintiff's expert witness, Dr. Iriarte, Peru's leading archaeologist in pre-Columbian artifacts, examined all eighty-nine of the objects and connected most of them to a Peruvian style and to a particular excavation site or specific area.[40] Dr. Iriarte, however, also admitted at trial that Peru's pre-Columbian cultures existed in areas that comprise not only modern day Peru, but also areas that are now within the borders of Bolivia and Ecuador.[41] Although in some instances plaintiff's expert admitted that an item may have come from Ecuador, Colombia, Mexico, or even Polynesia, he maintained his opinion that the object had been "found" in Peru.[42] Thus, faced with many other possibilities as to country of origin, the court declined to find that the objects came from Peru.[43]

The critical issue, however, was the timing of Peru's ownership of the artifacts, which Peru claimed had begun in 1822. In deciding this issue, the court looked to Peruvian laws from 1822

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33 18 U.S.C. §§ 2314-2315 (1988 & Supp. II 1992).

34 United States v. McClain, 545 F.2d 988, 996 (5th Cir. 1977).

35 18 U.S.C. §§ 2314-2315 (1988 & Supp. II 1992).

36 *See, e.g.,* United States v. Hollinshead, 495 F.2d 1154 (9th Cir. 1974) (defendant was successfully prosecuted under this Act for transporting into the United States known and catalogued Guatemalan Stela). *See also,* United States v. McClain, 545 F.2d 988 (5th Cir. 1977) (holding that the Act was applicable to the illegal exportation of Mexican artifacts, but reversing the convictions on other grounds); United States v. McClain (II), 593 F.2d 658 (5th Cir.) (upholding application of the Act to illegally exported Mexican artifacts, but reversing the convictions on other grounds), *cert. denied,* 444 U.S. 918 (1979).

37 720 F. Supp. 810 (C.D. Cal.), *aff'd,* 933 F.2d 1013 (9th Cir. 1989).

38 *Id.* at 811.

39 *Id.* at 812. Peru's heavy legal and factual burdens of establishing that the objects came from and were owned by Peru at the time of exportation proved to be insurmountable. *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

to the present, noting that they were far from precise and had changed several times during those years.[44] Additionally, the Peruvian Government undercut its initial claim by admitting in pleadings, responses to discovery requests, and pretrial memoranda that a 1929 statute, rather than the 1822 statute, was the earliest legal basis for its claims.[45] This position was supported by Robert MacLean, a former Supreme Court Justice of Peru, who testified at the trial as an expert on Peruvian law.[46] Thus, Peru was barred from claiming ownership to any of the items that might have left Peru before 1929.

Specifically, this 1929 law provided that "privately owned pre-Columbian artifacts must be registered in a special book 'which shall be opened at the National Museum of History,' and that any '[o]bjects which, after one year beginning on the day the book is opened, have not been registered, shall be considered the property of the State.' "[47] Unfortunately, during discovery the plaintiff admitted that it did not know when these books were opened, and indicated that until 1972 these books were at the National Museum of Anthropology and Archeology and the Museum of the Nation, which may not be the same Museum of History specified in the 1929 Act.[48] The question of ownership was further muddled by the Act's repeal or replacement on January 5, 1985,[49] which resulted in obligating private persons to register archeological objects. Failure to do so could vest ownership in the state.[50] Peru changed its laws twice more in 1985:[51] in February to declare pre-Hispanic objects to be "untouchable,"[52] and in June to grant the state ownership in all archeological sites.[53]

Based on this evidence, the court concluded that Peru had merely enacted export restrictions that were concerned with protection. Those restrictions, however, did not imply ownership of cultural property.[54] Although the court was sympathetic to Peru's need to protect its priceless cultural property from looting

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44 *Id.* at 812-14.
45 *Id.* at 813.
46 *Id.*
47 *Id.* (quoting Peruvian Law No. 6634 of June 13, 1929).
48 *Id.*
49 *Id.*
50 *Id.*
51 *Id.* at 814.
52 *Id.* The February 1985 decree also categorically forbade removal of pre-Hispanic artistic objects from the country. However, it did not clearly establish state ownership of any such objects. *Id.*
53 *Id.*
54 *Id.* at 814-15.

and smuggling, since Peru was unable to show clear ownership of the pre-Columbian artifacts, it could not recover them.

Peru v. Johnson illustrates the limited effectiveness of prosecuting transnational cultural property claims. Aside from the cost factor, which is prohibitive for most developing countries, the evidentiary hurdles can be overwhelming.[55] According to the Peruvian Cultural Affairs Officer at the Embassy in Washington, the problem is threefold.[56] The first is proving that the items are authentic. This is a very difficult task; the Peruvian government estimates that while more than 40,000 items have been stolen from state museums, only a fraction of these have formal descriptions.[57] Such thefts have occurred despite the 1981 Agreement for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties[58] between the United States and Peru, which was specifically designed to prevent international traffic in stolen art. The second problem is ascertaining which cultures the articles represent and the third is proving that the objects are stolen or exported illegally. To overcome some of these limitations, the U.S. government is currently negotiating a bilateral agreement with Peru to ease the process for obtaining the return of these antiquities.[59] One of the goals is that any agreement cover all of the represented pre-Columbian cultures.[60] Other Latin American countries, particularly Guatemala and Ecuador, are also pursuing similar bilateral pacts with the United States.[61]

These voluntary bilateral agreements or arrangements, such as inter-museum exchanges, are the most exciting aspects of the cultural property regime. Article 15 of the 1970 Convention[62] encourages, but does not mandate, bilateral cooperation between states to effect restitution of cultural property. While some countries may not be moving as rapidly as others would like, the results so far have been promising. These arrangements involve collective efforts among states, public and quasi-public

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55 *See generally* Nafziger, *supra* note 9 (discussing international agreements and mechanisms of enforcing cultural property laws).

56 Telephone interview with Maria Cecilia Rozas, Cultural Attache for the Embassy of Peru, in Washington, D.C. (December 10, 1991) [hereinafter Rozas Interview].

57 *Id.*

58 Sept. 15, 1981, U.S.-Peru, T.I.A.S. No. 10,136.

59 Rozas Interview, *supra* note 56.

60 *Id.*

61 *Id.*

62 1970 Convention, *supra* note 11, art. 15. Article 15 provides: "Nothing in this Convention shall prevent states' parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before entry into force of this Convention for the states concerned." *Id.*

institutions, as well as private persons and entities.[63] For instance, at the governmental level, notable bilateral agreements were concluded between France and Laos as early as 1950.[64] Additionally, pursuant to an agreement between Belgium and the former colony of Zaire during the 1970s,[65] Belgium assisted in establishing museums and in teaching their staffs Western techniques of museum management; eventually, Belgium returned approximately 200 objects to the African state.[66] Although this effort seems impressive, Belgium at that time had produced over 700 volumes of anthropological research based on its Zairian holdings. Consequently, the return of a mere 200 objects from a collection that had produced some 700 volumes of research is not as impressive as it might appear initially. This does show, however, that an arrangement between two states for the return of cultural property can be, and has been, effectively used, particularly in cases where a symbiotic relationship existed between a former colony and its colonizer. Moreover, the Netherlands and Indonesia concluded such an agreement in 1976,[67] as did Italy and Ethiopia.[68] Unfortunately, from a legal standpoint, these bilateral pacts permitted few objects to be returned without making restitution *de jure* because the returned items were usually deemed to be gifts.

In 1978 the International Council of Museums[69] ("ICOM") was established. The initial mission of ICOM was to define and implement a code of ethics for museums concerning acquisitions policies and inter-museum exchanges.[70] In that same year, ICOM instituted the Museum Exchange Project ("MUSEP"), which coordinates long- and short-term loans of cultural items and donations between Western museums and developing Third World institutions.[71] This method falls far short of cultural resti-

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63 *Summary Records of the 31st Session*, [1979] 2 Y.B. Int'l L. Comm'n 81, para. 51, U.N. Doc. A/CN.4/322/1979.

64 Graham, *supra* note 5, at 791.

65 McGuire, *supra* note 1, at 52.

66 *Id.*

67 Graham, *supra* note 5, at 791.

68 *Id.*

69 The International Council of Museums ("ICOM") is the successor to the League of Nations organization, the International Museums Office. Luis Monreal, *Problems and Possibilities in Recovering Dispersed Cultural Heritages*, 31 MUSEUM 49 (1979).

70 *Id.* at 51. The activities of the Museum Exchange Project include: collecting information and details about museums willing to exchange, loan, or receive art objects; proposing various bilateral contract forms for the carrying-out of such transfers; offering legal advice and technical assistance; and acting as negotiator between the participating institutions. *Id.*

71 *Id.*

tution; however, it provides an effective contractual basis for loaning art objects in cases where outright transfer of ownership is not contemplated between the parties. In some cases, long-term loans can ripen into permanent acquisitions, as is the case with the Nefertiti head that is now displayed in and shared by both Berlin and Cairo.[72] MUSEP has also successfully assisted efforts by private individuals or entities in the United States and Ireland to return patrimony to New Guinea and Australia.[73]

Although the ICOM program has been effective, there is still much left to do. Presently, much of the discourse—particularly in a culturally diverse country like the United States—is less about "technique,"[74] and more about devising an ethical framework in which to promote multiculturalism.[75] Though there are many legal perils endemic to current efforts to blend unique cultural heritages into a pre-existing whole fabric, the question of protecting and promoting cultural property is largely a matter of technique. The issue of protecting cultural heritages—often an inchoate and always an intangible concept—is, however, a far more difficult task for the architects of our multiculturalism. It is also a major task for the next 500 years. Columbus's new world frontier is now fully explored and peopled with a rich variegation of humanity that, centuries before, wove their separate cultures in oceanic isolation. Moreover, the new world convergence of this diverse mix of peoples today poses major challenges to commerce, education, the arts, and other areas.[76]

Interestingly, a growing number of multiculturalist advocates are drawing upon the insights of a new breed of physicians and psychiatrists who have begun to trace the mental and physical health problems—especially lack of self-esteem—of many minorities to the symbolic annihilation of their culture by the dominant group. Noted African-American writer, Ishmael Reed, has suggested that another cause of this depression is the severance of any link to the images of their ancient religions (*i.e.*, cul-

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72 Herbert Ganslmayr, *Federal Republic of Germany*, 31 MUSEUM 12, 12 (1979); Graham, *supra* note 5, at 791.

73 Jim Sprecht, *The Australian Museum and the Return of Artifacts to Pacific Island Countries*, 31 MUSEUM 28, 28-31 (1979).

74 *See, e.g.*, Monreal, *supra* note 69, at 49-50 (discussing methods of protecting cultural heritage); McGuire, *supra* note 1, at 45-65 (discussing and evaluating the legal framework for protecting cultural property).

75 *See* Monreal, *supra* note 69, at 49-50 (discussing development of an international code of ethics for the protection of the heritage of mankind).

76 Sherri L. Burr, Remarks at the Association of American Law Schools Art Law Section Fieldtrip to the San Antonio Museum of Art 2 (Jan. 4, 1992) (transcript on file with the *Cardozo Arts & Entertainment Law Journal*).

tural icons) as manifested through "art."[77] Perhaps this theory explains why cultural distinctions continue to curdle from the imposed homogeny of political and economic nationalism.

Surely, each cultural group bears the ultimate responsibility for re-igniting appreciation of their cultural legacies and ensuring its transmission to future generations. But if the next 500 years are to be meaningful, and different from the past, the international arts community, both legally and cooperatively, must play a role in helping to restore patrimony and cultural sensibilities torn from the memories of subjugated peoples. Ultimately, expanding the diversity of voices is one way to assure that multiculturalism does not become a new euphemism for old notions of ethnic hierarchy, but rather a more accurate reflection of the unique cultural contributions that all peoples have made to what truly is, or must become, the common heritage of mankind.

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77 Ishmael Reed, *Foreword* to ZORA NEALE HURSTON, TELL MY HORSE at xiii (Perennial Library 1990).