

GENERAL ARTICLES

Agnieszka Plata*

plata.agnieszka@gmail.com
orcid.org/0000-0002-3682-4787
Faculty of Law and Administration
University of Gdańsk
ul. Jana Bażyńskiego 6
80-980 Gdańsk, Poland

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

Abstract: This article analyses the case of the dispute over the return of the Aboriginal shield from the collection of the British Museum, which up to 2018 was believed to have come from the First Contact with the Aboriginal people made by the crew of captain James Cook. The arguments exchanged between the parties are studied from the perspective of the theory of hard cases. The claim for the return expressed by Rodney Kelly is supported mostly by the arguments based on justice, and both personal and cultural affiliation. The British Museum responded to the claim with results of research questioning the provenance of the shield. The relevance of the research is evaluated in the context of the symbolic significance of the case. The author believes that application of the theory of hard cases allows to broaden the debate beyond the scope of positive law.

Keywords: colonialism, colonial loot, Indigenous peoples, Aboriginal Australians, restitution, postcolonial studies, hard case, argumentation

* **Agnieszka Plata** is Doctor of Law affiliated with the Department of the Theory and Philosophy of Law and State at the Faculty of Law and Administration of the University of Gdańsk (Poland) and an attorney-at-law admitted to the Pomeranian Bar Association. She holds an MA in law from the University of Gdańsk. Her research primarily concerns restitution and the return of cultural goods and the aesthetics of law from a feminist perspective. She operates her own law practice.

A relationship that links us to the past is a connection that is lived in the present and to be recreated in the future.
Irene Watson¹

Introduction: Lost Objects and Appropriated Stories

One of the consequences of European colonialism was an unbalanced movement of antiquities all over the globe. Even though the transfers of cultural objects have always been a universal aspect of human activity in times of both war and peace, colonial practices demonstrate a different dimension of looting, which exceeds physical displacement of the goods. As observed by Dan Hicks:

This is a story of documentary interventions in the fabric of time itself, to create a timeless past in the present as a weapon that generates alterity – appropriations in form not so much as property as unspecified rights, interests, privileges and claims, including the rights of mimesis and parody. This taking was no side effect of how the violence grew, mere mementoes or keepsakes for scrapbooks and cabinets, but “relics” through which the violence, as both an idea and a reality, would be continually surfaced and made to last.²

With this in mind, the debate over the return³ of cultural objects displaced as a result of colonial practices needs to be conducted both mindfully of the available legal framework – or lack of thereof – regarding the movement of the objects, and with due sensitivity to the meaning of the circumstances that led to the dispossession, the cultural trauma it involves, and the symbolism of the potential physical return of the lost heritage. Elazar Barkan establishes that restitution is not only a legal category, but also a cultural concept addressing the issue of amending past injustices.⁴ This statement remains a valuable guide to examining the restitution debates.

This article explores the issue of return of cultural objects lost to colonial powers as a case set in law, morality, culture, and historical research. It examines the case of the debate over the return of the Aboriginal shield in the collection of the British Museum. The first section characterizes the restitution debates as possible hard cases in law and describes the restitution arguments used and exchanged

¹ I. Watson, *Aboriginal Peoples, Colonialism and International Law. Raw Law*, Routledge, Abingdon–New York 2015, p. 13.

² D. Hicks, *The British Museums. The Benin Bronzes, Colonial Violence and Cultural Restitution*, Pluto Press, London 2020, pp. 12-13; see also T. Barringer, T. Flynn (eds.), *Colonialism and the Object. Empire, Material Culture and the Museum*, Routledge, New York 1998.

³ Throughout this article the terms “restitution” and “return” are used interchangeably. For more information on the terminological distinction in legal sources, see W. Kowalski, “Types of Claims for Recovery of Lost Cultural Property,” *Museum International* 2005, Vol. 57(4).

⁴ E. Barkan, *The Guilt of Nations. Restitution and Negotiating Historical Injustices*, Johns Hopkins University Press, Baltimore 2001, p. xix.

in the dispute. Next, the article undertakes the case study by describing the cultural object in question, the historical circumstances of its loss, and the arguments exchanged in the restitution debate. The final section presents conclusions addressing the central issues of the debate and the potentially available direction of further solutions.

Return of Cultural Objects Lost to Colonial Powers as a Hard Case

In this article cultural objects lost in the colonial context are understood as objects of cultural or historical importance which were acquired without just compensation or were involuntarily lost during the European colonial era.⁵ In the colonial relationship the law affirms a model of subjugation of the “weaker” population by the “stronger” actors.⁶ For that reason, the transfer of goods involving a colonial actor raises multiple concerns regarding the degree of equality among the parties to the legal acts or other events.⁷ When it comes to the acquisition of cultural objects in that historical context – which often implies duress – one may ask, after Jos van Beurden: “[D]id the acquirers consult its makers, original owners or their descendants? Was the transfer voluntary or was pressure exerted and was it an involuntary loss?”⁸ The fact that the transfer was made to a colonially-associated actor (e.g., colonial administrators) from a party under colonial power is fundamental to the discussion on cultural objects lost during the colonial era.

Moreover, van Beurden distinguishes three methods of transferring the cultural objects in question: (a) acquisition by normal purchase or barter, at an equal level; (b) acquisition in accordance with colonial legislation, but at an unequal level; (c) acquisition in violation of this legislation and at an unequal level.⁹ Also, from the point of view of the circumstances under which the objects were acquired, van Beurden enumerates the following types of cultural goods: (a) gifts to colonial administrators and institutions; (b) objects acquired during private expeditions; (c) objects acquired during military expeditions; (d) missionary collecting; and (e) archives.¹⁰

The removal of cultural objects from the former colonial States and from Indigenous peoples by specific States holding colonial power or other actors associated

⁵ See Jos van Beurden’s definition of “colonial cultural objects”: J. van Beurden, *Treasures in Trusted Hands. Negotiating the Future of Colonial Cultural Objects*, Sidestone Press, Leiden 2017, p. 39; see further U. Mattei, L. Nader, *Plunder. When the Rule of Law Is Illegal*, Blackwell, Malden–Oxford–Carlton 2008, pp. 20–44.

⁶ U. Mattei, L. Nader, op. cit., p. 26.

⁷ See J. van Beurden, op. cit., p. 40.

⁸ Ibidem.

⁹ Ibidem, p. 41.

¹⁰ Ibidem.

with that power at the time is one of the causes for the debate over the restitution of cultural goods.¹¹ These cases remain profoundly connected with the process of settling accounts with the period of colonialism, acknowledging guilt for its consequences, and negotiating amendments.¹² Moreover, gaining independence from colonial rule is a significant factor underlying the need to reinforce original national identity, including the protection of the cultural heritage. In that sense, the protection of cultural heritage can mean not only preserving and retaining cultural objects within States, but also recovering objects that were previously unjustly transferred or lost.¹³ However, it needs to be emphasized that over 300 million Indigenous peoples today – including Aboriginal Australians – still function immersed in the cultures of the States which expropriated their territory during colonial reign.¹⁴ Under these circumstances, countries of origin of the antiquities lost during the colonial era, as well as groups and individuals, support initiatives to establish international instruments on the issue of return of cultural objects, as well as raise direct requests regarding certain goods.

It is necessary to emphasize that in the case of cultural goods lost during the colonial era, direct application of legal regulations is usually impossible as their removal occurred prior to the establishment of laws on the protection of cultural heritage.¹⁵ Principles of international law applicable nowadays, as expressed in Article 11 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, signed in Paris on 14 November 1970,¹⁶ and in other international instruments, forbid the “export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power”. Unfortunately however, the retroactive application of these rules of law is usually not possible due to the established principles on state responsibility as well as the rule of inter-temporal law.¹⁷ From this point of view, examining the chain of ownership solely from the legal perspective often in effect constitutes a defence for the colonial powers, by allowing them to claim that the ownership has been acquired legally according to the law contemporarily in effect at the

¹¹ K. Zeidler, *Restitution of Cultural Property. Hard Case, Theory of Argumentation, Philosophy of Law*, Gdańsk University Press, Gdańsk-Warsaw 2016, p. 36.

¹² A. Plata, *Argumentative Aspects of Disputes over Return of Cultural Objects Lost to Colonial Powers*, “Gdańskie Studia Międzynarodowe” 2020, Vol. 18(1-2).

¹³ K. Zeidler, op. cit., p. 36.

¹⁴ I. Watson, op. cit., p. 88.

¹⁵ See the Guidelines prepared in 1986 by the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation.

¹⁶ 823 UNTS 231.

¹⁷ J. Shuart, *Is All “Pharaoh” in Love and War. The British Museum’s Title to the Rosetta Stone and the Sphinx’s Beard*, “Kansas Law Review” 2004, Vol. 52(667), pp. 689-690.

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

time of the act of transfer.¹⁸ Marie Cornu and Marc-André Renold address this issue by stating that:

[W]here earlier dispossessions are concerned, the question arises in different terms. If the test used were whether the dispossession was unlawful, any principle of restitution could easily be defeated. In most situations, either it was not unlawful under the law applicable at the time, or any wrongfulness has been purged by time. Besides the fact that it may not always be possible to ascertain and evaluate the circumstances in which a dispossession occurred, it sometimes took place with the consent of the states or communities concerned.¹⁹

Moreover, attempting to translate some of the Indigenous cultures to the dominant legal structure of the debate may generate additional problems. Indigenous legal systems often exceed the definitions of classical jurisprudence, which can be exemplified by the Aboriginal Law – a natural system of obligations and benefits flowing from an Aboriginal ontology.²⁰ The specificity of Indigenous traditions – largely oral and dynamic – often clashes with the idea of culture as an established and definable heritage.²¹ For example, Barkan notes that traditional societies can be based on the practice of maintaining and reproducing the past in ways that are believed by the practitioners to be traditional – namely, unaltered – and over which they claim rights of proprietorship.²² The function of cultural objects in the Indigenous traditions often proves to be impossible to reconcile with the Western understanding of protection of cultural heritage, i.a. by providing access to it in the isolated environments of museums and perceiving them as aesthetically and educationally valuable. In fact the objects of colonial loot often have an ongoing sacral, ritual, political, or practical meaning to their original possessors, which can be blurred or even omitted when they are decontextualized as parts of museum collections.²³

Legal definitions of cultural goods founded in international law indicate that their importance is of a complex nature, including archaeological, pre-historical,

¹⁸ See Y. Kryvoi, S. Matos, *Non-Retroactivity as a General Principle of Law*, "Utrecht Law Review" 2021, Vol. 17(1).

¹⁹ M. Cornu, M.-A. Renold, *New Developments in the Restitution of Cultural Property. Alternative Means of Dispute Resolution*, "International Journal of Cultural Property" 2010, Vol. 17(1), p. 15.

²⁰ I. Watson, *op. cit.*, p. 5.

²¹ E. Barkan, *op. cit.*, p. 167.

²² *Ibidem*.

²³ See further R. Thornton, *Repatriation as Healing the Wounds of the Trauma of History. Cases of Native Americans in the United States of America*, in: C. Fforde, J. Hubert, P. Turnbull (eds.), *The Dead and Their Possessions. Repatriation in Principle, Policy and Practice*, Routledge, New York 2002; J.A.R. Nafziger, *Cultural Heritage Law. The International Regime*, in: J.A.R. Nafziger, T. Scovazzi (eds.), *Cultural Heritage of Mankind*, Martinus Nijhoff, Leiden 2008.

historical, literary, artistic, or scientific values.²⁴ This extraordinary character of cultural objects, manifested beyond the concept of economic value, often inspires a debate which does not fit within the scope of legal regulations and scientific facts, and raises moral, political, and scientific issues.²⁵ The values associated with many of the cultural goods of Indigenous peoples often prove to be subjective and immeasurable.

This lack of direct legal regulations applicable to the transfer of cultural objects taken during colonization, and the diversity of values encapsulated within these artefacts, contribute to making the evaluation of the issue of restitution a hard case, possible to settle through more than one justifiable solution.²⁶ According to Kamil Zeidler,

[W]e are dealing with a hard case when the case does not generate one standard solution, but, on the contrary, when there may be many correct findings. The solution of a hard case does not proceed clearly from the legal rules applied, and most frequently in such a situation it is necessary to appeal to norms other than legal ones and to assessments and evaluations.²⁷

This complex character of the arguments raised in restitution debates proves that searching for a fair solution frequently requires turning to justifications other than the law. Thus, actors in a restitution debate concerning cultural objects lost to colonial powers need to acknowledge that as a result of exchanging arguments for and against return, it is possible to reach more than one solution which is justifiable by the criteria of equity and rationality.²⁸ Moreover, Jerzy Zajadło notices that hard cases appear due to the issues arising in the five following aspects: applying the law; creating the law; interpreting the law; assessing the binding force of the law; and abiding by the law.²⁹ The author also indicates that a hard case might not be correlated with the law, as it can occur as a result of the lack of legal regulation.³⁰

This lack of legal norms allowing the return of cultural objects is one of the significant factors in the hard cases involving the British Museum. More precisely, under the British Museum Act 1963³¹ the Trustees of the British Museum are

²⁴ See, e.g., Article 2 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

²⁵ See K. Zeidler, op. cit., pp. 105-130.

²⁶ Ibidem, p. 19; see further R. Dworkin, *A Matter of Principle*, Clarendon Press, Oxford 2001.

²⁷ K. Zeidler, op. cit., p. 19.

²⁸ A. Plata, op. cit., p. 77; see J. Stelmach, *Kodeks argumentacyjny dla prawników* [An Argumentative Code for Lawyers], "Zakamycze", Kraków 2003, p. 21.

²⁹ J. Zajadło, *Po co prawnikom filozofia prawa?* [Why Do Lawyers Need a Philosophy of Law?], Wolters Kluwer Polska, Warszawa 2008, p. 15.

³⁰ Ibidem, pp. 15-16.

³¹ British Museum Act (1963 c. 24).

obliged to keep the objects comprised in the collections of the Museum within the authorized repositories of the Museum, except for the disposal of objects proceeded under the limitations of section 5 of the Act. The Trustees of the British Museum may sell, exchange, give away, or otherwise dispose of any object vested in them and comprised in their collections if the object is a duplicate of another such object, or if the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or in the opinion of the Trustees the object is unfit to be retained in the collections of the Museum and can be disposed of without detriment to the interests of students. The legal limitations to the deaccession procedures are one of the core arguments of the British Museum in its defence to claims for return of cultural objects from the Museum's collection.³²

The concept of hard cases applied in the debate over the return of cultural objects opens the dialogue to spheres beyond the limitations of legal regulations and the applicability of the law. It validates the argumentation resulting from other values, such as justice, cultural significance, personal bonds, or spirituality. The concept of hard cases implies the existence of multiple justifiable solutions, which allows for the broadening of the spectrum of weighed interests and acknowledges the multitude of values captured in cultural treasures. Specifically, it allows the parties to a restitution debate to create valid arguments where the positive law does not necessarily acknowledge their interest.

Restitution Arguments: Supporting Return and Defending Possession

The current practice of resolving cultural heritage debates relies upon several means of dispute settlement, including adjudication by domestic courts, international judicial recourse, international judicial settlement mechanisms, alternative dispute resolution (notably the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation), and cultural diplomacy.³³ Perceiving restitution disputes as potential *hard cases* allows one to search for various frameworks enabling an exchange of arguments which might lead to achievement of a proper assessment, evaluation, or understanding.

³² See J. Greenfield, *The Return of Cultural Treasures*, Cambridge University Press, Cambridge–New York 2007, p. 103.

³³ See A. Chechi, *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, Oxford 2014, pp. 134–185; I. Stamatoudi, *Cultural Property Law and Restitution. A Commentary to International Conventions and European Law*, Edward Elgar, Cheltenham 2011, pp. 189–209.

Due to the issues surrounding the non-retroactivity of the law, seeking judicial recourse in the cases regarding cultural objects lost in a colonial context can prove problematic. In fact, the non-retroactivity of the law is one of the decisive obstacles to having recourse to traditional legal proceedings, as it excludes certain types of cases.³⁴ As Irini Stamatoudi rightly observes: “this, however, does not mean that the claim is not sound on ethical, scientific, historical, humanitarian or other grounds. These grounds, however, are not grounds that are judiciable by courts, which have to follow the rigid legal approach”.³⁵ That being the case, regardless of the platform on which a given cultural heritage dispute is to be resolved, the special nature of cultural objects introduces arguments other than those derived from legal regulations, especially insofar as concerns ownership. Consequently, dealing with the claims for the return of cultural objects removed from their places of origin during the colonial era calls for the use of a wide variety of arguments. The concept of restitution arguments – understood as arguments that are raised by parties in restitution disputes – constitutes one of the perspectives on cultural heritage case studies explored by researchers of this field.³⁶

To exemplify, Lyndel V. Prott and Patrick J. O’Keefe construct a typology of restitution arguments, dividing them into “the arguments for restitution or return” and “the arguments for retention”; and then organizing them further within these two groups.³⁷ Arguments supporting return are: wrongful taking of property; the need for cultural identity; appreciation in its own environment; the need for national identity; dangers to the cultural heritage arising from trafficking; and the dynamics of collecting. In the category of arguments for retention, the authors include: ownership; access; conservation; place in cultural history; and the need to maintain Western collections.³⁸ With reference to the views of Ana F. Vrdoljak, one can identify three rationales supporting the restitution of cultural goods, which emphasize such grounds as: sacred property (derived from the principle of territoriality and the connection between people, land, and cultural goods); righting international wrongs (attempting to make amends for historical injustices); and self-determination and reconciliation.³⁹

³⁴ I. Stamatoudi, op. cit., pp. 190-192.

³⁵ Ibidem, p. 191.

³⁶ See, e.g., K. Zeidler, A. Plata, *The Argumentative Aspects of the Terezín Declaration and Its Place in Public International Law*, in: V. Drbohlavová (ed.), *Terezín Declaration – Ten Years Later. The Documentation, Identification and Restitution of the Cultural Assets of WWII Victims*, Documentation Centre for Property Transfers of Cultural Assets of WWII Victims, Prague 2019, pp. 25-31; K. Zeidler, op. cit.; L.V. Prott, P. O’Keefe, *Law and the Cultural Heritage*, vol. 3: *Movement*, Butterworth & Co., London 1989, pp. 838-850; A.F. Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, Cambridge University Press, Cambridge 2008, p. 2.

³⁷ See L.V. Prott, P. O’Keefe, op. cit., pp. 838-850.

³⁸ Ibidem.

³⁹ A.F. Vrdoljak, op. cit., p. 2.

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

Moreover, Zeidler offers a broad perspective by dividing restitution arguments into positive (i.e. supporting a restitution claim) and negative (supporting retention).⁴⁰ The catalogue of restitution arguments organized by Zeidler emphasizes the special nature of cultural objects as well as the complexity of possible bonds to cultural goods. To enumerate a few, Zeidler's theory names arguments from justice, ownership, place of production, right of loot, national affiliation, cultural affiliation, social utility, most secure location, historical eventuation, and the passage of time.⁴¹ The restitution arguments delineated by Zeidler can be classified into five main groups, i.e. those resulting from justice; legal protection; affiliation to cultural objects; historical circumstances; and protection of cultural heritage. These theories of restitution arguments enable an in-depth assessment of statements expressed in documents regarding the return of cultural objects or exchanged between parties during a dispute.

Aboriginal Shield from the Collection of the British Museum

The exhibition in the Enlightenment Gallery at the British Museum presents hundreds of objects, creating a mosaic of stories which led to the acquisition of cultural goods to the Museum's collection. Upon one of the shelves the visitors may notice a pierced Aboriginal shield made from bark and wood.⁴² Until recently the object was accompanied solely by an information plaque stating that:

This is the earliest shield from New South Wales in the Museum. When Cook landed in Botany Bay in 1770, two men came forward with spears. Cook fired shot hitting a man in the leg, the men retreated, dropping a shield. It has been suggested, but not confirmed, that this is that shield. First contacts in the Pacific were often tense and violent.

Currently, directly under the shield and the information quoted above, the visitors can study an additional plaque, which reads:

The shield, of bark and wood (red mangrove), dates to the late 1700s or early 1800s. Broad shields such as this were used as defensive weapons against spears. The size and shape of the hole in the shield suggests it was pierced by a spear. Although once thought to be collected in 1770 by James Cook or Joseph Banks at Kamay (Botany Bay, near Sydney), it may have been obtained from its owner between about 1790 and 1815 and sent to London by a colonial governor or other collector. It is the earliest known Aboriginal shield from Australia and has come to symbolise the first British colonisation of Australia and its ongoing legacy, which still affects Aboriginal and Torres Strait Islander people in Australia today.

⁴⁰ K. Zeidler, *op. cit.*, p. 138.

⁴¹ See *ibidem*, pp. 141-202.

⁴² British Museum number: Oc1978,Q.839, https://www.britishmuseum.org/collection/object/E_Oc1978-Q-839 [accessed: 12.05.2022].

The origins of the shield have become the subject of research in recent years and the conclusions reached remain an important aspect of this hard case.

The shield is undecorated, has an elongated, oval form with pointed ends, and is slightly convex. The bark has a rough surface and appears blackened in places with traces of white kaolin on the outer side. The shield has a thin handle attached vertically to the reverse at the centre. Both the shield and the handle are made of red mangrove (*Rhizophora stylosa*). The shield has a pierced hole near the centre, with ragged edges, and a smaller hole near one end. The shield is 97.30 cm high, 32.30 cm wide and weighs 2157 g.⁴³

Documented Aboriginal cultural objects from the Sydney region are rare in museum collections. The collection of the Museum of Archaeology and Anthropology in Cambridge contains the spears collected by Captain Cook at Botany Bay in 1770; the Ethnologisches Museum in Berlin holds a similar looking shield; and some objects are dispersed in the collections of regional museums in the United Kingdom. In 2015-2016 the shield from the British Museum's collection was loaned to the National Museum of Australia in Canberra for a temporary exhibition.

First Contact: Historical Injustice and Its Ripple Effect

The Aboriginal peoples of Australia initially came into contact with the British in 1768-1771 due to Captain James Cook, during his first scientific voyage to the Pacific Ocean onboard the *HMS Endeavour*.⁴⁴ The initial interactions often resulted in violent escalations.⁴⁵ In Australia the first contact is historically symbolized by the confrontation at Botany Bay, Sydney on 29 April 1770, which led to opening fire by the crew of *HMS Endeavour* in the direction of the Gweagal people.⁴⁶ According to archival materials, during this historically significant incident, in which the British, equipped with firearms, confronted the Gweagal people using wooden weapons, the British confiscated a wooden shield, pierced by a bullet fired from the ship.⁴⁷

As observed by Irene Watson, the "Doctrine of Discovery" was a colonizing myth constructed to legally justify the dispossession and genocide of First Nations from their territories.⁴⁸ The landing in Australia by the Europeans resulted in taking land from the Indigenous people, beginning in 1788. Such takings later came to be justified by the concept of the *terra nullius*, a legal fiction supporting the theory that

⁴³ Ibidem.

⁴⁴ See G. Blainey, *The Story of Australia's People. The Rise and Fall of Ancient Australia*, ePUB edition, Viking, Melbourne 2015.

⁴⁵ See H. Reynolds, *The Other Side of the Frontier*, UNSW Press, Sydney 2006.

⁴⁶ G. Blainey, op. cit., chapter 16, section 3.

⁴⁷ S. Keenan, *The Gweagal Shield*, "Northern Ireland Legal Quarterly" 2017, Vol. 68(3), p. 284.

⁴⁸ I. Watson, op. cit., p. 5.

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

Indigenous Australia was a land empty of peoples, laws, and systems of governance, and thus ripe for colonization.⁴⁹ From today's perspective, the contact of the Aboriginal peoples with the British and its consequences are considered to have been a cause of an intergenerational trauma for the Aboriginal peoples of Australia, which affects them unjustly to this day. This historical injustice is a significant context in the majority of the disputes regarding the objects lost by the Aboriginal peoples. As pointed out by Sarah Keenan, before the First Contact made by the crew of Captain James Cook, the Aboriginal peoples inhabited Australia exclusively for more than 60,000 years.⁵⁰ Antony Anghie notes that the colonial ideology instrumentally differentiated the "universal" and "civilized" from the "particular" and "uncivilized", while the colonial actions were intended to "bridge the gap" by the erasure of the "uncivilized" qualities.⁵¹ Today, the Aboriginal peoples constitute only 3% of the Australian population, many of whom live in conditions of abject poverty.⁵² Aboriginal Australians have a life expectancy 10 years shorter than non-Aboriginal Australians, demonstrate higher suicide rates, and are over-represented in Australian prisons.⁵³ However, the public debate over these shameful consequences of the colonial violence often omits the issue of reversing the dispossession and genocide of the Indigenous peoples, and is instead limited to the issue of "closing the gap" between the communities.⁵⁴ The social and cultural disadvantages of the Aboriginal peoples is a significant aspect of the broader debate over the restoration of justice and unravelling the policies rooted in the vision demarcating the cultures.

Restitution Debate: Requesting the Future, Researching the Past

The restitution request regarding the Aboriginal shield in the collection of the British Museum was raised by Rodney Kelly, a Gweagal man. Leah Kelly, Faith Aldridge, and Rodney Kelly are six-times great grandchildren of the warrior Cooman,

⁴⁹ Ibidem; see also B. Buchan, M. Heath, *Savagery and Civilization. From Terra Nullius to the "Tide of History"*, "Ethnicities" 2006, Vol. 6(1); G. Foley, T. Anderson, *Land Rights and Aboriginal Voices*, "Australian Journal of Human Rights" 2006, Vol. 12(1).

⁵⁰ S. Keenan, op. cit., p. 284; see more: J. Flood, *The Original Australians*, Allen & Unwin, Crows Nest 2006; P. Read, G. Meyers, B. Reece, *What Good Condition? Reflections on an Australian Aboriginal Treaty 1986-2006*, ANU Press, Canberra 2007.

⁵¹ A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge 2008, p. 4.

⁵² Ibidem.

⁵³ Ibidem; see W. Kealy-Bateman et al., *Should We Be Royal?*, "Australasian Psychiatry" 2021, Vol. 29(4); see also J. Beckett, *Encounters with Indigeneity*, Aboriginal Studies Press, Canberra 2014.

⁵⁴ I. Watson, op. cit., p. 6.

GENERAL ARTICLES

Agnieszka Plata

one of the participants in the events in Botany Bay, from whom – according to the known materials – the pierced shield was taken.⁵⁵ While Rodney Kelly's goal of repatriating the shield is considered "elusive",⁵⁶ it gathered support from NSW Greens Senator David Shoebridge and in August 2016 the New South Wales Legislative Council agreed to a motion calling for the return of the shield.⁵⁷ Shortly after that, the Australian Senate followed suit with a motion to acknowledge the Gweagal people and their descendants as the rightful and lawful owners of the shield.⁵⁸ It is worth noting that in a broader debate over the return of Aboriginal cultural objects, Dharawal Elders support the idea of a compromise, consisting of shifting the emphasis from the aspects of legal ownership and repatriation to maximizing access to the objects, i.e. under a long-term loan.⁵⁹

Before undertaking further analysis of the restitution debate, it needs to be accentuated that the British Museum currently denies that the shield acquired by the Museum is the one that had been confiscated by the crew of *HMS Endeavour* during the First Contact with the Gweagal people in Botany Bay.

Rodney Kelly, acting both on his own behalf and on behalf of the Gweagal community, made an official restitution claim regarding both the shield from the collection of the British Museum and the Aboriginal spears from the collection of Museum of Archaeology and Anthropology in Cambridge on 25 October 2016, during a meeting with the deputy director of the British Museum and curators. The text of the statement regarding the request was published online.⁶⁰ The language used by Rodney Kelly and the character of the arguments raised makes it possible to analyse the reasons behind the request for the return of colonial loot.

Firstly, the initial sentence of the statement made by Rodney Kelly displays the direction of restitution arguments presented in the claim. In this sentence Rodney Kelly accentuates his Aboriginal roots, which legitimize the title to Aboriginal cultural heritage and establish the personal bond between the claimant and the warrior Cooman:

I am Murrum of the Gweagal, custodian of the land of Kamay, sixth time great grandson of the warrior Cooman.

⁵⁵ E. Pearson, *Old Wounds and New Endeavours. The Case for Repatriating the Gweagal Shield from the British Museum*, "Art, Antiquity & Law" 2016, Vol. 21(3), p. 207; see J.C. Beaglehole (ed.), *The Endeavour Journal of Sir Joseph Banks 1768-1771*, vol. 2, Public Library of New South Wales, Sydney 1963, p. 133.

⁵⁶ J. Taylor, *No Improper Measure*, "Overland", 15 July 2022, <https://overland.org.au/2022/07/no-improper-measure/comment-page-1/> [accessed: 19.09.2022].

⁵⁷ E. Pearson, op. cit., p. 237.

⁵⁸ Ibidem.

⁵⁹ J. Taylor, op. cit.

⁶⁰ <https://sovereigntyparliam.wixsite.com/firstcontact1770/single-post/2016/10/25/statement-to-british-museum-regarding-gweagal-repatriation-october-25th-2016> [accessed: 13.05.2022].

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

The next introductory sentence directly addresses the argument in terms of its justice⁶¹ and the potential for healing the historic harm by the meaningful gesture of return of cultural objects:

What I wish to offer is respect and the chance to help heal the wrongs of the past that have been perpetrated against my people.

This argument, based on justice, accentuates the moral burden of the actions that led to the loss of cultural objects, as well as the need to heal the consequences of said injustice. In this sense, the return of the cultural object(s) is one of the ways of attempting to amend for the colonial atrocities. Bringing up the issue of justice addresses the past, while emphasizing that the results of injustice are still being experienced. Cultural objects – due to their nonmaterial significance – prove to be a valuable medium in the debate over amending historical injustices.

The arguments presented below prove that the cultural,⁶² national,⁶³ and personal affiliations⁶⁴ of the cultural object, together with the need to amend historical injustices, form the foundations of the argumentation used in the debate.

The argument from the point of view of justice focuses both on the symbolism and trauma of the events during the First Contact made by James Cook with the Aboriginal peoples of Botany Bay, as well as on the entirety of the consequences of colonial occupation of Australia on the Indigenous peoples:

The Gweagal Shield is a gateway that has the potential to open the discourse on the tragic modern history of Indigenous Australians under colonisation. The British Museum must realise that this Sacred object still has vital and imperative cultural work to do in Australia.

And further:

In the 246 years since Cook's landing, everything has changed in Australia. My people, the Original inhabitants now face horrifying youth incarceration rates, drug and alcohol epidemics, an impoverished existence, welfare dependence, loss of language, culture, ceremony and lifestyle and the industrial rape and pillaging of our sacred landscape to the point of ecological collapse and mass extinction. The finger of blame is pointed squarely at the British Empire.

Moreover, the author of the speech takes up the issue of narratives and perspectives on the historic events, by proceeding with a description – almost literary

⁶¹ See K. Zeidler, *op. cit.*, pp. 141-145.

⁶² See *ibidem*, pp. 167-170.

⁶³ See *ibidem*, pp. 159-167.

⁶⁴ See *ibidem*, pp. 174-175.

in its essence – of the events in Botany Bay as seen and felt by the Aboriginal Australians:

History is always written by the conqueror. What has not been told is the version of events as told by My People. Our history. That story is being told now by me. For my people. I am speaking to you on behalf of my Elders and my tribe. April 28 1770. The first musket round ever fired over Australian soil rang out across what would come to be known as Botany Bay, announcing the arrival of the British Empire. That first shot put a hole in a wooden shield held by my ancestor, one of the first indigenous Australians ever sighted by a white man. It was the day that changed Australia forever. For my people, it was a change for the worst.

The argument from cultural affiliation addresses the special bond between the present Aboriginal communities and any remaining physical proofs of their almost annihilated heritage. It is supported by a thesis about the proper narratives on the Indigenous culture, which are best conveyed by the Aboriginal Australians themselves:

You don't know our stories. Only we can tell our story. Our stories are held in our minds and in our hearts and have been passed down for thousands upon thousands of years. Our artefacts are the remnants of an ancient culture that has been decimated by the invasion of colonialism.

The presented argumentation displays that the argument – seen from the point of view of cultural affiliation – interacts with the argument from the place of allocation⁶⁵ due to the character and nature of cultural objects in Indigenous traditions:

It is a core part of Aboriginal belief that artefacts must be kept in the country they came from, as they form a part of the ongoing story of that place. It is a part of our culture that our artefacts and tools of survival are left on the ground to be picked up as needed.

The bond with the cultural object in question is also personal, and thus Rodney Kelly presents the argument from personal affiliation:

It was my ancestor, the warrior Cooman of the ancient Gweagal people, who stood on the beach that day in 1770 and opposed the landing of Cook, defending our land and people from a strange tribe.

Drawing from the arguments regarding the severity of historical injustice, the author indicates that the lost cultural objects are a significant factor in re-establishing the Aboriginal national identities, which enables gaining knowledge and continuing traditions. These motives are presented in arguments from social utility:⁶⁶

⁶⁵ See *ibidem*, pp. 153-154.

⁶⁶ See *ibidem*, pp. 176-179.

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

Today there are many, many Aboriginal people in Australia[;] people trying to find out who they are, where they come from and how to connect with their history. Because that history has been stolen from them.

And further:

My people are suffering and our culture is dying. We need our artefacts back to bring our culture back together. [...] The healing power that this shield has for Aboriginal Australia is much greater than any value it can have as part of The British Museum, as any other foreign institution can never tell our stories as we can.

Moreover, the author combines the issues of justice and cultural or national affiliation by emphasizing that the lost objects are a crucial part of the cultural identity that the Aboriginal peoples were denied for so many years as a result of the colonial violence:

Why these artefacts are so important to the Gweagal people of Botany Bay is that we were the first Original Australian people to have contact with the British and we were the first to lose our culture and language. We haven't practiced our culture for many years. It's slowly returning to us word by word, artefact by artefact. We are slowly regaining our culture and our language. To us, our artefacts are not just a tool. They are who we are.

Finally, Rodney Kelly sums up the multidimensional character of the values that the lost object represents:

It holds significance for my family as something held by our ancestor Cooman; it has significance to the Gweagal people for the survival of our culture; it has national significance as a symbol of pride and unity to Australia's Original People; and it has significance to Australia as a reminder of the true nature of first contact in this land and the history of its Original inhabitants.

The request formulated by Rodney Kelly is both personal and communal. The author indicates that the shield and other potentially returned objects could be displayed as parts of the exhibition at the Living Cultural Heritage Museum in Kurnell (Botany Bay). At the moment of expressing the claim, the expected return was awaited at a date which would enable the organization of an exhibition dedicated to the 250th anniversary of the First Contact in Botany Bay. The appeal of Rodney Kelly understandably lacks legal argumentation for the transfer of ownership of the shield. However, the case of the shield is a significant example of a personal interest supporting the arguments about cultural affiliation to the community as a whole.

As indicated above, the claim for the return of the Aboriginal shield is mostly supported by the arguments addressing the personal bond of the descendant of the warrior Cooman with the object, and the specific symbolic circumstances

which led to the loss of the object. Therefore, the new scientific developments regarding the provenance of the shield, presented by the British Museum, are of significance to the direction of the debate.

The official statement of the British Museum regarding the characteristics of the shield specifies that red mangrove, from which the object is made, does not grow in the area of the south-eastern coast of Australia (i.e. Sydney and the Botany Bay region).⁶⁷ Consequently, the shield is believed to come from the regions further north in New South Wales. However, the Museum addresses the fact that in recent decades, until 2018, the similarity of the shield in question to the one illustrated among the objects from Cook's voyages suggested it may have been obtained by Captain Cook during his landing in Botany Bay in 1770.

The Museum supports its denial of the supposition that the shield in the collection of the British Museum and the shield collected by the crew of *HMS Endeavour* are the same object by using the results of scientific research published in 2018.⁶⁸ The complex research regarding the shield was requested by the La Perouse Local Aboriginal Land Council, and conducted by the scientists affiliated to the British Museum, Australian Museum, and Museum of Archaeology and Anthropology in Cambridge.

The scope of the research involved, *inter alia*, reconsidering the species' distribution of red mangrove in New South Wales; examining evidence for Aboriginal trade networks in the archaeological record and early contact era; identifying like shields for comparison; and reviewing museum records to establish the earliest possible date of acquisition of the object by the British Museum.⁶⁹ As a result of the research conducted and the verification of previous findings, it was determined that the gathered material regarding the origins of the shield does not allow for associating the object with the events in Botany Bay in 1770, and that there are other – more probable – hypotheses on how the object entered the British Museum collection.⁷⁰ In the opinion of researchers, none of the gathered evidence is decisive and within the voyage accounts there is no report of the/a shield being collected, even though the acquisition of other objects is described, including a cache of spears, some of which are now in the Museum of Archaeology and Anthropology in Cambridge.⁷¹ Also, there is no record of the object's entry into the collections of

⁶⁷ British Museum, *Early Shield from New South Wales, Australia*, <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/early-shield-australia> [accessed: 13.05.2022].

⁶⁸ See M. Nugent, G. Sculthorpe, *A Shield Loaded with History. Encounters, Objects and Exhibitions*, "Australian Historical Studies" 2018, Vol. 49(1); N. Thomas, *A Case of Identity. The Artefacts of the 1770 Kamay (Botany Bay) Encounter*, "Australian Historical Studies" 2018, Vol. 49(1).

⁶⁹ M. Nugent, G. Sculthorpe, *op. cit.*, pp. 36 ff.

⁷⁰ *Ibidem*, p. 32.

⁷¹ *Ibidem*, p. 34.

the British Museum.⁷² The piercing of the shield was assessed as a common characteristic of the objects of that type, as they have a defensive function. It was also ruled out that the piercing came from a bullet.⁷³ As stated by Maria Nugent and Gaye Sculthorpe: "Comparison with other shields of a similar type extant in other museum collections, or described in historic accounts or illustrations, suggests a hole – or holes – near the centre is a common element in shields of this type".⁷⁴ Finally, the research did not support the thesis that the shield could possibly have been produced north of Sydney and then traded south, around 500 km from the southerly extent of red mangrove.⁷⁵

Conclusions: Navigating the Impasse

Analysis of the dispute over the return of the Aboriginal shield allows us to observe the multitude of contexts and emotions surrounding the cultural object in question. Due to this information and values, the restitution debate gains a diplomatic sensitivity and can be characterized as a hard case. Katrina Schlunke notes that:

Declared objects of colonialism are insistent and persistent things. They confirm colonialism but also repudiate it, resist it and continue beyond it. As colonial things, they are always hybrid objects – they result from Indigenous and non-Indigenous productions, ideologies and philosophies, and their effects are pervasive and disruptive.⁷⁶

The scientific findings regarding the origins of the discussed shield have created an impasse in the discussion. However, the fact that the shield possibly came from a collection of the British Museum, and that it is not the Gweagal shield taken from the warrior Cooman in Botany Bay, does not diminish Rodney Kelly's argumentation regarding the need to heal the consequences of historical injustice suffered by the Aboriginal Australians. After all, it remains undisputed that the shield found its way to the British Museum directly as a result of the British colonial expansion in Aboriginal Australia.

The lack of information on the exact provenance of the object seems to be paralyzing the discussion by limiting the restitution arguments available, both to Rodney Kelly and the Gweagal community. However, regardless of the data concerning the origins of the shield, it is well established that the cultural and

⁷² Ibidem.

⁷³ Ibidem, p. 37; see also V.J. Attenbrow, C.R. Cartwright, *An Aboriginal Shield Collected in 1770 at Kamay Botany Bay. An Indicator of Pre-Colonial Exchange Systems in South-Eastern Australia*, "Antiquity" 2014, Vol. 88(341).

⁷⁴ M. Nugent, G. Sculthorpe, op. cit., p. 37.

⁷⁵ Ibidem, pp. 39 ff.

⁷⁶ K. Schlunke, *One Strange Colonial Thing. Material Remembering and the Bark Shield of Botany Bay*, "Continuum. Journal of Media & Cultural Studies" 2013, Vol. 27(1), p. 18.

scientific value of the object is immense as it is the oldest known Aboriginal shield in any collection.⁷⁷

The official statement of the British Museum also admits that the object “has come to symbolise British colonisation of Australia and the ongoing legacy of that colonisation”.⁷⁸ Except for indicating that the object in the collection is not the one requested by Rodney Kelly, the British Museum does not raise any arguments supporting its retention of the object. The Museum does however refrain from arguments addressing the legal obstacles to the deaccession of objects from collection under the British Museum Act 1963, or concerning the value of the British Museum as the “world museum”.⁷⁹ Instead, the Museum focuses on cultural cooperation and ensures that the Trustees would consider loaning the shield again, subject to regular loan conditions.⁸⁰

The discussed case demonstrates that sometimes what contributes to the hard-case nature of a restitution debate are the limitations of science and the passage of time from the moment of transfer of the object. Essentially, up until 2018 the Aboriginal shield from the collection of the British Museum was deemed to be – both in the scientific and popular consciousness – the shield lost to Captain Cook’s crew during the dramatic First Contact. While the new research results have created a shift in the evaluation of the arguments raised, still the essence of the dispute concerns key issues about making amends for injustices and respecting Indigenous perspectives. Modern sensitivity, influenced by postcolonial theory, leads to exploring a broader meaning of restitution itself, understood not only as a legal category but also as a cultural concept.⁸¹ The debate also highlights the need to restore Indigenous voices in any such discourse. As expressed by Muran man Don Christophersen: “You have to listen to both versions, the Indigenous version of our history and the non-Indigenous version of our history, because they’re both telling the truth but they’re both not the same story”.⁸²

Analysing the restitution debate from the point of view of the theory of hard cases allows for challenging the limitations of positive law. It opens up the discussions to include issues of fairness, affiliation of the objects, or spiritual values.

Among the arguments raised in the restitution debate, those concerning justice and the need to heal intergenerational trauma are crucial. It is worth noting

⁷⁷ British Museum, *Early Shield...*

⁷⁸ *Ibidem*.

⁷⁹ See further: British Museum, *British Museum Policy. De-accession of Objects from the Collection*, https://www.britishmuseum.org/sites/default/files/2019-10/De-accession_Policy_Nov2018.pdf [accessed: 13.05.2022]; J. Cuno, *Museums Matter. In Praise of Encyclopedic Museum*, University of Chicago Press, Chicago 2011.

⁸⁰ British Museum, *British Museum Policy...*

⁸¹ E. Barkan, *op. cit.*, p. xix.

⁸² Quoted in: E. Pearson, *op. cit.*, p. 238.

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

that the strong moral grounds involved in certain cases – despite the passage of time and its corresponding limitations on the access to legal action – have in fact and indeed justified the creation of legal solutions facilitating the return of cultural objects lost during the Second World War.⁸³ Correspondingly, the need for assisting postcolonial restitution claims with the support of specialized panels has become all the more important.⁸⁴ There are already examples of rewriting the legal limitations to deaccession regarding certain groups of objects lost in the colonial times.⁸⁵ Drawing from the experience of dealing with traumatizing legacies can inspire the creation of other similar tools to address the future of other contested objects, and lead to providing platforms to share perspectives on the extent and consequences of colonial violence.

The story of the Aboriginal shield demonstrates key problems in dealing with the colonial loot. Although it might not be directly linked to the symbolic event of the First Contact, it will remain associated with the events in Botany Bay and their dramatic effects. The issues of memory and restoration of the identity of Aboriginal Australians are central to the debate. Hence, despite the uncovering of new scientific data, the symbolic value of this case remains significant and should prevail.

References

- Anghie A., *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge 2008.
- Attenbrow V.J., Cartwright C.R., *An Aboriginal Shield Collected in 1770 at Kamay Botany Bay. An Indicator of Pre-Colonial Exchange Systems in South-Eastern Australia*, "Antiquity" 2014, Vol. 88(341).
- Barkan E., *The Guilt of Nations. Restitution and Negotiating Historical Injustices*, Johns Hopkins University Press, Baltimore 2001.
- Barringer T., Flynn T. (eds.), *Colonialism and the Object. Empire, Material Culture and the Museum*, Routledge, New York 1998.

⁸³ See further: E. Campfens (ed.), *Fair and Just Solutions? Alternatives to Litigation in Nazi-Looted Art Disputes. Status Quo and New Developments*, Eleven International, The Hague 2015; eadem, *Restitution of Looted Art. What About Access to Justice?*, "Santander Art and Culture Law Review" 2018, Vol. 2(4); T.I. Oost, *Restitution Policies on Nazi-Looted Art in the Netherlands and the United Kingdom. A Change from Legal to a Moral Paradigm?*, "International Journal of Cultural Property" 2018, Vol. 25(2).

⁸⁴ See *Summary of report of the Advisory Committee on the National Policy Framework for Colonial Collections*, <https://www.raadvoorcultuur.nl/binaries/raadvoorcultuur/documenten/adviezen/2020/10/07/summary-of-report-advisory-committee-on-the-national-policy-framework-for-colonial-collections/Summary+of+report+Advisory+Committee+on+the+National+Policy+Framework+for+Colonial+Collections.pdf> [accessed: 13.05.2022].

⁸⁵ See F. Sarr, B. Savoy, *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, November 2018, http://restitutionreport2018.com/sarr_savoy_en.pdf [accessed: 13.05.2022]; J.P. Feldman, *Restitution Is Not Enough. Deaccessioning for Justice in Contemporary Art*, "Inquiries into Art, History, and the Visual" 2020, Vol. 21(1); A. Herman, *Restitution. The Return of Cultural Artefacts*, Lund Humphries, London 2021, pp. 64-65.

GENERAL ARTICLES

Agnieszka Plata

- Beaglehole J.C. (ed.), *The Endeavour Journal of Sir Joseph Banks 1768-1771*, vol. 2, Public Library of New South Wales, Sydney 1963.
- Beckett J., *Encounters with Indigeneity*, Aboriginal Studies Press, Canberra 2014.
- Blainey G., *The Story of Australia's People. The Rise and Fall of Ancient Australia*, ePUB edition, Viking, Melbourne 2015.
- British Museum Act (1963 c. 24).
- British Museum, *British Museum Policy. De-accession of Objects from the Collection*, https://www.britishmuseum.org/sites/default/files/2019-10/De-accession_Policy_Nov2018.pdf [accessed: 13.05.2022].
- British Museum, *Early Shield from New South Wales, Australia*, <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/early-shield-australia> [accessed: 13.05.2022].
- Buchan B., Heath M., *Savagery and Civilization. From Terra Nullius to the "Tide of History", "Ethnicities" 2006*, Vol. 6(1).
- Campfens E. (ed.), *Fair and Just Solutions? Alternatives to Litigation in Nazi-Looted Art Disputes. Status Quo and New Developments*, Eleven International, The Hague 2015.
- Campfens E., *Restitution of Looted Art. What About Access to Justice?*, "Santander Art and Culture Law Review" 2018, Vol. 2(4).
- Chechi A., *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, Oxford 2014.
- Cornu M., Renold M.-A., *New Developments in the Restitution of Cultural Property. Alternative Means of Dispute Resolution*, "International Journal of Cultural Property" 2010, Vol. 17(1).
- Cuno J., *Museums Matter. In Praise of Encyclopedic Museum*, University of Chicago Press, Chicago 2011.
- Dworkin R., *A Matter of Principle*, Clarendon Press, Oxford 2001.
- Feldman J.P., *Restitution Is Not Enough. Deaccessioning for Justice in Contemporary Art*, "Inquiries into Art, History, and the Visual" 2020, Vol. 21(1).
- Flood J., *The Original Australians*, Allen & Unwin, Crows Nest 2006.
- Foley G., Anderson T., *Land Rights and Aboriginal Voices*, "Australian Journal of Human Rights" 2006, Vol. 12(1).
- Greenfield J., *The Return of Cultural Treasures*, Cambridge University Press, Cambridge–New York 2007.
- Herman A., *Restitution. The Return of Cultural Artefacts*, Lund Humphries, London 2021.
- Hicks D., *The Brutish Museums. The Benin Bronzes, Colonial Violence and Cultural Restitution*, Pluto Press, London 2020.
- Kealy-Bateman W. et al., *Should We Be Royal?*, "Australasian Psychiatry" 2021, Vol. 29(4).
- Keenan S., *The Gweagal Shield*, "Northern Ireland Legal Quarterly" 2017, Vol. 68(3).
- Kowalski W., *Types of Claims for Recovery of Lost Cultural Property*, "Museum International" 2005, Vol. 57(4).
- Kryvoi Y., Matos S., *Non-Retroactivity as a General Principle of Law*, "Utrecht Law Review" 2021, Vol. 17(1).
- Mattei U., Nader L., *Plunder. When the Rule of Law Is Illegal*, Blackwell, Malden–Oxford–Carlton 2008.

The Aboriginal Shield from the Collection of the British Museum: A Case Study from the Perspective of Recent Developments

- Nafziger J.A.R., *Cultural Heritage Law. The International Regime*, in: J.A.R. Nafziger, T. Scovazzi (eds.), *Cultural Heritage of Mankind*, Martinus Nijhoff, Leiden 2008.
- Nugent M., Sculthorpe G., *A Shield Loaded with History. Encounters, Objects and Exhibitions*, "Australian Historical Studies" 2018, Vol. 49(1).
- Oost T.I., *Restitution Policies on Nazi-Looted Art in the Netherlands and the United Kingdom. A Change from Legal to a Moral Paradigm?*, "International Journal of Cultural Property" 2018, Vol. 25(2).
- Pearson E., *Old Wounds and New Endeavours. The Case for Repatriating the Gweagal Shield from the British Museum*, "Art, Antiquity & Law" 2016, Vol. 21(3).
- Plata A., *Argumentative Aspects of Disputes over Return of Cultural Objects Lost to Colonial Powers*, "Gdańskie Studia Międzynarodowe" 2020, Vol. 18(1-2).
- Prott L.V., O'Keefe P.J., *Law and the Cultural Heritage*, vol. 3: *Movement*, Butterworth & Co., London 1989.
- Read P., Meyers G., Reece B., *What Good Condition? Reflections on an Australian Aboriginal Treaty 1986-2006*, ANU Press, Canberra 2007.
- Reynolds H., *The Other Side of the Frontier*, UNSW Press, Sydney 2006.
- Sarr F., Savoy B., *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, November 2018, http://restitutionreport2018.com/sarr_savoy_en.pdf [accessed: 13.05.2022].
- Schlunke K., *One Strange Colonial Thing. Material Remembering and the Bark Shield of Botany Bay*, "Continuum. Journal of Media & Cultural Studies" 2013, Vol. 27(1).
- Shuart J., *Is All "Pharaoh" in Love and War. The British Museum's Title to the Rosetta Stone and the Sphinx's Beard*, "Kansas Law Review" 2004, Vol. 52(667).
- Stamatoudi I., *Cultural Property Law and Restitution. A Commentary to International Conventions and European Law*, Edward Elgar, Cheltenham 2011.
- Stelmach J., *Kodeks argumentacyjny dla prawników [An Argumentative Code for Lawyers]*, "Zakamycze", Kraków 2003.
- Summary of report of the Advisory Committee on the National Policy Framework for Colonial Collections*, <https://www.raadvoorcultuur.nl/binaries/raadvoorcultuur/documenten/adviezen/2020/10/07/summary-of-report-advisory-committee-on-the-national-policy-framework-for-colonial-collections/Summary+of+report+Advisory+Committee+on+the+National+Policy+Framework+for+Colonial+Collections.pdf> [accessed: 13.05.2022].
- Taylor J., *No Improper Measure*, "Overland", 15 July 2022, <https://overland.org.au/2022/07/no-improper-measure/comment-page-1/> [accessed: 19.09.2022].
- Thomas N., *A Case of Identity. The Artefacts of the 1770 Kamay (Botany Bay) Encounter*, "Australian Historical Studies" 2018, Vol. 49(1).
- Thornton R., *Repatriation as Healing the Wounds of the Trauma of History. Cases of Native Americans in the United States of America*, in: C. Fforde, J. Hubert, P. Turnbull (eds.), *The Dead and Their Possessions. Repatriation in Principle, Policy and Practice*, Routledge, New York 2002.
- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

GENERAL ARTICLES

Agnieszka Plata

van Beurden J., *Treasures in Trusted Hands. Negotiating the Future of Colonial Cultural Objects*, Sidestone Press, Leiden 2017.

Vrdoljak A.F., *International Law, Museums and the Return of Cultural Objects*, Cambridge University Press, Cambridge 2008.

Watson I., *Aboriginal Peoples, Colonialism and International Law. Raw Law*, Routledge, Abingdon–New York 2015.

Zajadło J., *Po co prawnikom filozofia prawa? [Why Do Lawyers Need a Philosophy of Law?]*, Wolters Kluwer Polska, Warszawa 2008.

Zeidler K., *Restitution of Cultural Property. Hard Case, Theory of Argumentation, Philosophy of Law*, Gdańsk University Press, Gdańsk–Warsaw 2016.

Zeidler K., Plata A., *The Argumentative Aspects of the Terezín Declaration and Its Place in Public International Law*, in: V. Drbohlavová (ed.), *Terezín Declaration – Ten Years Later. The Documentation, Identification and Restitution of the Cultural Assets of WWII Victims*, Documentation Centre for Property Transfers of Cultural Assets of WWII Victims, Prague 2019.