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A Philosophical Perspective on the Ethics and Resolution of Cultural Properties Issues

Karen J. Warren

INTRODUCTION

Who, if anyone, owns the past? Who has the right or responsibility to preserve cultural remains of the past? When, if ever, should preservational or educational considerations override national sovereignty in determining the disposition of cultural materials? What should be declared illegal or illicit trade in cultural properties? What values are at stake in conflicts over cultural properties, and how should these conflicts be resolved?

Questions such as these are at the heart of the debate over so-called "cultural properties." These questions raise important philosophical issues about the past (e.g., what constitutes the past; who, if anyone, may be said to own the past; who may have access to the past and to the information derived from it; what controls may be exercised over remains of the past). They also bring to the fore both the diversity of values associated with the preservation of cultural properties (e.g., aesthetic, educational, scholarly, cultural, and economic values) and the conflicts of interests of the various parties to the dispute (e.g., governments or nations, private citizens, collectors, art and antiquities dealers, museums and museum curators, suppliers or sellers, customs agents, indigenous peoples, present and future generations of humans).

It is easy to get lost in this cacophony of voices over cultural properties. These voices raise very different, often competing, perspectives on the nature and resolution of cultural properties issues. What is needed to help guide one through the morass is a philosophical framework for understanding and assessing the variety of claims and perspectives in the debate over cultural properties.

The primary purpose of this essay is to provide such a framework. I begin by presenting an overview of what I take to be the main arguments and issues in the debate

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over cultural properties. This section is intended to be reportive of what I understand to be the central arguments in the debate and suggestive of some of the key philosophical issues raised by tbat debate. I then suggest that what is at stake philosophically in the debate over cultural properties is much deeper and richer than a critique of any particular argument would show; what is at stake is the very way in which one conceives the dispute, and, hence, tbe way in which one attempts to resolve that dispute. I do this by showing how the current debate over cultural properties reflects what I call "the dominant perspective" in the Western philosophical tradition, and by suggesting some respects in which that perspective is itself problematic as a conceptual framework for identifying and resolving so-called cultural properties issues. I conclude by suggesting that what is needed is a rethinking of the debate in terms which preserve the strengths of a dominant perspective while making a central place for considerations often overlooked or undervalued from that perspective. This is the promise of "an integrative perspective" on cultural heritage issues.

PHILOSOPHICAL OVERVIEW: THE 3 R'S

One way to organize the various claims which surface in the dispute over cultural properties is in terms of what I call "The 3 R's." The 3 R's are claims concerning the restitution of cultural properties to their countries of origin, the restriction of imports and exports of cultural properties, and the rights (e.g., rights of ownership, rights of access, rights of inheritance) retained by relevant parties.

Claims to the 3 R's are offered by the various parties to the disputes and represent a wide range of relevant values. Typically, these claims conceive the debate over "cultural properties" as a debate over ownership of the past, where "the past" is understood not only as the physical remains of the past (e.g., artifacts, places, monuments, archaeological sites) but also the "perceptions of the past itself" (e.g., information, myths, and stories used in reconstructing and transmitting the past).[1]

Some of the arguments in support of the claims concerning the 3 R's are mutually compatible; others are not. Many of these arguments turn on how one answers the question "Who owns the past?" Three sorts of alternative and competing answers are given: (1) "Everyone owns the past," since the past is the common heritage of all; it is "humanity's past;" (2) "Some specific group (e.g., indigenous peoples, scholars, collectors, museums, nations) owns the past," since that group speaks for or represents the important values that are at stake in the debate over cultural properties; and (3) "No one owns the past," since the past is not really the sort of thing that is ownable. As will be shown, these three sorts of answers reflect competing philosophical positions about the ownership of "cultural property," understood here in the widest sense to include both physical remains of the past and "perceptions of the past itself."

In this section I identify what I take to be the main sorts of arguments for, and the main sorts of arguments against, claims to the 3 R's by countries of origin,[2] and

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the basic philosophical issues raised by each. I treat each argument like the basic plot line of a story: The argument's plot line is the basic focus or issue addressed. While a change in cast of characters and circumstantial details provides different, often more complex, versions of the story, the plot line of the story remains basically unchanged by these variations on a theme.

Six Arguments Against Claims to the 3 R's by Countries of Origin

1. ***The Rescue Argument*** Many of the sorts of cultural properties at issue would have been destroyed (e.g., by natural elements, war, looters) if they had not been rescued by those foreigners or foreign countries with the skills and resources to preserve them. Those who rescued them now have a valid claim (right, interest, entitlement) to them, whether or not they had such a claim prior to their rescue and preservation by foreigners. Hence, the rescue of these cultural properties by foreigners and foreign countries justifies their retention by foreign parties or countries. Any efforts toward repatriation of these properties by countries of origin, on whatever basis, is unjustified.

The Rescue Argument raises two basic, interrelated issues about the practice of rescuing or saving cultural properties. The first issue is whether that practice is justified; the second is, if justified, whether that practice gives foreign countries (including individual foreigners) a valid claim to the rescued properties.

Three grounds for justification of the rescue of cultural properties are typically offered: first, the values preserved and interests served justify the rescue as a practice, whatever the costs or benefits of the rescue in a particular case; second, the benefits gained in a particular case justify the rescue in that case; and, third, those who rescue cultural properties have a right (e.g., right of ownership) to those properties, which right is passed on to genuine beneficiaries.[3]

Notice that, taken together, these three different grounds offered for the justification of rescuing cultural properties draw upon the whole range of issues about values, rights, and utility (e.g., cost-benefit) considerations which are addressed by the remaining five arguments given below. As such, whether or not the Rescue Argument is sound will turn, in part, on the strengths and weaknesses of these other arguments.

2. ***The Foreign Ownership Argument*** The removal of many cultural properties by foreign countries (or foreigners) was undertaken legally (e.g., by permit); they were neither stolen nor illegally imported.[4] Since they were legally removed, those who removed them (or their genuine beneficiaries), and not the countries of origin, own them and are legally entitled to keep them. Therefore, no claims to restitution, restriction, or rights of ownership of countries of origin against such foreign countries or foreigners are valid.

The main issue raised by the Foreign Ownership Argument is what constitutes "legality" with regard to the removal of cultural properties. How one answers that

question will affect how one answers the secondary question of the legality of claims to the 3 R's—restitution, restriction, and rights—by countries of origin.

Considerations of legality are not, as they might first appear, straightforward questions of fact. To determine legality one must ask a host of other questions as well: According to whom was the cultural property legally removed? According to which laws was the removal deemed legal? What is illicit or illegal under the existing law of the country of origin? Was the country of origin under foreign rule at the time the property was removed? What are taken to be the relevant facts bearing on the issue of legality? Are the facts intersubjectively and interculturally verifiable and agreed upon as facts?

Such questions make visible important issues about what counts as a fact and whether agreement about facts is sufficient to ensure agreement about the legality of the removal of cultural properties. For even when alleged questions of fact are resolved, there may still be important ethical disagreement about how to value the facts, for example, about what valuational attitude to take toward the facts. This ethical disagreement in attitude may persist even when agreement in belief is reached about the facts or about the legality of the removal of cultural properties. Until agreement in attitude on the relevant ethical issues is also reached (e.g., agreement on how to value the facts, or whether what is legal ought to he legal), disagreement on whether such practices should be declared illicit or illegal will persist.

Attempts to answer these definitional, empirical, and valuational questions reveal the respects in which the resolution of many legal issues presupposes the resolution of many nonlegal issues (e.g., about what one takes as fact and how to value the facts). Determining the soundness of the Foreign Ownership Argument, then, will involve determining the correctness of a whole range of other commitments (explicit or implicit) on other-than-strictly legal issues; in fact, it will turn on just such issues as are raised by the other five arguments against claims to the 3 R's by countries of origin.

3. ***The Humanity Ownership Argument*** Many cultural properties have artistic, scholarly, and educational value which constitutes the cultural heritage of human society. But the cultural heritage of human society belongs to a common humanity. Hence, these cultural properties belong to a common humanity: they are not and cannot be owned by any one country, and no one country has a right to them. Since countries of origin do not own or have a right to them, blanket declarations of ownership by countries of origin are not binding and ought not be upheld by foreign courts.

The general issue raised by the Humanity Ownership Argument is whether one can speak meaningfully of the past being owned by "everyone, and no one in particular." If so, then any claims to ownership by any specific group (whether a foreign country or country of origin, whether a collector, art dealer, or museum curator) are moot.

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Certainly there is precedent in law and ethics to speak of rights which hold against "the world at large"—so called *in rem* rights, in contrast with *in personam* rights. "No trespassing rights" are frequently cited as examples of in rem rights. But whether any such rights talk, including talk of a "common humanity" as rightful owner of cultural properties, is properly construed as talk of ownership is a controversial issue. That issue would have to be resolved in the affirmative in order for the Humanity Ownership Argument to be plausible. Furthermore, there would need to be agreement that there is a relevant common humanity. Marxists or feminists might challenge just such a claim as presupposing a mistaken, ahistorical notion of what it is to be human. For traditional Marxists, humans are always historically and materially located; "human nature" is always a response to the prevailing mode of economic production in a society or culture. On this view, there is no such thing as a "human nature" or "common humanity," if by that, one means a transcendental ahistorical, asocial "essence" which all humans have, independent of their particular concrete and historical location. Similarly, many feminists have argued that in contemporary culture, thoroughly structured by such factors as sex/gender, race, and class, there is no such thing as a *human simpliciter* all humans are humans of some sex/gender, race/ethnicity, class, affectional preference, marital status, etc.[5] Such feminists argue against "abstract individualism," that is, the view that humans can meaningfully be said to exist independent of and abstracted from any social, historical circumstances. If the "common humanity" referred to by the Humanity Ownership Argument refers to some notion of an ahistorical essence or abstract individualism, the argument will be rejected by these classical Marxists and feminists.

4. ***The Means-End Argument*** The practice of selling or exporting cultural properties has materially aided the promotion of many important values: the preservation of priceless artifacts; the enrichment of aesthetic sensibilities; the advancement of education and scholarship; the breakdown of parochialism; the encouragement of cultural pluralism; the role of art as a good will ambassador. Not only is the promotion of these values both desirable and justified; its continuance requires the "free flow" of at least some cultural properties. Hence, the practice of selling or exporting cultural properties is both desirable and justified, and restrictions on such practices are undesirable and unjustified.

The Means-End Argument is a utilitarian argument against regulations of imports and exports in terms of the multifarious benefits of import/export practices. The philosophically interesting issues it raises are many: When do such utilitarian considerations outweigh nonconsequentialist (deontological) considerations[6]—such as ones based on alleged claims of rights, claims to restitution, or claims to compensatory justice (e.g., by repatriation of stolen or taken cultural properties) by countries of origin? What is the scope of such utilitarian claims? Are only some practices of selling or exporting some cultural properties undesirable and unjustified, and hence only some restrictions desirable and justified on utilitarian grounds?

Or is the scope wider than this? And even if the utilitarian benefits of (some) unrestricted export/import practices is established, where should the cultural properties stay? Claims to restitution by countries of origin are not automatically ruled out by the Means-End Argument.

The Means-End Argument is a very popular kind of argument against claims to the 3 R's by countries of origin. This is because the Means-End Argument makes a fundamental place not only for the full range of values at issue in the debate over cultural properties, but also for those parties to the debate who support the export/import of cultural properties on the basis of the benefits and advantages gained by such practices for themselves and others. However, the Means-End Argument leaves totally open the question about *how* to control the international trade in cultural properties in order both to prevent theft and looting and to ensure the protection and preservation of those properties. Should one do so through physical protection, economic incentives and sanctions, embargos, screening and licensing systems, or import/export regulation?[7] If the use of export-import regulations is desirable and justified, one must state exactly which ones are, which cultural properties are/should be regulated by them, and how appeal to them preserves the relevant values at stake. It is on just these points of substance and detail that advocates of the Means-End Argument differ drastically. To resolve those issues, more is needed than the Means-End Argument itself (as given here) provides.

5. ***The Scholarly Access Argument*** In order to preserve cultural properties, those whose primary responsibility or role is to promote and transmit cultural information and knowledge (e.g., scholars, educators, museum curators) must have scholarly access to cultural properties. Restitution to or retention by countries of origin of cultural properties will prevent such persons from having scholarly access to cultural properties. Hence, such restitution and retention is unjustified.

If scholarly access to cultural properties is viewed primarily as a necessary means to a desired end (viz. the preservation of cultural properties), then the Scholarly Access Argument is a version of the Means-End Argument and can be treated as such. If, however, scholarly access to cultural properties is viewed as a right or responsibility of persons properly authorized to preserve cultural properties, then the Scholarly Access Argument is a separate argument in its own right. Understood as the latter, it is grounded on the assumptions that there is a responsibility to preserve cultural properties, and that fulfillment of that responsibility is the right or duty of properly authorized persons—typically authorized because of the official powers, roles (offices, positions), or institutions (e.g., museums) such persons have, occupy, or represent.

On either interpretation of the Scholarly Access Argument, then, the main issues raised are the same: What is the nature and ground of a responsibility to preserve cultural properties, and whose responsibility, or even right, is it to do so? If it is the right or responsibility of some specific group (e.g., scholars, collectors, museum of-

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6. *The Encouragement of Illegality Argument* The practice of restricting the selling or export of cultural properties encourages illegal activity (e.g., the looting of archaeological sites, black market trade). Since such illegal activity ought not be encouraged, such practices are unjustified.

The Encouragement of Illegality Argument raises an important issue about the practice of restricting the "free flow of art": Is such restriction part of the problem or part of the solution (or both)? A variation on the argument is expressed by such sentiments as "If I don't buy (sell) it, someone else will" and "It's no good for one country to stop buying or trading cultural properties if everyone else continues to do so."[8] This is more than just a worry about the consequences of export/import regulation; it is a worry about the justification of the practices themselves, and whether those practices serve the ends they are intended by design (and not simply by consequences) to serve. As such, the Encouragement of Illegality Argument raises just the sort and range of philosophical issues that the traditional utilitarian-deontological controversy in ethics raises: Do the net costs of the consequences of the practices render the practices themselves unjustified? Or are there other, nonutilitarian considerations (e.g., rights of courts, customs offices, bona fide owners) which justifiably trumps utilitarian considerations in cases of illegal practices? Resolving this question will call into play the same sorts of complex and controversial considerations that surface in traditional utilitarian-deontological disputes.

To summarize, the six arguments (or, properly speaking, argument-types) discussed here are a rendering of what I understand to be the main sorts of arguments given against claims to the 3 R's by countries of origin, and some of the main philosophical issues raised by each. Consider now the sorts of arguments given in support of claims to the 3 R's by countries of origin.[9]

Three Arguments for Claims to the 3 R's by Countries of Origin

1. *The Cultural Heritage Argument* All peoples have a right to those cultural properties which form an integral part of their cultural heritage and identity (i.e., their "national patrimony"). The practices of permitting foreign countries to import cultural properties and to retain those currently housed on foreign soil deprive indigenous peoples and countries of origin of their right to their cultural heritage. Hence, such practices are unjustified. These practices should be stopped and cultural properties presently displaced in foreign countries should be returned to their countries of origin.

The Cultural Heritage Argument raises the vital issue of the relevance and legitimacy of claims to cultural property based on considerations of national patrimony,

that is, those aspects of a country which are of special historical, ethnic, religious, or other cultural significance and which are unique in exemplifying and transmitting a country's culture. The Cultural Heritage Argument assumes that countries have a legitimate claim to preserve, foster, and enrich those aspects of their culture that represent their national identity. What it leaves open is which cultural properties those are, which import/export practices must be stopped, how many cultural properties must be returned, and whether "cultural patrimony" must stay permanently in the country of origin.

It is what is left open, and not the main assumption about a country's right or claim to its cultural patrimony, which makes the Cultural Heritage Argument especially controversial. Unless it is clear which cultural properties constitute a country's national patrimony and which regulations are supported by claims to a country's cultural heritage, the argument loses its critical bite. Foreign countries could use the same sort of argument to defend claims to the retention of cultural property that has been in the country so long that it now constitutes part of *their* cultural heritage. Foreign countries also could reject the argument by rejecting the remedies proposed (e.g., import/export restrictions), without rejecting the main assumption on which the argument is based, viz. that countries of origin have a legitimate claim to protect and preserve their cultural heritage. Since both uses of the Cultural Heritage Argument by foreign countries would be unacceptable to its advocates, the Cultural Heritage Argument must provide answers which rule out such usurpations of the argument.

2. ***The Country of Origin Ownership Argument*** The past, as expressed in cultural property, is owned by the property's country of origin. Since the countries of origin own them, they have a right to have their cultural property returned to them or, if already located in the country, to keep it there.

This argument repudiates claims to ownership of cultural property that locate that ownership elsewhere than in countries of origin. Hence, it constitutes a rejection of both the Foreign Ownership and the Humanity Ownership Arguments. Nonetheless, like those arguments, it construes the main issue concerning cultural properties as one of ownership: it assumes that the question "Who owns the past?" is legitimate; it simply provides a different answer. Whether any of these arguments is plausible, then, will depend on the strength of the position that the past—both the material remains and the "perceptions of the past"—is properly described in terms of ownership and property.

3. ***The Scholarly and Aesthetic Integrity Argument*** The practices of collecting and importing cultural properties contribute to the breakdown in the scholarly value of those properties and their aesthetic integrity as an artistic complex (e.g., by mutilating large monuments, disrupting a series of interconnected panels, "thinning" intricately carved stelae, destroying the complex system of hieroglyphic inscriptions necessary for identifying artifacts).[10] Since it is important to preserve the

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educational value and aesthetic integrity of cultural properties, such practices are unjustified. Restriction on the import/export of such cultural properties is therefore required and justified.

There are two main issues here, one which is relatively uncontroversial and a related one which is quite controversial. The relatively uncontroversial issue is whether the practices which destroy or jeopardize the scholarly or aesthetic integrity are wrong. Nearly everyone agrees that they are, even though there is disagreement about just what constitutes the practice, whether an individual activity genuinely "falls under this (rather than some other) practice," and whether the practice may be justified in a particular (though not all) case. The main question, then, is whether restrictions on the import/export of particular cultural properties falling under those practices, or of restitution to countries of origin of other cultural properties (i.e., those collected or imported without jeopardizing their scholarly or aesthetic integrity), should be permitted or required. This question remains even if the practices which violate the scholarly or aesthetic integrity of cultural properties are wrong and ought to be restricted.

RETHINKING THE DEBATE

The preceeding overview of the debate over cultural properties has been organized in terms of nine main kinds of arguments concerning claims to the 3 R's by countries of origin, noting the key philosophical issues raised by each. In the remainder of this chapter I take a different approach. I look at the debate taken as a whole, and offer reasons for supposing that the traditional categories and concepts used in the debate, as given by these arguments concerning the 3 R's, are inadequate as is to provide a theoretical framework for addressing and resolving conflicts concerning the disposition of cultural remains of the past. To do that, I discuss four issues: the nature and importance of conceptual frameworks; the language used to discuss cultural properties; ways of correcting bias in a theory or perspective; and alternative models of conflict resolution. Taken together, I show how acknowledgment of the importance of these four issues can help in the attempts to resolve the debate over cultural properties.

The Nature and Importance of Conceptual Frameworks

Whether we know it or not, each of us operates out of a socially constructed world view or conceptual framework. A conceptual framework is a set of basic beliefs, values, attitudes, and assumptions that shapes, reflects, and explains our view (perception, description, appraisal) of ourselves and our world.[11] It is the lens through which "we" (whoever we are) conceive ourselves and our world. As a social construction, a conceptual framework is affected by such factors as sex—sex/gender, race/ethnicity, class, age, affectional preference, religion, and national background.

Some conceptual frameworks are oppressive.[12] An oppressive conceptual framework is one which functions to justify or maintain dominant-subordinate relations, or subordination of one group by another. As I use the term, an oppressive conceptual framework is characterized by three features: (1) Value, hierarchical or "Up-Down" thinking—an organization of diversity by a spatial metaphor ("Up-Down") that attributes greater value, prestige, or status to that which is "Up" or higher than to what is "Down" or lower.[13] (2) Value dualisms—disjunctive pairs in which the disjuncts are presented as exclusive (rather than inclusive) and oppositional (rather than complementary), and where greater value, prestige, or status is attributed to one disjunct than the other. (3) A logic of domination—a structure of argumentation or reasoning which justified subordination, typically on the grounds that whatever is "Up" has some property that whatever is "Down" lacks and in virtue of which what is "Up" is superior to that which is "Down." The unstated assumption is that the superiority of what is "Up" justifies the subordination or unequal treatment of what is "Down."

When an oppressive conceptual framework is Western and patriarchal, traditionally Western male-identified beliefs, values, attitudes, and assumptions are taken as the only, or the standard, or the more highly valued ones. In a Western and patriarchal conceptual framework, inappropriate or harmful Up-Down thinking is/has been used to justify the inferior treatment of women and Third World peoples on the grounds that the claims (beliefs, values, attitudes, assumptions) of these groups are less significant, less cultivated, or otherwise inferior to those of the dominant Up-group and its claims. In a Western patriarchal conceptual framework, inappropriate value dualisms conceptually separate as opposites aspects of reality that are in fact inseparable or complementary, for example, treating as ontologically or metaphysically separate and opposed what is human to what is nonhuman, mind to body, reason to emotion.

Current conceptions of the debate over cultural properties in terms of arguments for and against claims to the 3 R's by countries of origin in many important ways reflects a Western and patriarchal conceptual framework. It also (and not incidentally or accidentally) reflects a familiar perspective—what I call the "dominant perspective" in the Western philosophical tradition. What I want to show now is one way this tradition and the sort of Western and patriarchal conceptual framework which houses it contribute to a particular and not altogether satisfying way of construing the so-called debate over cultural properties. I do so by discussing a favored approach, what I call a "rights/rules approach," to talking about humans, ethics, and ethical conflict resolution in what I refer to as the "dominant tradition" in Western philosophy.

A rights/rules approach to discussions of humans, ethics, and ethical conflict resolution is an ethical framework for assessing what is morally right, wrong, or obligatory in terms of either alleged rights or duties (legal or moral) of relevant parties (e.g.,

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individuals, groups of individuals, nations) or governing legal or moral rules which warrant as justified or morally permissible the action or practice in question. Typically these rules are utility-based or duty-conferring rules; that is, they specify the net utility of performing or not performing a given act or kind of act, or of acting in accordance with a given rule, or the duties persons have in virtue of the governing rules (respectively). A rights/rules ethical framework views moral conflict as essentially a conflict among rights and duties of individuals or groups of individuals, and/or a conflict of relevant rules. Typically, a rights-rules approach adjudicates moral conflicts by appeal to the most basic right, duty, or rule in a value-hierarchical way, for example, where the "authority" of a right, duty, or rule is given from the top of a hierarchy and is appealed to in order to settle the conflicts or dispute.

In the dominant tradition, the inappropriate or harmful use of a rights/rules ethic occurs when all moral situations are mistakenly or misleadingly construed as adequately captured by talk either of who has what rights or duties, or which rules prevail. In the dominant tradition, rights are assumed to be *prima facie rights* which hold "other things being equal," and the relevant moral rules are assumed to be objective, universal, impartial, and cross-culturally binding.

In recent discussion of ethics, feminists have begun to challenge this hierarchical rights/rules approach to ethics in the Western philosophical tradition. For example, in her book *In A Different Voice*, psychologist Carol Gilligan contrasts this Western philosophical highly individualistic, hierarchical, rights/rules ethic with an essentially contextual, holistic, and web-like ethic of care and responsibility in relationships.[14] Gilligan argues that these two ethical orientations have thematic and gender significance: they reflect important differences in moral reasoning between men and women on such basic issues as how one conceives the self, morality, and conflict resolution.[15] According to Gilligan, the moral imperative in the rights/rules ethic tradition is an injunction to protect the rights of others against interference, to do what is fair, and to do one's duty. In the ethic of care, the moral imperative is an injunction to care and avoid hurt, to discern and relieve the "real and recognizable suffering" of this world, to express compassion.[16] The contrasting images of hierarchy and web convey different ways both of structuring relationships and of viewing the self, morality, and conflict resolution.[17] According to Gilligan, the image of a hierarchy emphasizes an exclusive realm of individual rights, a morality of noninterference, and a conception of the self in separation or isolation, while the image of a web provides a nonhierarchical vision of human connection, an inclusive morality of care and responsibility, and a contextual conception of the self in community or in relationships.[18]

Philosopher Kathryn Pyne Addelson makes a related point in her article, "Moral Revolution." Addelson argues that there is a bias in the dominant world view which results from the near exclusion of women from the domain of intellectual pursuits. That bias conceives of ethical problems "from the top of the hierarchy," and assumes

that the authority of that position represents the "official" or "correct" or "legitimate" point of view.[19] Addelson offers as her paradigmatic example of such bias the rights/rules ethic of the Western philosophical tradition.[20] According to Addelson, the dominant tradition perpetuates the sort of dominant-subordinate structures which create inequality, in part by not noticing that the point of view at the top of the hierarchy is not, as the tradition assumes, a value-neutral objective, universal, and impartial point of view. According to Addelson, the perceptions and power of subordinate groups (e.g., women, Third World peoples) are necessary to create new social structures and world views which do not have such a bias.[21]

This is not the place to discuss the strengths and weaknesses of the Gilligan and Addelson accounts. They are offered merely to show the respects in which "the dominant tradition" has come under attack recently by feminists who view it as biased in key respects (e.g., by sex/gender, by race/ethnicity, by class/privilege). Consider, now, how an understanding of this sort of criticism of the dominant perspective applies to the "debate over cultural properties."

Language and Conceptual Frameworks

The language we use and the questions we ask reflect our conceptual framework or world view. In the debate over cultural properties, the language we use reflects our conception of the main issues in that debate and sets into place the sorts of remedies that are taken to be relevant to resolving that debate. To illustrate this, consider the title of this book, *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?*

First, the language used in the title reflects the by now familiar conception of the debate as essentially a debate about property. As such, the language grows out of and reflects a conceptual framework which takes as fundamental and most important (most highly valued) considerations of property and ownership. But such talk is unpacked in terms of the rights and duties of relevant parties. The debate therefore presupposes the legitimacy and efficacy of construing the debate over cultural properties in terms of both properties which properly can be said to be owned, and a rights/rules framework for stating and resolving what are taken to be the most important ethical issues addressed in the debate: Who owns what cultural properties? To which cultures (countries) does the cultural property properly belong? Who has a right to collect or own cultural properties? Who has what duties with regard to cultural properties? Which rules prevail in the disposition of cultural properties—ones expressing utilitarian considerations, or ones expressing deontological, nonutilitarian considerations?

The nine specific sorts of arguments for/against claims to the 3 R's—restitution, restriction (or regulation), and rights—are couched in the same sort of language. The assumption underlying them is not simply that the question "who owns the past?" is a meaningful and important question; it is typically the main or focus

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question. Several arguments are explicitly so construed (i.e., the Rescue, Foreign Ownership, Humanity Ownership, Cultural Heritage, and Country of Origin Ownership Arguments). The other arguments (i.e., the Means-End, Scholarly Access, Encouragement of Illegality, and Scholarly and Aesthetic Integrity Arguments) implicitly or covertly appeal to a rules ethical framework for justifying serious consideration of values and interests not explicitly unpacked in terms of property and rights. Thus, all of the specific sorts of arguments given are presented within some sort of rights/rules framework.

Second, the language used to conduct the debate over cultural properties is often male gender-biased. Interchangeable talk of cultural properties and national patrimony goes unnoticed as a gender-biased category of analysis. Since "one way a tradition conceals data is through the concepts and categories it uses,"[22] use of the concept or category national patrimony to discuss an entire society's cultural heritage is at least misleading. Surely it is at least an open question whether the concept national patrimony, like the concepts of property, ownership, utility, and rights, properly captures the relevant information about the relationship of all people to their cultural history. For persons in a cultural context where "the past" is not viewed as property, perhaps not even as "past" (e.g., some Native American cultures), or where talk of property, ownership, utility, and rights do not capture important conceptions of the past (e.g., communal kinship with the "living past") or where one's cultural heritage and relationship to that heritage is not captured in the male-biased language of patrimony, what one takes to be the relevant issues—in fact, what one takes to be the debate itself—will not be captured by the current conception of the debate in terms of the dominant perspective on cultural properties. These concerns about the adequacy of the very language in which the debate is couched affect many of those cultures/countries from which the relevant cultural properties originate. Parties to the debate must take enormous care not to see as inferior, irrelevant, or of less significance the sorts of concerns that indigenous peoples, for example, may raise about both how their cultural heritage is talked about and how it is treated if they are to avoid conducting the debate over cultural artifacts from within an oppressive, Western, and patriarchal conceptual framework.

What all of this suggests is that it is important to recognize and appreciate the nature and power of conceptual frameworks and of the language by which they are given concrete expression. By conceiving the dispute over cultural heritage issues as a dispute over properties, and by focusing the debate over cultural properties on the question of rights and rules governing ownership of or access to the past, the dominant perspective keeps in place a value-hierarchical, dualistic, rights/rules ethical framework for identifying what counts as a worthwhile value or claim, for assessing competing claims, and for resolving the conflicts among competing claims. Where such a framework is problematic or inadequate, what can be done to remedy the inadequacy?

Correcting Bias in the Dominant Tradition

If there is a bias in a theory, it may be that reforming the theory by making internal changes—redefining key terms, changing assumptions, extending its application in a new or different way—will remedy the bias. But if the bias is within the theory itself, rather than with its application, then that bias will not be remedied simply by reforming the application of the theory, altering a few of its assumptions, or revising the arguments given within the theory.[23] In such a case, more radical ways of construing and resolving the debate will be needed.

Is there a kind of bias in the debate over cultural properties, one which has been introduced by the near exclusive reliance on a value-hierarchical, value-dualistic, and rights/rules ethic, which subordinates the interests or claims of those in subordinate positions relevant to the dispute? If so, is it a bias that reforming from within that conceptual framework will remedy, or is it the sort of bias that requires reconceiving the very terms of the debate itself?

I already have suggested that there is such a bias, and that it enters into the debate in two ways.[24] The first way bias is introduced is by construing the dispute as basically a dispute about ownership, property, and rights. Since several of the main arguments concerning the 3 R's are explicitly couched in such terms (viz. the Rescue, Foreign Ownership, Humanity Ownership, Cultural Heritage, and Country of Origin Ownership Arguments), they overtly contribute to that bias. To the extent that at least some cultural properties issues really are issues of property, and to the extent that others are not, tinkering from within will be appropriate in some cases and not in others.

The second way bias is introduced relates to the first: Casting the dispute as a dispute about ownership, property, rights and rules at least encourages a resolution of conflicts over cultural properties from a value-hierarchical, win-lose perspective. Such a strategy of conflict resolution will be appropriate to the extent that the issues of the controversy genuinely fit a hierarchical model of conflict resolution (discussed below); to the extent that they do not, it biases the issues to treat the resolution of all cultural heritage issues from the perspective of a hierarchical model. Since all of the arguments given concerning the 3 R's are presented from within a hierarchical rights-rules model, the question of bias arises for each of them.[25]

In order to eliminate whatever bias there is in the conception of the debate over cultural properties from within the dominant tradition, it is necessary to identify those issues which can, and those issues which cannot, be adequately addressed and resolved from within that perspective. While it is outside the scope of this essay to do that critical work here, what I have said so far suffices to show how the issue of the adequacy of the dominant conceptual framework arises, why it is such an important issue, and what would need to be shown to decide the issue one way or the other.

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Any workable remedy to bias probably lies somewhere in between the extremes of reform and revolution. Some of the biases are correctible by reform; others are not. In order to know which sorts of remedies apply in which sorts of cases, it is important to recognize alternative models of conflict resolution. It is to that issue that I now turn.

Models of Conflict Resolution: 3 Alternatives

Three alternative models of conflict resolution are what I refer to as the hierarchical, compromise, and consensus models. On the hierarchical model, one chooses between competing rights, claims, interests, and values by selecting the most basic, most important, or otherwise most stringent one. This model presupposes a pyramidal or hierarchical, Up-Down organization of the relevant variables, and appeals to some basic rule (principle, standard, criterion), value, or right to justify selection of the relevant variable as most stringent. If, for example, a claim to right of ownership of a foreign country conflicts with a claim to right of ownership of a country of origin, on a hierarchical model one would decide which right is more stringent or valid by appeal to some governing rule (principle, standard). The hierarchical model is particularly useful in a litigious approach to conflict resolution.

The hierarchical model is an adversarial, win-lose model which presupposes that one not only can organize diverse claims in terms of hierarchies, but that one can provide some way of rank ordering them. First, conflicting rights, claims, interests, and values do not always neatly form hierarchies, especially when the variables are of different types. For example, how should one hierarchically order the scholarly value of collecting cultural artifacts with the right of a country of origin to restrict their distribution? Second, there are problems with providing objective rankings or weighting for selecting among these competing considerations: What is the appropriate weighting and ranking of rights vis-à-vis scholarly values? Furthermore, underlying the hierarchical model is the assumption that it is possible and appropriate to resolve (all) conflicts by providing a value-hierarchical ranking. But this assumption is controversial. As has been suggested, value hierarchical rankings often maintain inequalities or misdescribe reality by perceiving diversity in terms of value dualisms and Up-Down orderings (e.g., of dominate-subordinate relationships). And those values which do not neatly fit into a value-hierarchical ranking (e.g., web-like values of care, friendship, or kinship) or do not translate neatly into a rights/rules framework without misdescribing the situation (e.g., as a situation of rights rather than as one of compassion and care), seem to get lost in the model.[26] Lastly, the model dictates a winner and loser in the resolution of the conflict. But not all conflict must have a winner and a loser. That is a limitation of the model, not necessarily a limitation of the controversy, the values or claims at issue, or the parties to the dispute. To see that this is so, consider two alternative models.

A compromise model is designed to provide something, though not everything, for all parties to the dispute, or to provide some of each of the relevant values, rather than realizing any one value to the exclusion of others. Some claims or values are traded-off in order to realize others. Underlying this model is the presumption that values can be realized in degrees. Its successful use requires that parties to a dispute are willing to compromise.

A third model is the consensus model: all parties voluntarily engage in a process of reaching mutually agreed upon goals, typically with the help of a third party facilitator or mediator perceived to be a neutral party to the dispute. Consensus-building is process oriented. Typically it begins with people putting their values and attitudes on the table, and uses empowerment strategies and techniques to have people collectively, voluntarily, and cooperatively decide what the problem is, how they will resolve it, and what will count as a resolution of the conflict. Since this model involves voluntary cooperation in a non-binding decision making process, it takes time, good will, and cooperation. It fails when mutually acceptable agreement is not reached.

There may be some situations in which the hierarchical model is the most, or the only, appropriate model. For example, in the context of cultural properties, it may be useful to litigate conflicting legal claims by parties to the dispute. Nonetheless, exclusive reliance on this model contributes to the problem, not the solution, by promoting an adversarial, value-hierarchical, win-lose approach to the resolution of all conflicts over "cultural properties." It is particularly inappropriate and inapplicable if one reconceives at least part of the debate in terms other than those of property or rights. To illustrate this, consider a tenth, different sort of argument than the nine we have already considered concerning the 3 R's.

"The Non-Renewable Resource Argument"

So-called cultural properties are like environmentally endangered species. First, they are non-renewable resources; once exhausted or destroyed, they cannot be replenished or replaced. Second, they are not anyone's property and no one can properly be said to own them. Our relationship to them is more like that of a steward, custodian, guardian, conservator, or trustee than that of a property owner. Since these cultural properties ought to be preserved yet are no one's property, no one has a right to them. Hence, no one has a claim to their restitution or restriction based on an alleged right (e.g., right of ownership) to them. Their protection and preservation is a collective responsibility of all of us as stewards: it must acknowledge our important connection with the past, be conducted with care and a sense of responsibility for peoples and their cultural heritages, and respect for the context in which cultural remains are found.

There are at least four related main issues raised by the Non-Renewable Resource Argument: (1) How much are at least some cultural properties like environmentally

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endangered species? (2) To what extent are humans like stewards, custodians, guardians, conservators, or trustees of cultural heritages? (3) Exactly whose responsibility is it to preserve cultural heritages? And, (4) Is a responsibility to preserve cultural heritages based on or grounded in a web-like ethic of care? If the analogy between environmentally endangered species and cultural heritages is strong, then at least some talk of cultural property is a misnomer. We should speak instead of endangered cultural heritages, endangered cultural pasts, or even, more simply, endangered cultures. If those who have responsibility to preserve cultural heritages are conceived as stewards of that heritage, then talk of property rights and ownership of that heritage is inappropriate and misguided. If this responsibility is grounded in web-like considerations of care and contextual appropriateness, then the dominant tradition's rights/rules ethic also is either inappropriate, limited, or seriously inadequate as a framework for capturing all or perhaps even the most important relevant ethical considerations.

The linguistic changes in how one speaks about cultural heritage issues which are suggested by the Non-Renewable Resource Argument are significant: they challenge not only how one conceives the debate over so-called "cultural properties" but also how one solves that debate. If at least some aspects of a culture's heritage or past are not the sort of thing that properly can be talked about in terms of property, ownership, and rights, then, the construal of the debate in such terms is inappropriate.

Furthermore, a hierarchical model of conflict resolution simply is the wrong tool for the job if what one is trying to do is resolve competing claims about who has what communal responsibilities of care regarding the preservation of cultural heritages. That issue is complex, not simple, and requires that we complexify both our thinking about and our remedies to the issue of endangered cultures in ways that resist simple constructions of the debate in terms of rights or rules.

In summary, by construing the debate over cultural heritages as a debate over cultural properties, and by viewing conflicts in that debate as conflicts among competing claims concerning restitution, restriction, and rights (i.e., the 3 R's), the debate is conceived from a perspective characterized by value-hierarchical, normatively dualistic, rights/rules thinking and a model of conflict resolution that is a win-lose model. Given that there are alternative ways to conceive the debate and to resolve the conflicts over cultural heritage issues, the dominant perspective seems inadequate by itself as a theoretical framework for understanding and resolving so-called cultural properties issues.

RETHINKING THE DEBATE: AN INTEGRATIVE PERSPECTIVE

In this chapter I have attempted both to provide an overview of the main arguments and issues involved in the current debate over cultural properties and to suggest why it is important to rethink the terms of that dispute from a nonhierarchical,

nonadversarial (win-lose) perspective. I have also attempted to suggest why an adequate solution to the dispute will involve more than simply refining arguments from within the dominant perspective on cultural properties. It will require what I call an integrative perspective to the understanding and resolution of cultural heritage issues.

An integrative perspective is intended to preserve the strengths and overcome the limitations of the dominant perspective's approach to cultural heritage issues. It does so by making a central place for considerations typically lost or overlooked in that approach: (1) It takes seriously cultural heritage issues which are not properly viewed as concerns about property, ownership, and rights (e.g., concerns of indigenous peoples who do not see land or cultural artifacts as possessions one owns); (2) It emphasizes preservation as a primary value and recognizes the respects in which cultural heritages are like endangered species; (3) It encourages talk of stewardship, custodianship, guardianship, or trusteeship of the past, especially for those aspects of the past—both the physical remains of the past (artifacts, places, sites, monuments) and the perceptions of the past (information, stories, myths)—which are not owned or ownable; (4) It acknowledges and preserves the importance of the diversity of values and perspectives involved in the resolution of cultural heritage issues. This means it is flexible in when and how it is appropriate to apply considerations of rights, property and ownership, and when it is not, and it recognizes the variety of available strategies and solutions for resolving conflicts over cultural heritage issues; (5) It involves the meaningful use of compromise and consensus models for resolving disputes over cultural heritage claims. One way it does this is by encouraging nonlitigious, voluntary, reciprocal, and mediated solutions to conflicts and the sharing of cultural artifacts (e.g., through museum collection sharing programs; loans; jointly undertaken studies, restorations, publications, and exhibitions); (6) It involves the restitution of legitimate "cultural heritage" to countries of origin and the use of restrictions to eliminate illicit traffic in cultural artifacts.

The first step to implementing an integrative perspective to cultural heritage issues is to make visible the conceptual framework in which the debate over cultural properties is currently conducted. This will require abandoning language which biases the terms of the dispute in favor of the dominant perspective (e.g., replacing inappropriate talk of cultural properties and cultural patrimony with talk of cultural heritage issues or endangered cultural heritages). It also will require recognition of nonhierarchical models of conflict resolution. By making visible the nature and function of the dominant conceptual framework, one is in a position to envision alternatives for how one conceives and resolves the debate over cultural heritages.

The second step to implementing an integrative perspective is to make context central to how one understands cultural heritage issues. Most of the physical re-

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mains of the past are at best fragments. All cultural properties, like the cultural heritage that constitutes the past, come with a context. Objects without a context (i.e., without provenance) are dispossessed of the very sorts of information that are essential to their constituting a cultural heritage. An integrative perspective to cultural heritage issues would make context central to any adequate account or resolution of cultural heritage issues. Once the twin goals of making visible the conceptual framework of the dominant perspective and incorporating contextual considerations into the discussion of cultural heritage issues are realized, an integrative perspective can begin to implement specific changes in the way the debate over "cultural properties" is conceived and conducted (e.g., changes suggested at 1–6 directly above).

An integrative perspective on cultural heritage issues encourages all of us to rethink the dispute as one of preservation (not, or not simply, one of ownership) of the past, and to rethink the resolution of the cultural properties conflict from a compromise or consensus model of conflict resolution, rather than from a value-hierarchical, normatively dualistic, win-lose model. An adequate resolution of cultural heritage issues—that is, one which uses appropriate language, concepts, and categories, captures the diversity of values, claims, and interests of various parties to the dispute, and provides flexibility in the resolution of conflicts—requires that we rethink the terms of the dispute. That is what an integrative perspective on cultural heritage issues promises.

NOTES

1. For a discussion of these two different foci of ownership of the past, see Isabel McBryde's "Introduction" in *Who Owns the Past?*, ed. by Isabel McBryde (London: Oxford University Press, 1985) and Cha. 5, "Whose Past?" in Karl E. Meyer's *The Plundered Past* (New York: Atheneum Press, 1977).

2. I treat these as arguments for and against claims to the 3 R's which are advanced by countries of origin, rather than as claims organized around a typology of relevant values (e.g., aesthetic, educational, religious or economic values) or as claims advanced by other groups (e.g., specific individuals, such as curators, collectors, scholars); foreign countries (i.e., countries which have or would like to have cultural property but are not the country of origin of that property); humanity as a whole. The rationale for identifying the arguments in terms of claims to the 3 R's by countries of origin is that this provides an organizational schema which accommodates all the values and parties to the dispute, while accurately highlighting how issues concerning cultural properties arise (viz. because the traffic in cultural property is basically traffic from countries of origin outward; whatever values and interests are at stake are so ultimately because of this traffic outward). Hence, this typology appropriately leaves open the question whether foreigners or foreign couotries do or might support some of the claims to the 3 R's by countries of origin (e.g., by arguing on behalf of the relevant values and interests of indigenous peoples to their cultural heritage).

3. In the case of what is owed, a "genuine beneficiary" is one who has a legitimate or valid claim (i.e., a right) to what is owed, while a "mere beneficiary" is one who stands to benefit from the performance of an owed act but does not have a legitimate or valid claim (i.e., a right) to what is owed. This distinction is particularly important in the case of inheritances, e.g., the inheritance of possessions or properties owned by benefactors. If those who rescued cultural properties have a right to them, and their descendants (whether individuals or countries) are acknowledged as "genuine beneficiaries," then those descendants also have a right to them.

4. In his book *The International Trade in Art* (Chicago: The University of Chicago Press, 1982), Paul M. Bator discusses what counts as "illegality" in the international art trade under existing law. Since not all illegal export is theft (or some other form of illegal taking) and not all illegal exports are cases of illegal import, the structure of illegal trade consists of four factors: export regulations, theft, importing illegally exported cultural properties, and importing stolen cultural properties (pp. 9–13). According to Bator, in the United States, the only case of illegal export that constitutes illegal import is the 1972 statute "Importation of Pre-Columbian Monumental or Architectural Sculptor or Murals," which bars the import of illegally exported "pre-Columbian monumental or architectural sculpture or mural" (cited in Bator, p. 11, n. 32).

5. See, e.g., the position of Alison Jaggar, *Feminist Politics and Human Nature* (Totowa, N.J.: Rowman and Allanheld, 1983); Naomi Scheman, "Individualism and The Objects of Psychology," in *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and The Philosophy of Science*, eds. Sandra Harding and Merrill B. Hintikka (Netherlands: D. Reidel Publishing Company, 1983): 225–244.

6. Utilitarian and deontological theories of ethics are both normative theories of moral obligation. They provide theoretical answers to the question "What acts, or kinds of acts, or human conduct is right, wrong, or obligatory?" Utilitarian theories are "consequentialist theories," i.e., they assess the rightness, wrongness, or obligatoriness of human conduct solely in terms of the consequences of such conduct. Specifically, according to utilitarianism, performing a given act (or kind of act), or following a certain rule, is justified if and only if no alternative act (kind of act, rule) provides a higher net balance of good over evil (typically understood in terms of pleasure over pain). Jeremy Bentham and John Stuart Mill are the historical figures most frequently associated with utilitarianism. Deontological theories are nonconsequentialist, i.e., they assess the rightness, wrongness, or obligatoriness of human conduct in terms other than the consequences of such conduct. Aristotle and Immanuel Kant are among the prominent historical figures identified with deontological ethical theories.

7. For a clear and thorough survey of the options available for controlling the international trade in art (including cultural properties), and the author's view of which ones are desirable and why, see Paul M. Bator, ibid., Cha. III.

8. See Karl E. Meyer, ibid., pp. 190–191.

9. These three arguments are not simply rebuttals of the six arguments already given. They involve additional claims about the claims of countries of origin against foreign countries and others.

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10. See Paul M. Bator, ibid., Chas. I and II.

11. Recent feminist theory in all academic disciplines has focused attention on describing and critiquing what I call here a "world view" or "conceptual framework." This is especially so in philosophy and ethics. See, e.g., Kathryn Addelson's "Moral Revolution" and Joyce Trebilcot's "Conceiving Women: Notes on the Logic of Feminism," in *Women and Values: Readings in Recent Feminist Philosophy*, ed. by Marilyn Pearsall (Belmont, Ca.: Wadsworth Publishing Co., 1986: 291–309 and 358–363, respectively; Elizabeth Dodson Gray's *Patriarchy As A Conceptual Trap* (Wellesley, Mass.: Rountable Press, 1982); Alison Jaggar, ibid.

12. For a discussion of oppressive, especially patriarchal, conceptual frameworks, see my "Feminism and Ecology: Making Connections," *Environmental Ethics* (Spring, 1986): 3–20.

13. For a discussion of value-hierarchical thinking in what she calls "patriarchal conceptual frameworks," see Elizabeth Dodson Gray. *Green Paradise Lost* (Wellesley, Mass.: Rountable Press, 1981), p. 20. See also my discussion of patriarchal conceptual frameworks in "Feminism and Ecology: Making Connections," *Environmental Ethics* (Winter, 1987).

14. Carol Gilligan. *In A Different Voice* (Cambridge, Mass.: Harvard University Press, 1982).

15. Gilligan writes that "the different voice" she describes is "characterized not by gender but by theme. Its association with women is an empirical observation, and it is primarily through women's voices that I trace its development. But this association is not absolute . . ." (ibid., p. 2.) Gilligan uses "the male voice" and "the female voice" to highlight a distinction between two modes of thought and two different ways of conceiving the self, morality, and conflict resolution. It is this aspect of what Gilligan says that I am interested in conveying here.

16. E.g., ibid., pp. 73, 90, 100, 164–165.

17. Ibid., p. 62.

18. Ibid. Note that Gilligan does not argue for the superiority of one view over the other. Rather, she argues for a convergence of the two perspectives (i.e., an "ethic of justice" or a rights/rule ethic and an "ethic of care"). See pp. 151–174.

19. Ibid., p. 307.

20. Addelson calls this dominant tradition in ethics "the Thomson tradition," named after Judith Jarvis Thomson's approach to doing ethics, and contrasts it with a minority tradition, what she calls "the Jane tradition," named after a group of politically active women in Chicago who formed an organization called Jane.

21. Ibid., p. 306.

22. Addelson, ibid., p. 305.

23. This is the main point expressed by Kathryn Addelson in her article, "Moral Revolution," ibid.

24. While I do not explicitly argue for the claim that there is a bias in the dominant tradition's construal of the debate over cultural properties, what I have said about world views, the dominant tradition and its associated "patriarchal world view" is sufficient to show what such a defense would involve.

25. Notice that those arguments which focus either un the values or the practices associated with collecting "cultural properties" and are presented in connection with utilitarian considerations (e.g., the Means-End, Scholarly Access, Encouragement of Illegality, and Scholarly and Aesthetic Integrity Arguments) implicitly introduce the first sort of bias by relying on an objective and universalizable "rules" approach to resolving cultural property issues. They also encourage the second sort of bias, since they presuppose a resolution of cultural properties conflicts from within a value-hierarchical win-lose model.

26. Although I do not argue explicitly for these claims here, the arguments given earlier by Gilligan and Addelson are among the sorts of arguments which have been given in support of these claims.