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Cultural Co-Ownership: Preventing and Solving Cultural Property Claims

Marc-André Renold*

INTRODUCTION

Cultural property claims are numerous and of very different nature. Some relate to recent trafficking of cultural property;[1] some are based on ancient legal grounds which are contested today;[2] others relate to past wars and colonial times;[3] others, still, relate to mass spoliations in times of conflict.[4] In general, though, the original owner seeks to recover what was taken from him, or at least to obtain some form of compensation.[5] The present owner or possessor is as a matter of principle interested in keeping his possession.[6] These conflicting positions are often seen as irreconcilable and, indeed, litigation in a traditional manner will bring to the typical "either/or" solution: either I am the owner, or you are. There is no in-between solution.

Observing some of the more recently adopted solutions leads to asking whether sole ownership should not be revisited in a certain number of cases, in particular where there have been several possessors for long periods of time. My hypothesis is that these cases can probably be solved if we start thinking in terms of ***cultural co-ownership***, i.e. where both parties' claims to the whole can be taken care of by some form of sharing among these claims. This is the principal assumption behind the present contribution.

As a preliminary matter it might be useful to restate what is meant by ownership and possession. Ownership as understood here is a legal right on a particular object or chattel, opposable *erga omnes*.[7] Possession, on the other hand, is the physical control over an object or chattel, and it is not an actual right.[8] Rights and duties can nevertheless be linked to the possession of the object.

I shall first start by looking at the practice in this area, the "either/or" solution that prevails in ownership claims before courts (I), and if this practice can give way,

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when the parties agree to negotiate, to co-ownership, or some form of co-ownership or co-possession, as a solution to solve difficult issues (II). Once we have understood the technicalities of these case-based answers, we can turn to attempting to propose a solution to more complex cases (III). The solution will not only depend on general principles of property, but also on very clear practical elements, which will help taking care of cultural co-ownership in practice (IV). We shall terminate by reviewing a specific case, that of the Rosetta Stone, and trying to determine whether and how it could be solved by co-ownership (V).

I. RESTITUTION CASES BEFORE THE COURTS

Taking the matter to court is still a serious option in a relatively important number of cases, even if it can be the first step which might later lead to a negotiated or mediated solution.[9] In addition, a court decision is not necessarily the end of the matter. The saga of the Marquis de Sade manuscript, *Les 120 Journées de Sodome*, is significant in that respect.[10] The manuscript, once owned by the French aristocratic de Noailles family, was stolen from them and sold to a *bona fide* collector in Switzerland. A long battle followed before the French Courts (which saw the thief convicted) and the Swiss Courts (which confirmed the Swiss purchaser's title based on his good faith acquisition).[11] After the Swiss collector's death, the family sold his collection but kept the manuscript.[12] After his wife's death, the children eventually decided to sell the manuscript and one of the interested parties was no other than the descendant of the initial French owner, who sought to buy it in order for this important piece of French cultural heritage to be brought back to its home country. The sale failed, but a French collector bought it, before going bankrupt, so that the manuscript will eventually be on the market again... In the end, what this shows is that the Swiss Supreme Court decision, taken in May 1998, was not the end of the matter and the parties continued to negotiate long after the matter was judicially settled.

The difficulty with going to court to solve an ownership issue, though, is that it is a "yes or no" situation: either the court will recognize the initial owner's title or it will give effect to the present possessor's claim. And the scale can tilt both ways, depending on several factors, including the applicable law to the transfer of ownership of the object.[13] As an example of a restitution to the previous owner one might cite the *Mendel v. List* decision,[14] a classic in holocaust art matters: the descendants of the victim of an act of looting by the Nazis claimed for the restitution of their ancestor's Chagall and were eventually successful thanks to the *nemo dat quod non habet* rule of US law. The painting by Chagall was returned to them.

Among the many examples going the other way, i.e. where restitution is refused, one could mention the ancient gold coins case in Switzerland:[15] two magnificent and enormous gold coins (one weighed more than 10 kilograms), minted in the 17th century, belonged to the nizam, the then ruler of the state of Hyderabad. Although Hyderabad joined the newly founded state of India in 1948, the coins

remained in the possession of one of the nizam's descendant who, after having tried unsuccessfully to sell them at auction, used them as security for a loan from a bank in Switzerland. When it came to selling the coins to pay the bank, India claimed the coins and the case was fought all the way to the Swiss Supreme Court which rejected India's claim, mainly on the basis of the bank's good faith when the security was established.[16] The gold coins were kept by the bank and eventually sold to a third party.

So, as a general rule, these examples show that there is no third solution before a court. After sometimes many years of litigation, the result is either the claimant wins and gets his property back or he loses and the present possessor keeps the object. This can lead to a certain dissatisfaction and, given the possibility, parties will more often than not try to follow an alternative route.[17]

II. SHARED OR CO-OWNERSHIP AS A SOLUTION TO OWNERSHIP CLAIMS

Scholars and researchers have shown the dissatisfaction caused by the situation described above and an interesting debate took place around 2005 on the "Caring and Sharing" alternative to the restitution/retention debate. For example, the International Law Association's Committee on Cultural Heritage Law worked on the topic and a resolution was adopted in 2006 at the 72nd Conference of the International Law Association.[18] Although its resolution does not refer expressly to co-ownership, it nevertheless deals with alternatives to the transfer of cultural material and states:

> Museums and other institutions shall develop guidelines consistent with those of the International Council of Museums (ICOM) for responding to requests for the transfer of cultural material; these guidelines may include alternatives to outright transfer such as loans, production of copies, and **shared management and control**.[19]

Although it is not absolutely clear what the committee was referring to with "shared management and control", it goes clearly in the direction of co-possession or co-ownership.[20] The example which all had in mind at the time were the agreements entered into between US museums and Italy which set out broad schemes of cooperation between Italy and the concerned museums.[21]

There are only a handful of cases in which shared property or co-ownership is recorded as having been used to solve complex claims relating to a work of art. It is interesting to have a look in some detail at those rare cases where the question was raised.[22]

Landscape with Smokestacks by Degas

One of these is the Searle/Gutmann litigation relating to the Degas painting *Landscape with Smokestacks* ("Paysage avec Cheminées"). The painting had belonged

to Friederich Gutmann, a German Jewish banker who was killed in the concentration camp of Theresienstadt in 1943. The painting had been sent to Paris in 1939, where its track was later lost. In 1995, the two surviving Gutmann children traced the Degas to the collection of Daniel Searle, a Chicago collector who had bought it in 1987 from a reputable US dealer. The litigation that ensued determined that the painting had entered the United States in 1951 where it had been acquired by a New York collector who had allegedly bought it from the brother-in-law of Hans Wendland, a Swiss-based German dealer who had been involved in selling many of the works of art looted and seized in France by the *Einsatzstab Reichsleiter Rosenberg*.[23]

After litigation had begun in New York and Chicago, the case was eventually settled through a form of co-ownership: the ownership of the work of art was allotted to the claimants and the defendant in equal shares, each being given freedom as to what he wanted to do with his share. Searle gave his "half" of the painting to the Chicago Art Institute (of which he was a trustee) and the Art Institute bought the Gutmann heirs' second "half," which was evaluated at fair market value. A label was attached to the painting exposing its history, the misappropriation of the Gutmann art collection and the settlement entered into.[24]

The Marriage of Tobias and Sarah *by Steen*

Another co-ownership case was that of the Jan Steen painting, *The Marriage of Tobias and Sarah*, which was the result of a rather unusual procedure of reunification of two parts of the original painting which had been separated long before the Second World War. After they were reunified through a relatively complex restoration in 1996, a claim was made on one of the parts by the heir of the Dutch dealer Goudstikker, which ended up in a co-ownership between the heir of Goudstikker and the City of The Hague, at a ratio of 76%/24%. A 2008 binding advice of the Dutch Restitution Committee ordered the dissolution of the co-ownership and the sale of the 24% of the painting to the heir of Goudstikker.[25]

The Teotihuacan Mosaics

An interesting case, taken from the field of antiquities is that of the Murals of Teotihuacan. A long dispute between Mexico and the San Francisco Museums of Fine Arts on the ownership of mural paintings coming from the famous Teotihuacan temples in Mexico.[26] In 1981 an agreement was entered into according to which a minimum of 50% (in the end almost 70%) of the murals were to be returned to the Anthropological Institute of Mexico and the rest were to be retained by the San Francisco Museums.[27] A participant to the lengthy negotiations commented in the following way: "Showing a great cultural and political sensitivity, all the involved parties finished by agreeing to say they would not be able to agree ... on the ownership issue. We came to agreeing, however, on the importance of the collection and

on the necessity to work together in order to protect and preserve it; it is therefore on this basis that we cooperated."[28]

The Macchiaioli Paintings

A less-known case relates to Macchiaioli paintings which had been acquired by the Dunedin Public Art Gallery in New Zealand. It appeared, while the paintings were on loan to an Italian museum, that they had actually been looted during the Second World War from Cino Vitta's private collection. In order to unblock the matter, and after three years of litigation, the Italian Court suggested that a negotiated settlement would be far better and the parties did as a matter of fact come to an agreement according to which the paintings were apportioned among the parties, two going to the family and three to the Museum.[29]

It therefore appears that some cases have actually been solved by a common or shared ownership regime. Such a regime is not necessarily meant to last very long, especially when the interests of the co-owners do not coincide. But the most interesting aspect of these cases is that they show the emergence of a ***common (or shared) cultural interest*** which can be useful in resolving the dispute among the parties. Such an interest was the subject of a publication co-authored by the undersigned and Marie Cornu of the French CNRS, and our conclusion was that ownership by one or the other should probably not be the preferred solution anymore and that the terms of the equation might not contain sole ownership, at least in the classical Roman law understanding of "*usus and abusus.*"[30]

A highly interesting case where such an interest was identified, is the Machu Picchu matter which saw the state of Peru opposed to Yale University with regards to many objects which the US archaeologist Hiram Bingham had taken to the United States after re-discovering the now famous Inca site in Peru.[31] In the partnership agreement that was entered into between the parties in 2011 several elements were of importance, and not only the restitution of a certain number of the archaeological objects: a common international research center was established in Cusco and several academic exchanges, not only of objects, but also of researchers, were made possible.[32] The cooperation between the Universidad Nacional de San Antonio Abad del Cusco and Yale University was recently reinforced by a 4 June 2015 "Memorandum of Understanding."[33]

It thus appears that the issue of actual ownership was not, in all these case, perceived as the central one, much more importance being given to issues of cultural cooperation.

III. CO-OWNERSHIP AS AN ALTERNATIVE SOLUTION TO COMPLEX MATTERS

There are a certain number of cases which were eventually resolved, even though they could have been more solidly and convincingly finalized through an agreement on cultural co-ownership. I will take the following three examples:

The Swiss Ancient Manuscripts Case

In this particular case, the claim related to mediaeval manuscripts taken as war booty by the Zurich army during its victorious occupation of St. Gallen around 1710. Many years later, after numerous unsuccessful attempts to obtain restitution by St. Gallen, a mediation took place between the two Cantons, under the auspices of the Swiss Confederation. The mediation agreement eventually entered into by the Cantons in 2004 provided that Zurich was to be considered the owner of the manuscripts, even though Zurich had been the party to loot the objects. However, Zurich simultaneously agreed to lend the manuscripts on a long term basis to St. Gallen. In addition, there is language in the agreement to the effect of a recognition by Zurich of the cultural significance of the manuscripts for St. Gallen. Special provisions are also set forth regarding the Terrestrial and Celestial Globe of Prince-Abbey Bernhard Muller by which Zurich agreed to create a duplicate at its own cost and offer it to St. Gallen.[34]

In a way this agreement is very exceptional,[35] but I tend to think its contents could have been even better. After almost 200 years, it remains quite surprising that the property is left in the hands of the looters with an actual legal title. Today things might seem acceptable because Zurich had to relinquish its possessory right over the manuscripts for 37 years, the period during which the agreement cannot be renegotiated. But what if after that time has lapsed Zurich obtains a cancellation of the loan and a full-fledged restitution of the manuscripts? This basically would mean that through a series of subtle steps Zurich would have managed to secure an undisputable title over property looted during a conflict.

The question therefore is: would an appropriate answer not have been to recognize a form of co-ownership between the two Cantons and to work on a specific agreement relating to the sharing of the objects amongst them?

The Korean Uigwe Manuscripts Case

In 1866 the French army sacked the island of Kanghwa in Korea, where ancient royal manuscripts were kept in archives. Several French priests had been killed and the French army ordered the invasion of this island and the taking of the manuscripts as a punitive measure against Korea. These manuscripts were then completely forgotten until 1975 when a Korean researcher found them in the French national library stacks in Versailles. Thereafter, Korea had been claiming their restitution when eventually a loan agreement was entered into between France and Korea. This was in February 2011. The loan is for a period of five years and is renewable.[36]

Upon receiving the loan the Koreans celebrated the "restitution" of the manuscripts and it is clear that they do not envisage returning them to France. Indeed, several politicians said at the time that this was to be considered as an outright restitution and not as a simple loan.[37] Why not be more realistic and accept

a co-ownership of the manuscripts? This would have enabled a restitution of the manuscripts, but a connection with France, where they had been kept for many decades, would also have been preserved.

The Makonde Mask Case

A theft at the national museum of Dar-Es-Salaam led to the disappearance in 1984 of a Makonde mask. Very soon thereafter the Swiss Barbier-Müller Museum acquired this same mask. In 1990 an Italian scholar identified the mask as the one that had been stolen in Tanzania and the Barbier-Muller Museum informed the Tanzanian authorities. Long discussions followed, as the museum initially intended to return the mask as a loan to Tanzania, which was refused. The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP) was notified of the dispute and eventually,[38] with the help of the International Council of Museums (ICOM), an agreement relating to the donation of the mask by the Barbier-Müller Museum to Tanzania was entered into in 2010.[39]

The overall contents of the agreement are not known, but the main difference between restitution and donation is that the latter implies that there was a valid acquisition by the Swiss museum, which it had always said it wanted to see recognized. On the other hand the state of Tanzania accepted only with difficulty the fact that an object that belonged to Tanzania could be "given" to it.

Here again, such difficulties might have been avoided with a decision to opt for a co-ownership.

IV. CO-OWNERSHIP IN PRACTICE

Have we made any progress in identifying the existence in certain cases of a common cultural interest making co-ownership possible? Some might say that this does not change anything, but I see it differently: recognizing such a common interest is a major step in enabling the reconciliation of opposing interests.

Having identified such a common interest, we can now attempt to proceed to the establishment of a co-ownership regime, which will organize the rights and obligations of the parties in the co-ownership. The central issue will be that of the actual possession of the property, but other questions, such as loans to third parties, restoration, insurance, the termination of the co-ownership, choice of law, and dispute resolution must be dealt with in some detail.

The Possession of the Property

This is quite obviously one of the most important questions and might very well be the main bone of contention between the parties. The advantage is that

with a co-ownership regime the parties are forced to find a solution, whereas if there is no legal relationship amongst the parties a status quo might probably be the best one could expect.

There are many possible practical solutions. If the property can be divided, on could easily imagine a shared possession, each party receiving the custody of a part of the property. This is in a way what happened with the Teotihuacan frescoes. The division can be 50/50, but any proportion is of course possible.

Another option is a shared possession in time: co-owner A can possess for 6 months (or 3 years) and co-owner B will follow by possessing for the following 6 months (or 3 years).

In very complex cases one could also imagine that the parties agree on sharing the original and a duplicate on a similar time-basis. This is in a sense what Zurich and St. Gallen agreed upon: before receiving the copy made by Zurich, St. Gallen was granted the right to expose the original at the St. Gallen monastery library during a temporary exhibition.[40]

It is interesting to note that some important legal texts could be seen as leaving open the option of an alternative arrangement as to ownership, in particular art. 6 § 3 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects[41] according to which the parties can agree, instead of an indemnification, to a transfer of ownership to a third party. This shows that the authors of the Convention had in mind that arrangements other than a simple transfer of ownership or indemnification of the good faith possessor could be envisaged.

Loan to Third Parties

While the cultural object is in the possession of one of the co-owners it might appear that a third party (state, museum, etc.) asks for the object to be loaned to it, e.g. for a temporary exhibition. Nothing prevents the parties to agree on this. Seeing the importance of this, the co-owners should agree to the loan and also, possibly, to any immunity from seizure during the loan.[42]

Restoration

What about restoration? If important work is to be performed, the agreement of both co-owners would be necessary. If, on the other hand, one is only speaking of "maintenance," or if the matter is urgent, I would tend to consider that the person in possession of the object is to handle such matters.[43]

Insurance

In order to avoid any trouble, an agreement by the parties to the co-ownership would need to be entered into at the outset as to the actual and insurance value of the object at stake and the consequences of any damage suffered.

Termination of the Co-Ownership

In most cases (apart from the case where the parties agree to a co-ownership in view of selling the property) a co-ownership will be a long term relationship. Its termination should therefore only be possible under very specific circumstances and with a long notice period.

The Day-to-Day Running of the Co-Ownership

A good idea might be to appoint a particular person or institution for the day-to-day running of the co-ownership. And the parties could also adopt internal regulations relating to the practical issues of the co-ownership (maintenance, etc.).

Applicable Law and Arbitration

The co-ownership agreement would have to select an applicable law and provide for a dispute resolution mechanism. A mediation and arbitration clause would seem a good idea.

V. A POSSIBLE TEST CASE: THE ROSETTA STONE

Let us try to apply the above principles to a test case, that of the Rosetta Stone. The Rosetta Stone was discovered in Egypt in July 1799 by a French soldier during Napoleon's military campaign in Egypt. It was discovered in Rosetta, in the Nile delta in Egypt, and its peculiarity is that it contains the same text (a Ptolemaic decree) in three different languages: hieroglyphic, demotic Egyptian, and Greek. It was originally part of a temple, but it had since been used as construction material for the fortifications of the city of Rosetta.[44]

The Rosetta Stone was clearly useful in the discovery by Champollion of the translation of hieroglyphs and it plays therefore an important role in the history of Egypt and of mankind.[45] Apart from its exhibition at the British Museum, as part of its permanent collection, the stone is reproduced in many other contexts, including the village of Figeac (from which Champollion originated) and where a reproduction of the stone covers the floor of a small square, next to the Champollion Museum.[46]

Because of the war over the colonies between France and the United Kingdom and the 1801 Treaty of Alexandria, the stone eventually came under British control and ended up in the British Museum.[47] It has been the object of a claim for restitution by the Government of Egypt for quite some time.

It would be difficult to consider the stone as being of purely British or French ownership. The link with Egypt is obvious, even though the fact that it was reused for construction rather than kept as an important piece of Egyptian cultural heritage slightly loosens its link to the country's history. The common cultural

interest is that this particular stone was the beginning of our understanding of the Egyptian hieroglyphs, which is indeed an incredible advancement of knowledge not only for Egypt, the United Kingdom, and France, but for the entire world community.

How could the Egyptian claim be resolved under cultural co-ownership? First, one might suggest that two perfect copies should be made. As a matter of fact, the French made a copy at the time and it would clearly, for historical reasons, be appropriate to use that very same copy. The difficult question is of course: who shall be entitled to the original? I would tend to propose a circulation of the original between the parties and a change of location every four months or every year. The expenses of the circulation, as well as of the execution of the copies, would be borne in equal shares by the three states of Egypt, France, and the United Kingdom.

A multilateral agreement could, it seems to me, be relatively easily entered into and solve the questions of loan, restoration, insurance, termination, and day-to-day running of the co-ownership. The applicable law might be a bone of contention as the three involved legal systems have quite different rules on ownership, so applying a third country's legislation as being "neutral" might be a solution. And an arbitration clause rather than a choice of jurisdiction clause, should clearly be preferred.

The simplicity of the above-mentioned clauses seems to contrast with the difficult and sometimes tense atmosphere surrounding the claim for the restitution of the stone. For instance, in 2003, Zahi Hawass, the then Egyptian Secretary General of the Supreme Council of Antiquities, affirmed, "Otherwise I will have to approach them using a different strategy... The artefacts stolen from Egypt must come back."[48] Of course, the involved parties would have to show a minimum of goodwill and accept competing claims over the stone. But, with that in mind, an agreement on the cultural co-ownership by the three countries involved might be easier to achieve than expected.

CONCLUSION

There is much talk today about the cultural heritage of mankind, promoted in several of the UNESCO conventions, including those of 1954 and 1972. That some specific objects belong to mankind and its common cultural heritage should be of little doubt, be it the Rosetta Stone, the Parthenon Marbles, the head of Nefertiti, the mask of Montezuma and many other, perhaps less emblematic, objects. The fact that a particular object belongs to mankind's heritage does not, however, mean that it should not be legally owned by one or several parties or states. And, before they become part of the *res commune* of humanity, an intermediate step, after a purely nationalistic and unilateral claim on them, might be to consider that these pieces of our common heritage belong to several of the states involved.

A cultural co-ownership could possibly be the best way to solve relatively short-term claims and to enable that in the long run their possession be shared by several of those involved. This would hopefully enable a satisfactory and viable conciliation of the interests in presence.[49]

ENDNOTES

1. Although many cases can be cited in this respect, one of the most prominent ones was the *Medici* affair, subject of several publications, among others Watson and Todeschini 2006. The matter was followed up with regards to US museums by Felch and Frammolino 2011.

2. The seminal example of this is the case of the Parthenon marbles. The bibliography on this is huge, see among many St. Clair 1998.

3. One can refer in this respect to the case of the Venus of Cyrene discovered in today's Libya when Libya was an Italian colony. See Chechi 2008.

4. Examples here are also numerous. Perhaps the Altmann litigation on the Klimt paintings is one of the most well-known cases, especially given that a film was released recently on the story: *Woman in Gold*, by Simon Curtis (2015).

5. Schönenberger 2009, 56–74.

6. Ibid., 94–137.

7. Steinauer 2012, note 1002 ff.; Foëx and Marchand 2010, 168–69.

8. Steinauer 2012, note 159 ff.; Foëx and Marchand 2010, 172–74.

9. See the results of the ArThemis research: many cases start with litigation, but do not necessarily end with a court decision. Renold 2012, 289.

10. See Nathaniel Herzberg, "Caché, volé, racheté: l'histoire folle d'un manuscrit de Sade," *Le Monde,* 1 October 2012, http://www.lemonde.fr/livres/article/2012/10/01/cache-vole-rachete-l-histoire-folle-du-manuscrit-de-sade_1767353_3260.html (accessed 30 July 2015); "Le plus sulfureux des manuscrits de Sade, de retour à Paris," *Le Monde,* 4 April 2014, http://www.lemonde.fr/livres/article/2014/04/03/le-plus-sulfureux-des-manuscrits-de-sade-de-retour-a-paris_4394810_3260.html (accessed 30 July 2015).

11. N. de N. v. N. et al., Swiss Supreme Court, 28 May 1998, Semaine judiciaire 1999, 1–6.

12. On this occasion a beautifully illustrated book was published by the family on the collection: "Eros Invaincu. La Bibliothèque Gérard Nordmann" (see 116–23 for the Marquis de Sade manuscript and its first editions).

13. Renold 2004, 251–63.

14. Menzel v. List, 267 N.Y.S. 2d 804 (1966); see Merryman, Elsen, and Urice 2007, 24–29.

15. Union de l'Inde c. Crédit Agricole Indosuez (Suisse) SA, ATF 131 III 418, JdT 2006 I 63.

16. Renold 2006, 361–69.

17. Renold 2012, 289.

18. See the 2006 International Law Association "Report of the Seventy-Second Conference" (Toronto), 337–38.

19. See the International Law Association Resolution no. 4/2006, Cultural Heritage Law (Section 3) [emphasis added].

20. See Nafziger, Patterson, and Enteln 2010, 610; Nafziger and Patterson 2014, 16–17.

21. The agreement between the Met and Italy was reproduced in the *Journal du Droit International* (Clunet) 2009, 527–29. Since then several agreements have been entered into by Italy with the Boston Museum of Fine Arts, the Getty Institute, the Cleveland Museum, the University of Princeton, etc.

22. The cases analyzed here are the subject of detailed presentations and analysis in the University of Geneva ArThemis database at www.unige.ch/art-adr.

23. The *Einsatztab Reichsleiter Rosenberg* (EER), established in 1940 and led by the fanatical anti-Semitic Alfred Rosenberg, was tasked with tracking, destroying, or transferring to Germany all artworks belonging to Jewish people or made by Jewish artists. See Palmer 2000, 110–11.

24. See Anne L. Bandle, Alessandro Chechi, and Marc-André Renold, "Case Landscape with Smokestacks — Gutmann Heirs and Daniel Searle," Platform ArThemis, Art-Law Centre, University of Geneva, http://unige.ch/art-adr.

25. See the Binding advice concerning the dispute over The Marriage of Tobias and Sarah by Jan Steen (no. 3.93) published by the Dutch Restitution Committee on 6 October 2008, http://www.restitutiecommissie.nl/en/recommendations/recommendation_393.html (accessed 30 July 2015); see the related press release, http://www.restitutiecommissie.nl/en/pressreleases/press_release_rc_393.html (accessed 30 July 2015).

26. See Chechi 2014, 191.

27. See the "Agreement Relating to the Return of the Teotihuacán Murals of 7 December 1981," in Merryman, Elsen, and Urice 2007, 368. See also Caroline Renold, Alessandro Chechi, and Marc-André Renold, "Case Murals of Teotihuacán: Fine Arts Museums of San Francisco and National Institute of Anthropology and History," Platform ArThemis, Art-Law Centre, University of Geneva, http://unige.ch/art-adr.

28. Berrin 2007, 13 [translated from French by the author].

29. See Palmer 2000, 17; see also, Chechi 2012, 163.

30. This notion was first discussed in Cornu and Renold 2012, 251 ff.

31. See Chechi 2014, 196–97.

32. See the agreement and related issues discussed and presented under Alessandro Chechi, Liora Aufseesser, and Marc-André Renold, "Case Machu Picchu Collection – Peru and Yale University," Platform ArThemis, Art-Law Centre, University of Geneva, http://unige.ch/art-adr.

33. "Memorandum of Understanding Regarding the UNSAAC-Yale University International Center for the Study of Machu Picchu and Inca Culture," *Yale News*, 5 June 2015, http://news.yale.edu/2015/06/04/universidad-nacional-de-san-antonio-abad-del-cusco-yale-university-memorandum-understandi (accessed 30 July 2015).

34. Anne L. Bandle, Raphael Contel, and Marc-André Renold, "Case Ancient Manuscripts and Globe – Saint-Gall and Zurich," Platform ArThemis, Art-Law Centre, University of Geneva, at http://unige.ch/art-adr.

35. Cornu and Renold 2010, 1–31.

36. Raphael Contel, Anne Laure Bandle, and Marc-André Renold, "Affaire Manuscrits Coréens – France et Corée du Sud," Plateforme ArThemis, Centre du droit de l'art, Université de Genève, http://unige.ch/art-adr.

37. Indeed the French ex-Minister of Culture Jack Lang said that in an interview on 11 June 2011 with the Yonhap News Agency.

38. See among others the reports of the UNESCO's ICPRCP at http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/committes-successful-restitutions/restitution-of-the-makonde-mask/.

39. Anne L. Bandle, Raphael Contel, and Marc-André Renold, "Affaire Masque Makondé — Tanzanie et Musée Barbier-Mueller," Plateforme ArThemis, Centre du droit de l'art, Université de Genève, http://unige.ch/art-adr.

40. See the Exhibition Catalogue "Von der Limmat Zurück an die Steinach — St.Galler Kulturgüter aus Zürich" (St. Gallen 2006).

41. 24 June 1995, 34 ILM 1322 (1995).

42. On that issue, see van Woudenberg 2012.

43. In that respect the distinction that one finds in the Swiss Civil Code between "*actes d'administration courante*" (article 647a of the Swiss Civil Code) and "*actes d'administration plus importants*" (article 647b of the Swiss Civil Code) could be of use here. In the first case each co-owner can perform such acts, whereas in the second case such acts can only be performed if a majority of the co-owners agree to them. On co-ownership in Swiss law, see Steinauer 2012, note 1115 ff.; Foëx and Marchand 2010, 235–37.

44. For a fascinating history of the Rosetta Stone, see MacGregor 2010, 209–14.

45. See Lacouture 1989.

46. See the Champollion Museum's website at www.musee-champollion.fr/decouvrir-le-musee/hors-les-murs/.

47. Maget 2009, 79.

48. Charlotte Edwardes and Catherine Milner, "Egypt Demands Return of the Rosetta Stone," *The Telegraph*, 20 July 2003, http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/1436606/Egypt-demands-return-of-the-Rosetta-Stone.html (accessed 30 July 2015).

49. Cornu and Renold 2012, 262–63.

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