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The Dja Dja Wurrung Bark Etchings Case

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A recent Australian case has clearly illustrated the tensions between export regulations and the circulation of important cultural works through international exhibition. So far such claims have involved efforts of heirs of collectors to seize works of art appropriated in another country and temporarily located outside that country for exhibition, such as the claim by the Altman heirs in the United States or of Schuckina in France—a situation dealt with in many cases by indemnity statutes which prevent their seizure. This case involved the sensitivity of indigenous people who regard the work in question as part of their cultural heritage.

Museum Victoria in Melbourne ran an exhibition entitled, Etched on Bark 1854, from March 18, 2004, to June 27, 2004.[1] The exhibition notice stated the following:

> The earliest surviving Aboriginal bark etchings in Australia, they are the only remaining examples of artistic work done by Kulin men from the Loddon and Murray Rivers during the nineteenth century. They included two bark etchings borrowed from the British Museum and the Royal Botanic Gardens, Kew.

Apparently the two etchings concerned in the case were originally exhibited by Loddon River landowner John Hunter Kerr in the Sandhurst exhibition in Bendigo in 1854. The bark piece from Kew, inscribed with figures, was donated by Kerr and exhibited in Paris at the 1855 Exposition Universelle. The etchings were originally acquired by Kerr near Lake Boort in the Bendigo region of western Victoria. It is believed that Kerr asked the Kooris[2] to prepare the two etchings for the Bendigo exhibition before they ended up in Paris. Exhibition curator Elizabeth Willis said the show, which also included some of Victoria's oldest images of Aborigines taken 150 years ago, demonstrated that good relations existed between Aborigines and the Scottish pastoralist Kerr.

The Dja Dja Wurrung Native Title Group's own history acknowledges that John Hunter Kerr's collection was dispersed to places unknown after being shown at a Paris exhibition. It is doubtful the bark etchings would exist now were it not for

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Figure 1. A schematic drawing of a bark etching of a hunting scene, made by a member of The Murray and Loddon Tribe in 1854, and now in the collection of the British Museum, London. Drawing by Lindsay Kerr, Royal Botanic Gardens, Kew, 2003. Source: British Museum.

their collection by Kerr and subsequent transfer to the Royal Botanic Gardens at Kew and then to the British Museum.

The object from Kew was described simply as "Bark with Aboriginal Drawings, South Australia" (sic). Although described, the drawing has not yet been fully interpreted. However, it seems in part to be a representation of a corroboree.[3] Kerr saw several corroborees, and was one of the first Victorians to photograph the ceremony.

The bark drawing was normally housed in the Centre for Economic Botany at Kew and was on display there in 1861; but it spent many decades languishing in a back cupboard. Only three bark drawings from southeastern Australia survive in museum collections. The two etchings from London were of great interest, because they were made relatively soon after European settlement. They are the only remaining examples from an extensive tradition of artistic work around the Loddon and Murray rivers in the nineteenth century. The third, held at Museum Victoria, is a later piece collected before 1874 from an indigenous Australian from near Lake Tyrell in the Mallee.

The bark drawing from Kew is featured on the inside of fire-blackened stringybark.[4] The bark was probably originally flattened out but has now curved again and is cracked in two places. It is tied with white tape to keep it together and prevent it from cracking further. Figures have been scratched into the smoke-blackened bark, probably with the thumbnail or a piece of bone. The outlines have been filled in, and it looks as if some facial features were scratched in as well. The

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drawing shows 13 human figures, 8 clearly male. Of these, five are wearing what appear to be emu feathers on their heads, and some have additional hair ornaments. Many of the figures are carrying weapons: clubs, boomerangs, or tomahawks. Some of the smaller figures are sitting or lying on the ground and are of indeterminate gender, and not all are clearly human.

North West Cultural Heritage Board spokesman Gary Murray said he understood that the objects had been insured for £900,000. "So from an economic point of view and, of course, we value them a little bit higher than that from a spiritual point of view and a physical point of view, they connect us to our country and there's no price on that."[5]

The Department of Environment and Heritage issued a certificate of exemption from export control in respect of the etchings under section 12 of the Commonwealth Movable Cultural Heritage Act 1986. Certificates of exemption allow Australian protected objects that are overseas to be imported into Australia and subsequently reexported. Owners of Australian protected objects located overseas are encouraged to repatriate them to Australia for display or sale. Objects imported for exhibition allow the Australian public access to elements of their cultural heritage that would otherwise be unavailable. Objects returned for sale allow Australian residents to purchase and return these objects to the Australian domain. A certificate provides owners with security that their objects can be reexported on completion of the exhibition or if the sale to a resident of Australia is unsuccessful.

However, an amendment to the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Amendment Act in 1987 provided that Victorian Aboriginal people could apply to the Victorian Minister for Aboriginal Affairs for an emergency, temporary, or other declaration if they considered that Aboriginal objects or places were under threat of desecration. (This was at a time when the Commonwealth considered Victorian legislation inadequate to ensure such protection.) The minister was also empowered to compulsorily acquire any Aboriginal cultural property if the minister was satisfied that it was necessary to maintain the relationship between Aboriginals and that object (see Section 21E [1]). Such acquisition would carry with it a right to compensation from the state.

The Dja Dja Wurrung Group used this legislation to obtain temporary emergency declarations from an inspector under the act, preventing the museum from returning the borrowed etchings to England.[6] They claimed traditional ownership of the items. Museum Victoria had contractual obligations to return the items to the institutions concerned as soon as the exhibition had finished but was prevented from doing so by the emergency declarations. The declaration was valid for 30 days, but eight successive emergency declarations were issued.

Negotiations having failed, legal proceedings were then instituted in the federal court by Museum Victoria and elders of the Dja Dja Wurrung people. In the Federal Court proceedings, Ryan J. took the view that the inspector lacked the power to make the second and subsequent emergency declarations. The case removed the protective declarations that operated on the objects.

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The Dja Dja Wurrung people then applied to the minister for a permanent declaration of preservation and asked the minister to compulsorily acquire the fire-blackened bark objects under section 21L of the act. Among other things in this case, the indigenous applicants sought a review of the minister's failure to decide about a section 21E declaration and sought to compel him to decide. The applicants were unsuccessful. The court also dissolved the injunction that restrained the museum from removing or permitting the removal of objects in question from Victoria. It was then possible for the museum to return the objects to the lending institution.

POSSIBLE IMPLICATIONS OF KEEPING THE OBJECTS

Dawn Casey, former director of the National Museum of Australia and present chair of the Community and Industry Advisory Committee of the Centre for Cultural Materials Conservation at the University of Melbourne, said in an advice to the Victorian government in relation to these artifacts, "In my opinion, the impacts of such a decision would include no further loans to any Australian museums including art galleries.... [N]otwithstanding the rarity and cultural and historical significance of the artefacts," the consequences of keeping them in Australia would "far outweigh the benefits." She warned that for the sake of the three disputed artifacts, 40,000 other indigenous objects and human remains held in overseas institutions "would most probably never be seen in Australia again ... Museums in Europe ... would cease to lend other indigenous people's cultural material to their countries of origin."[7]

The Commonwealth parliament has since adopted an amending bill, which provided that all declarations made in accordance with the act in the future will be subject to any certificates made under section 12 of the Protection of Movable Cultural Property Act 1986 authorizing the export of objects. This provision allows the grant of an export certificate in advance of the import, for exhibition, of material from overseas. However, the experience in this case has now led to a "drying-up" of such loans to Australian museums.[8]

SOME IMPORTANT FACTORS

In recent decades Australian museums with important holdings of Aboriginal material have been reaching out to Aboriginal communities to learn of their wishes in respect of the handling of such material. Many museums now have curators of Aboriginal descent who ensure proper communication with the relevant communities. Their perspectives may not be entirely in accord with the philosophy of the museum, and such tensions need careful handling.

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The person issuing the emergency declaration was an inspector appointed under the act. He is of Aboriginal descent. The emergency declaration came from outside the museum on behalf of certain elders of the Dja Dja Wurrung; it did not come from within the museum. The museum's board is advised by the Aboriginal Cultural Heritage Advisory Committee (ACHAC), and consists of representatives of various indigenous groups throughout Victoria; they are all of Aboriginal descent. The chair of that committee is also a member of the museum board and opened the Etched on Bark 1854 exhibition. He was later involved (in his capacity as chair of ACHAC and as member of the board) in the negotiations with the Dja Dja Wurrung elders who attended meetings with museum staff and board members at the museum to try to resolve the issue, in an attempt to avoid going to court to test the legality of successive emergency declarations. The emergency declarations did not have universal support within the Victorian indigenous communities, either at the time or later.

Dawn Casey, who spelled out clearly the implications of seizing such material when it arrives on exhibition, is a former director of the National Museum of Australia in Canberra and of Aboriginal descent. Under her direction an exhibition of the history of Australia, with a strong input of the Aboriginal view of this history, drew the anger of conservative elements of Australian society, such as the historian Keith Windschuttle, author of *The Fabrication of Aboriginal History*. His vigorously disputed work criticized the use of historical sources by scholars who have tried to estimate the genocidal impact of white settlement on the Aboriginal population of Australia. The controversy resulted in a review of the National Museum. Dawn Casey's appointment was not renewed, an event attributed by many to the controversy.

CONCLUSION

It is sad that the exhibition caused distress in the Dja Dja Wurrung and controversy within the Aboriginal community. The case shows how difficult it can be to adjust competing interests in such material.

ENDNOTES

1. Elizabeth Willis, the curator of the exhibition, has written an essay on the experience, "Etched on Bark 1854: Contested Historical Ground" www.museumsaustralia.org.au/dbdoc./Conf%2006%willis%20Concurrent.pdf, accessed April 3, 2006.

2. "Koori," a member of one of the Aboriginal tribes of South Eastern Australia.

3. A *corroboree* is a ceremonial meeting of Australian Aborigines. At a corroboree Aborigines interact with the Dreamtime through dance, music, and costume and ceremonies act out events from the Dreamtime. Many of the ceremonies are sacred and people from outside a community are not permitted to participate or watch.

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4. There are a number of trees popularly called *stringybark* in Australia. They all belong to the Eucalyptus family.

5. Statement to the Austrailian Broadcasting Commission, July 17, 2004, http://www.eniar.org/news/art19.html#b, accessed April 3, 2006.

6. The litigation is reported in *Museum Boards of Victoria v. Carter* [2005] FCA 645 May 20, 2005; *Carter v. Minister for Aboriginal Affairs* [2005] FCA 667 923 May 2005.

7. Georgina Safe, "Artefact Stoush Risks Future Loans," *The Australian*, October 22, 2004.

8. The information about this case has been gathered from the following sources: Parliamentary Library Bills Digest, Information analysis and advice for the Parliament November 30, 2005, no. 67, 2005–06, ISSN 1328-8091; and the following web sites accessed April 3, 2006: www.eniar.org/news/repat29.html www.theage.com.au/articles/2004/09/21/1095651324188.html?from=storyrhs http://melbourne.museum.vic.gov.au/exhibitions/exh_past_show.asp?ID=561440 www.theage.com.au/articles/2004/09/21/1095651324188.html?from=storyrhs www.theage.com.au/articles/2004/09/21/1095651324188.html?from=storyrhs www.eniar.org/news/repat24.html; http://www.eniar.org/news/art19.html#aa

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