Photo from The Menil Collection. © Paul Warchol

BLOCKCHAIN AND CULTURAL HERITAGE

New ways of imagining the restitution of objects

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The 2018 Sarr Savoy Report, commissioned by French president Emmanuel Macron, energised the ongoing conversation about the restitution of cultural artifacts. Among their many findings Felwine Sarr and Bénédicte Savoy recounted that 95% of objects of African cultural heritage reside outside of the African continent. Hundreds of thousands of these objects can be found in European museums. In 2020, Arts Council England announced that they were revising the U.K guidance to museums and galleries on reparations and restitution. In global art markets, there appears to be more press scrutiny of objects coming to auction—and continued consideration of longstanding repatriation issues such as the debated return of the Elgin Marbles from the British Museum to Greece.

Because blockchain is a trusted yet decentralised ledger of ownership

In our work, we have considered novel and exciting solutions to these problems of restitution that are enabled by blockchain technology. While blockchain is perhaps best known for its association with cryptographic digital currencies such as bitcoin, the underlying structure of blockchain arguably offers many avenues of new approach to restitution. Because blockchain is a trusted yet decentralised ledger of ownership, it can form the underlying governance and registration of objects. Importantly, blockchain can allow stakeholders in these restitution claims to "split the rights stack," meaning to separate out the different dimensions of ownership including legal title, physical possession, exhibition rights, cash flows, and shares in investment proceeds. These potential solutions open up circulation of objects in art markets and new means of ethical and shared consideration of the return of these objects.

We model our inquiry after the unusual case of the Lysi frescoes. In 1983, the U.S.- and Paris-based philanthropist and collector Dominique de Menil was offered what were clearly looted frescoes. Recognising the significance of the work and deeply concerned that the frescoes would be destroyed, she feigned initial interest in purchasing them and then launched an independent inquiry to identify the works' rightful owners. Working with a former U.S. attorney general, de Menil identified Cyprus as the rightful owners. Cyprus had photographs of the frescoes in situ in the church of St. Thermanianos at Lysi, a part of the Autocephalous Greek Orthodox Church of Cyprus.

Figure 1 – The Chapel at Lysi. Courtesy: Laurence Morrocco

The Church of Cyprus and the Menil Collection reached an unusual and, one might argue, visionary agreement. The Menil Collection, located in Houston, Texas, formed a separate legal nonprofit entity called the Byzantine Fresco Foundation (BFF). The BFF and the Church of Cyprus entered into an agreement by which the Church of Cyprus was legally recognised as the owner of the frescoes. The BFF undertook purchase and restoration at its own expense—surpassing $1 million (in 1983 dollars, $2.5 million in today's dollars). In exchange, the Menil would have rights to exhibit the frescoes for 15 years before returning them to Cyprus. In accordance with the agreement, the Menil also built a consecrated Greek Orthodox chapel to house them.

Figure 2 – Byzantine Fresco Chapel and museum. Courtesy: The Menil Collection.

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The agreement between the Menil and the Foundation split the ownership and exhibition rights. The clarity around assignment allowed the parties to renegotiate. For example, the conservation process was so involved that the Menil was given an extension on its exhibition rights to exclude the multi-year process of repairing and restoring the frescoes. When the frescoes were indeed returned at the end of the fifteen years, it was not possible to return them to their original home in the chapel at

Lysi. The surrounding area was still under military contestation. Because the frescoes had been encased in a metal dome for their protection, the chapel would have had to be disassembled to reinsert the frescoes in their original home. Instead, the frescoes went to a museum.

This story is rare in the universe of cases of illegally sourced cultural materials. An engaged and vigilant philanthropist orchestrated a global research effort and then managed, with her counterparties, to negotiate an inventive multi-institutional collaboration. Although those factors are not directly replicable, they point to fundamentally new ways forward in the complex and sometimes frustrated international negotiations over looted, stolen, and otherwise taken objects of cultural heritage. Although these negotiations are often presented a zero-sum—the Elgin Marbles can be in England or Greece in the same way that only one team can win the World Cup—the Lysi frescoes story points toward new forms of collaboration and cooperation that depend on a more kaleidoscopic view of these artifacts of heritage. While the Elgin Marbles case may always be contested, in so many circumstances there are more solutions to the problem than the location of the physical artifacts. Blockchain enables new conversations around these pathways forward.

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This technology exists in a very specific and developed international legal context. The 1954 Hague Convention governs the return of cultural patrimony taken during war, while UNESCO governs cultural heritage taken during peacetime, and UNIDROIT. In addition, the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership and Cultural Property creates a more acute sense of complexity and restriction for objects acquired after that date. Accordingly, we see substantial pressure in markets and also in museum bequests or donations as those objects acquired after 1970 are naturally reaching a life-span limitation on their ownership by the acquiring party.

In applying blockchain technology, a few features of the technology are particularly important. First, it is registrarial in its nature. The founding purpose of blockchain was to secure trust in digital information without requiring trust in a central authority. (Cryptocurrencies such as bitcoin were first developed to incentivise the keepers of the many interconnected copies of the ledger.) What is important about blockchain's decentralised structure is its potential radical neutrality where histories of colonialism and hegemonic power are concerned. That is not to say technology is neutral; it is not. Access to technology is also not neutral. Yet if one does not have to trust a central authority, then the record of who owns, exhibits or pays restitution does not need to be held by one country, one institution, or even one intergovernmental body. It can be held by the ledger itself.

In our research, we have proposed four use cases that blockchain enables:

1. **The ownership-exhibition split**
   The original case study of the Lysi frescoes illustrates the possibility of splitting exhibition and ownership rights. If we take a contemporary dilemma, such as the Elgin Marbles, we can imagine—even with difficulty—a situation in which splitting ownership and exhibition helps

to resolve an otherwise intractable dispute. For example, the British Museum could return ownership to Greece but keep possession for a fixed term. As an additional variation, the British Museum could also return cash flows during the exhibition term. These monies could be used for restoration or preparation for the repatriation of the objects at the end of the exhibition term. This timeframe gives both institutions and countries a period of reflection, planning, and adjustment. These solutions are likely to involve a fixed term or a revenue share, or both.

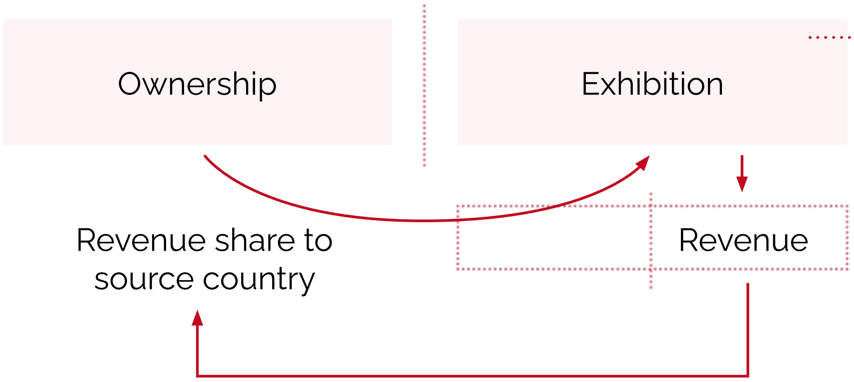

Figure 3 – Split of ownership and exhibition rights with cash flows to source country.

2. Portfolio of objects

The case of the Elgin Marbles has a singularity. Although there are many pieces of the statuary, they function as one unified object. In many other cases, there is a portfolio of objects at stake. With a portfolio or large group of objects, other possibilities arise. For instance, consider the 70,000 objects of African heritage that according to the Sarr Savoy Report, are held in the Musée du quai Branley-Jacques Chirac in Paris. The museum can return all objects and then the source country can gift some back. Or, the museum can return ownership to all objects and negotiate some exhibition rights with associated cash flows. Particularly since some of these objects are in storage, many different solutions could leave all parties better off. These solutions entail asking hard questions: Is it better to have all of the objects or to have some and then money for education, infrastructure, and new cultural industries? In this case, it is especially important that the negotiation and governance mechanisms respect the autonomy of source countries and that rates of pay, where assigned, are structural supports and not only token or symbolic gestures unless expressly intended to be the latter.

3. Registry at archeological digs

Perhaps the most straightforward, if also future-looking application of blockchain is the registration of objects at the point of discovery in archeological digs. Objects that are registered can no longer be looted and sold into markets. In addition, fractional ownership and rights can be allocated at that stage and recorded on the blockchain. If in the past researchers might have taken artifacts outright, now they might claim possession and certain other use rights but not legal ownership. Ownership and financial participation might be assigned variously or collectively to individuals, communities, organisations, or nation states.

4. **As certification for sale or donation**
   Lastly, these blockchain solutions can aid markets as well as museum restitution networks. There is no easy international mechanism to return artifacts, and there is also little infrastructure to develop negotiated solutions. If a collector, for instance, holds ten objects, they may be able to negotiate a partial return of physical objects, a partial ability to sell some, and a partial or fractional claim on the proceeds. If in countries such as the United States that have tax credits for donation, donation through charity and other tax structuring may financially advantageous while accomplishing the social mission of return. These solutions require careful negotiation and governance, as well as expert advice in tax.

In conclusion, blockchain may manifest as a tech phenomenon of our time, but its hype should not overshadow its real registrarial heft and potential toward the infrastructure of how individuals, institutions, countries, and even markets support the ongoing restitution of cultural heritage and the stewardship, understanding, and enjoyment of these artifacts. What is most striking to us in our analysis is the need for care and curiosity toward the entire ecosystem of antiquities, including gray-market actors and even criminal activity. Ethics can still be honoured while engaging with the complexity and nuanced repair work of decolonial process and restitution generally. With this human work of bringing people together, we can allow new technologies to support imaginative and inventive ways to steward the integrity of heritage into the future.

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Amy Whitaker teaches visual arts administration at New York University. This essay draws on a co-authored paper published in *International Journal of Cultural Policy*, first presented at the ENCATC Congress 2019, Burgundy Business School, Dijon, France. Amy is the author of two books *Art Thinking* and *Museum Legs* and the forthcoming *Economics of Visual Art* (Cambridge, 2021). Her work on fractional equity appears in *Management Science and The Art Newspaper*. Prior to NYU, Amy worked in museums including the Guggenheim, MoMA, and Tate and for the investment firm D.E. Shaw and the economics start-up Locus Analytics.

Note

For a more in-depth discussion of these ideas, see:

Whitaker, A., Bracegirdle, A., de Menil, S., Gitlitz, M.A. and Saltos, L. (2020). Art, antiquities, and blockchain: New approaches to the restitution of cultural heritage. *International Journal of Cultural Policy*. https://doi.org/10.1080/10286632.2020.1765163.

Co-authors of this paper have founded AABC, The Art, Antiquities, and Blockchain Consortium, a U.S. 501c3 in formation. For more information about the group or to enlist their advisement and consultancy, please email Anne Bracegirdle (abracegirdle@aabconsortium.org) and Susan de Menil (sdemenil@aabconsortium.org). For correspondence regarding the IJCP paper or this article, please write to Amy Whitaker (amy.whitaker@nyu.edu).