Beyond “To Return or Not To Return” – The Benin Bronzes as a Game Changer?

Abstract: “These works notably stand among the highest heights of European casting”. This is what Felix von Luschan, the curator of the ethnographic museum in Berlin, wrote in 1919 in his book on the Benin objects. Their looting in 1897 foreshadowed a scramble for cultural colonial objects in the heydays of colonial collecting. Today, they stand at the forefront of discussions on return, including new forms of consent, ownership, or re-appropriation. They constitute a special case and have triggered a novel race for returns. This contribution traces some of the violence and colonial stereotypes underpinning their taking, different perceptions of the objects, and contemporary ethical and legal frames for their return. It argues that the contemporary debate over the Benin Bronzes reflects certain changes in the attitude towards return in general; changes which are grounded in the interplay between justice, ethics, and human rights. It challenges the argument that takings were acceptable according to the standards of the time. At the same time it cautions that the current movement towards return should not turn into a cosmetic ritual of self-purification, which detracts from necessary reforms at the macro-level.
Keywords: Benin Bronzes, colonial violence, object biographies, restitution and return, museum ethics, national guidelines, relational cultural justice

Introduction

“I have come to take you home”. This was the title of a performance delivered by Nigerian artist Peju Layiwola in November 2021 at the Rautenstrauch-Joest-Museum in Cologne during the exhibition “RESIST! The Art of Resistance”. The title is borrowed from a poem dedicated to South African icon Sarah Baartman,¹ whose remains were returned from France in 2002 after 170 years of display in anthropological museums. This time the call for return referred to the Benin Bronzes, which were taken in a “punitive exhibition” in 1897 from the Oba of Benin in modern-day Nigeria.² They have become a poster-child of looted colonial art.³ They are representative of a paradigm shift relating to restitution and the return of “cultural colonial objects”.⁴

Restitution and return claims go back to the first half of the 20th century and the debates on an international cultural order in the 1970s.⁵ However, for decades they have been followed by talk without action, or been treated as a matter of comity or cultural cooperation, reflecting the benevolence of the holding coun-

⁴ The term “object” is misleading since it may conceal the various identities of artefacts, including their embodiment of personhood or sacred nature. It is used in a broad sense here and also covers “subjects/objects”. On the paradigm shift, see W. Apoh, A. Mehler, Mainstreaming the Discourse on Restitution and Repatriation within African History, Heritage Studies and Political Science, “Contemporary Journal of African Studies” 2020, Vol. 7(1), pp. 1-16. See also E. Bertho, Restitutions du patrimoine africain. Fictions et réalités, “Multitudes” 2019, Vol. 1(74), pp. 23-29.
Beyond “To Return or Not To Return” – The Benin Bronzes as a Game Changer?

The debate on colonial objects, or better “subjects/objects”, has remained in the shadow of the Holocaust and the return of Nazi-looted art. In the context of the struggle over colonial objects in the 1970s and beyond, former colonial powers have lobbied extensively for use of the term “return”, rather than “restitution”, in order not to set any precedent implying the illegality of historical takings.

Today, these developments are seen in a novel light. There is a growing trend in many former colonial powers, such as France, the Netherlands, Germany, or Belgium, and among museums (e.g., Smithsonian Institution, Metropolitan Museum of Art) and universities (e.g., Cambridge, Aberdeen) to question the status quo, interrogate provenance and conditions of ownership, and contemplate return or new forms of access or circulation. Art historian Bénédicte Savoy, who co-authored the French report on The Restitution of African Cultural Heritage commissioned by President Emmanuel Macron, qualified the return of the Abomey treasures – including three half-animal statues representing the former kings of Dahomey (Guezo, Glélé, and Béhanzin), from the Quai Branly museum to the modern-day Republic of Benin – as a historical tipping point in approaches towards returns, similar to the Fall of the Berlin Wall: There is a before, and there is an after.

Objects taken in the 1897 attack on the kingdom of the Oba of Benin occupy a central place in the restitution movement. They have triggered a “domino

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8 Many European powers feared that any act of restitution would imply that the initial “possession of the cultural property, historical archives, works of art etc.” was unlawful. See International Law Commission, Eleventh Report on Succession of States in Respect of Matters Other than Treaties, by Mr. Mohammed Bedjaoui, Special Rapporteur, May 1979, UN Doc. A.CN.4/322, para. 52.


effect”, which is reflected in, inter alia, the decisions by Cambridge, Aberdeen, or the Horniman Museum to return objects to Nigeria; the return of two brass plaques and a brass head by the Metropolitan Museum of Art in New York;\textsuperscript{14} the new return policy by the Smithsonian Institution,\textsuperscript{15} facilitating the return of 39 Benin objects; and the agreement on “unconditional” return between Germany and Nigeria on 1 July 2022, by which Germany agreed to transfer ownership to Nigeria “of all Benin Bronzes held in public museums and institutions in Germany”, i.e. more than 1,130 objects in total.\textsuperscript{16} Today, return is not only contemplated by countries which were involved in forcible takings, but also by countries which acquired objects through market transactions.

This shift appears to be driven not by just singular events, but rather by deeper structural changes which have occurred over past decades. It is partly the result of enduring resistance to takings. Return claims have been filed since the 1930s, have been repeated since the 1960s,\textsuperscript{17} and later pursued within the format of the Benin Dialogue Group.\textsuperscript{18} The basis for retention of colonial objects has been challenged by the Indigenous repatriation movement, which has gained broader recognition in settler colonial contexts since the 1980s,\textsuperscript{19} and more contemporary forms of protest such as the Black Lives Matter movement or Emery Mwazulu Diyabanza’s public actions to re-claim “stolen property” from Africa.\textsuperscript{20} The understanding of museums has also changed. There has been a move away from an encyclopaedic or universal understanding of museums, which was promoted in the 2002 Declaration on lines of the Arts Council England Help Restitution of Looted Asante Gold and Benin Bronzes?; “Modern Ghana”, 15 September 2022, https://www.modernghana.com/news/1183469/will-the-new-guidelines-of-the-arts-council-english.html [accessed: 25.09.2022].


\textsuperscript{20} He has been branded as the “Robin Hood of Restitution”. See K. Brown, Mwazulu Diyabanza, the Robin Hood of Restitution Activism, Has Been Fined for Removing a Congolese Funerary Statue From a Dutch Museum, “Artnet News”, 12 January 2021, https://news.artnet.com/art-world/mwazulu-diyabanza-netherlands-1936340 [accessed: 25.09.2022].
universal museums, towards a more critical museology which encourages critical encounters with provenance histories and new ways of engagement with objects, including multiple forms of access, new models of ownership or guardianship, and openness to return. Social media and digital transformation make it harder to hide objects in collections or to silence violent histories of takings and invoke pretexts or delay tactics. Transparency makes the continuing nature of the violence more apparent. It affects not only North-South relations, but also consciousness in the West. The possibility to reconnect to objects is crucial for both the identities and histories in the Global South and the transformation of knowledge and the confrontation of the colonial past in European societies. This trend is reinforced by the work of individual curators, who re-think the ways in which return may be understood as an act of repair or “future-making”, as well as by moves towards a cultural renaissance on the continent and the creation of new museums, such as the National Museum of Mali in Bamako, the Museum of Black Civilizations in Dakar, the national museum in Kinshasa, and the Edo Museum, all of which challenge the traditional narrative that objects cannot be adequately preserved or guarded in non-Western contexts.

This contribution analyses the shift from colonial takings towards return through the story of the Benin Bronzes. It develops: (i) their “dual” face as a symbol of looting and colonial violence on the one hand, and as drivers of social transformation and a cry for justice, acknowledgment of wrongs, and return on the other. It shows that there is a certain “mirror effect”. Historically, their taking paved the way for a scramble for cultural objects in the heydays of colonial collecting and a quantum leap in the recognition of African objects and artefacts as art.


23 On 24 August 2022, the 26th ICOM General Conference approved a more cautious museum definition, which refers to the mandate of museums to “foster diversity and sustainability”.


26 As Sarah Van Beurden has shown in her study of the Congo, many “objects” have undergone social transformation in the colonial era. They constituted “artefacts of science, players in the construction of narratives about the ‘civilizing mission’, and eventually art”. See ibidem, p. 473.

they stand at the forefront of a development in the opposite direction, namely the move towards return. This contribution examines two dimensions of this development: the turn to (ii) ethical guidelines and (iii) underlying legal models of responsibility. This entire process demonstrates how developments in ethics and law challenge the “standards of the time” argument, i.e. the claim that takings were acceptable according to the ethics or laws of the time they occurred. It shows, in a powerful way, that returns may be grounded in both wrongful agency and concepts of relational justice, namely the contemporary relationship to objects, and their cultural significance to their societies or communities of origin. It then develops: (iv) features of a relational cultural justice approach, which seeks to overcome traditional dichotomies between cultural nationalism and cultural internationalism. In conclusion, it offers reflections over how to strengthen relational approaches towards return beyond the case of the Benin Bronzes.

The “Dual” Face of the Benin Bronzes

The story of the Benin Bronzes illustrates the changing identities and social biographies of cultural objects throughout the colonial period. Their taking marked a hallmark in the history of cultural dispossession. It not only constituted a brazen taking of property, but an attack on history and identity – an attack which involved orientalising and the “othering” of cultures. Each bronze head represented an Oba (King), recording chronology back to the 12th century. The looting occurred only two years before the 1899 Hague Peace Conference, which protected cultural property as a category of civilian property and prohibited the pillaging of towns or places more generally.
Beyond “To Return or Not To Return” –
The Benin Bronzes as a Game Changer?

Traditional cultural property lenses, which approach artefacts through the perspective of ownership, are ill-equipped to capture the complexity of the objects. As social anthropologist Alfred Gell has argued, objects are social agents,\textsuperscript{35} which can have an agency of their own\textsuperscript{36} and create links between past and present. They acquire a specific cultural biography\textsuperscript{37} “as they move through different hands, contexts, and uses”.\textsuperscript{38} Their taking creates different types of “entanglements”, to borrow from Nicholas Thomas’ characterization of collecting practices in the Pacific region.\textsuperscript{39} It leaves a void in the place of origin. Their translocation opens space for new meanings, object conversions, or “necrographies”,\textsuperscript{40} i.e. the gradual loss of meaning or amnesia.

The Benin Bronzes have a “dual” face: they embody both the structural nature of colonial injustice – which reinforced the scramble for cultural objects and their commodification in the first two decades of the 20th century – as well as attempts to enable new types of engagement with cultural takings.

The taking was justified as part of a British “punitive expedition”. This very term shows the complicity of law and legal semantics in cultural takings.\textsuperscript{41} Nigerian scholars speak of “invasion” (\textit{Osarumwense})\textsuperscript{42} or “annexation” (\textit{Obinya}),\textsuperscript{43} since the categorization as a “punitive expedition” conceals the real underlying narrative, namely that people of Benin resisted “British interference in the affairs of a sovereign and independent nation”.\textsuperscript{44}

The attack was carried out after failed attempts by the British Empire to negotiate access to palm oil and rubber with the King of Benin. It was officially justified on two grounds. The first was the failure of the Oba of Benin to abide by a treaty-
-derived obligation to suppress human sacrifice, slavery, and denial of trading rights. It illustrates how the human rights discourses over “obligations” and arguments of “civilization” were used as a pretext to justify forcible intervention. It is unclear to what extent the Oba or his entourage understood the treaty as an instrument giving up royal rights or privileges. The agreement, concluded in 1892, simply contains an “X” in place of a signature by the Oba. The second ground was retaliation against an ambush on a British party in 1896, which became known in the British press as the “Benin massacre”. The British contingent sought to enter the city during a sacred period, the Igue festival. The Oba had sent messages not to approach Benin, but the warning was disregarded.

The following intervention, which resulted in the looting of Benin City, was branded as a counter-insurgency operation. It was carried out by around 5,000 men, with the support of 10 warships. During the raid, British forces removed several thousands of “bronzes”, including artefacts made from other material. They were collected as trophies and sold for personal profit or to cover the costs of the “expedition”. Their removal was planned in advance. According to documentation in Nigeria’s National Archives, Captain Phillips had written to Britain’s Foreign Office in November 1896 that he had “reason to hope that sufficient ivory may be found in the king’s house to pay the expenses in removing the king from his stool”. Diary entries and photos from soldiers at the time confirm that the removals were an act of looting. Many of them were shared by soldiers or sold to cover the costs of the expedition.

The looting caused long-lasting physical and emotional damage that is difficult to repair. For instance, Cameroonian philosopher Achilles Mbembe has argued in his *Critique of Black Reason* that this form of cultural “expropriation” created sentiments of inferiority and “humiliation” in formerly colonized societies, with ongoing effects until the present.

Seretse Khama (1921-1980), former President of Botswana, stressed the link between culture and the past in striking words:

We should write our own history books to prove that we did have a past, and that it was a past that was just as worth writing and learning about as any other. We must do this for the simple reason that a nation without a past is a lost nation, and a people without a past are a people without a soul.

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47 E. Eyo, op. cit.
48 House of Commons, Select Committee on Culture, Media and Sport, op. cit.
49 See D. Hicks, op. cit., pp. 167 et seq.
After their taking, the Benin objects acquired various identities. Soon after their arrival in Europe, the bronzes were quickly dispersed throughout Europe and North America. In Britain they were first celebrated as objects of triumph and prestige. They reinforced the colonial narrative of the victory of “civilization” over the inhumane and barbaric rule in the Kingdom of Benin. They were initially perceived as artefacts of “savages”. The Commissioner and Consul-General of the Niger Coast protectorate, Ralph Moor (1860-1909), who played a key role in the takings, described some of the items found as “hideously-constructed brass heads” and viewed them predominantly as “trophies” or “curios”. Initially, it was questioned whether they originated from the Edo culture. For instance, German archaeologist Leo Frobenius (1873-1938) was persuaded that they were of Greek origin. He noted in 1913: “I was moved to silent melancholy at the thought that this assembly of degenerate and feeble-minded posterity should be the legitimate guardians of so much loveliness”. When it became clear that they were indeed from Africa, they reinvigorated the hype for colonial collecting and challenged common European stereotypes of Africa.

Collectors soon expressed interest. Many of the objects brought to Britain were sold at public auctions in London as early as in 1898. Emerging ethnological museums prepared “wish lists of objects” or instructions for takings. Experts joined colonial missions to facilitate acquisition and/or document provenance. The objects themselves went through a process of conversion. Their violent acquisition became secondary, and they gained a different meaning. They were no longer treated as sacred or historical objects, but became commodified objects for collection. They were appreciated for their rarity, their craftsmanship, and their physical beauty. In the 20th century they gradually became considered as art. Felix von Luschan (1854-1924), the curator of the ethnographic museum in Berlin, wrote in his 1919 book on the Benin objects: “These works notably stand among the highest heights of European casting”. They quickly turned into “the most highly prized of all African art”. They became a source of inspiration for modernist artists. They were re-branded as international heritage. They have multiple meanings and identities: They are objects of national prestige to some (e.g. the British Museum); de-colonial symbols, illustrating the horrors of colonialism or anti-colonial resistance to others; sacred or historical objects to local communities; and global objects as works of art.

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54 Dispatch from Consul-General Moor to the Marquess of Salisbury, Benin City, 24 February 1897.
57 E. Barkan, op. cit., pp. 53, 36. Auction prices for Benin Bronzes have increased rapidly, reaching up to £10 million.
More than 120 years later, the bronzes have taken on another pioneering role for social transformation: They are turning into the public face of colonial injustice and embodiments of the shifting attitudes towards return. The changing policies of museums towards return mark a significant rupture with the stalemate of past decades. In 2006, the Benin Dialogue Group was created in order to advance discussions. Initially, the Group was reluctant to express a clear commitment to return. The initial focus was on “sharing of the cultural heritage through loans or common exhibition projects”. A breakthrough occurred at the 2019 meeting in Benin, which envisaged the establishment of “a new Royal Museum to reunite in Benin City the most significant of Benin’s historical artefacts”. This led to the creation of a Legacy Restoration Trust under the umbrella of the Edo State Government, whose main project is the construction of the planned Edo Museum of West African Art in Nigeria. The plan for the new museum paved the way for coordinated talks on return and transfer of ownership. It alleviated concerns by holding institutions regarding the safety and preservation of objects. Many of the objects are deemed to have found a new home in the newly built Edo Museum of West African Art in Benin City.

The shift in return policy is visibly reflected in the Joint Declaration on the Return of Benin Bronzes and Bilateral Museum Cooperation by Germany and Nigeria. It provides a novel consensual basis for colonial objects. It applies a two-step logic in order to break the impasses of past decades. It recognizes both “the great artistic, historical and current value of these artefacts for Nigeria and its present and future generations, particularly for the Edo people”, as well as “their universal importance for humankind”. It accommodates these multiple identities through the separation of legal and physical ownership. It authorizes “German public museums and institutions” holding Benin Bronzes to sign “transfer Agreements”, enabling

58 In 1939, Oba Akenzua II was required to buy back replica of royal stools that had been taken in 1897, since museums refused to return the originals. See A. Peraldi, Oba Akenzua II’s Restitution Requests, “Kunst & Kontext” 2017, Vol. 1, pp. 23-33.


62 It is partly financed by contributions from Germany and projects of the British Museum.

63 Joint Declaration..., Preamble.
“transfer of ownership” and “physical return of objects to Nigeria from 2022”, while maintaining the possibility for German public museums and institutions to continue to “display Benin Bronzes on loan” in agreement with Nigeria.

This approach reverses the logic of past decades. It changes the ownership title in light of the fact that the objects were “looted from the former Kingdom of Benin after its colonial occupation and acquired in the aftermath mainly through colonial trading networks”. At the same time it accepts that the “universal importance” of the objects may be accommodated through loans from Nigeria to collections in the West, shared exhibitions, and research or accessible display. The practice of “reverse loans” challenges the oft-repeated stereotype that return would lead to the emptying of Western collections – an assumption that proved to be wrong in the repatriation practices under the Native American Graves Protection and Repatriation Act. An important feature of the agreement is that it embeds returns in a broader policy of continued cultural cooperation, which has been promoted by relational ethics.

Developments in Ethics: Advances and Limitations

These changing attitudes towards retention and ownership coincide with an increase of ethical instruments to address the dilemmas of restitution and return. Ethical frames are convenient to fill in some of the gaps and silences left by cultural heritage instruments in relation to the colonial past. The turn to ethics is reflected in guidelines or policy principles, which have been developed by “specialy affected” countries such as the Netherlands, Germany, Belgium, and

64 Ibidem, p. 4.
65 Ibidem, p. 5.
66 Ibidem, Preamble.
67 Ibidem, p. 10.
69 See F. Sarr, B. Savoy, op. cit.
the Arts Council in England, or particular museums (e.g., the Smithsonian Institution), in order to deal with the colonial heritage of collections. They embrace a bottom-up approach to standard-setting or regulation which enables case-by-case solutions without setting firm legal precedents.

One common premise of contemporary initiatives is that they rely on the premise that the law is inadequate to address the challenges of return. They recognize that the collecting practices of the past were grounded in deep structural inequalities and require new critical approaches to history in the present circumstances. The Benin Bronzes are a clear-cut example of looting. However, there are many takings which are neither purely voluntary, such as gift exchanges or sale of objects produced for Western markets, nor clearly grounded in excessive violence such as punitive expeditions. Their taking is shaped by indirect violence or structural inequality, which casts doubt on the voluntary nature of dispossession or change of title. They may be referred to as “legally entangled objects”, i.e. as objects taken under unjust structural conditions, which produce unjust acts or outcomes. Ethical criteria provide space to broaden the frames of reference and accommodate such conditions.

New museum ethics and policies enable decision-making processes which take a broader perspective, focused more on justice than legality. They build on ideas, such as justice, fairness, and transparency, which are reflected in the Washington Principles on Nazi-Confiscated Art. In general they use two sets of criteria to assess cultural returns: justice-related criteria, which justify return by the wrongdoing involved; and arguments of cultural significance, which are more closely embedded in cultural rights. These criteria delegitimize the claim that return should be

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75 Smithsonian, op. cit.


79 On the notion of “entangled objects”, see N. Thomas, op. cit.

excluded since many of the takings were arguably acceptable in light of the standards prevailing of the time. But the existing initiatives differ considerably in terms of their framing and approach.

The most far-reaching example is the Sarr and Savoy report. It took the “structural injustice approach” all the way. It proposed a common stance for both return of objects taken by force as well as objects taken under conditions of structural inequality. It recommended not only the return of artefacts looted in “military contexts,” such as “punitive expeditions”; but also the return of objects acquired “under proven conditions of illicit trade” or through “scientific missions”, which embodied a “rationalized system of exploitation” comparable to the “exploitation of natural resources”. It supported a reversal of the burden of proof in relation to colonial missions and scientific “raids” in Africa between 1885 and 1960, according to which the irregular nature of the acquisition should be presumed in this period unless the museum is able to demonstrate that an object was acquired in Africa pursuant to a free, equitable, and properly-evidenced transaction. This approach has been criticized for its generalized treatment of colonial acquisitions and transactions. For instance, the 2021 German guidelines refuse to adopt a general presumption that “any acquisition during the era of colonialism was wrongful” since it is “problematic to deny that the communities of origin had any agency and to declare them all to be victims”.

Other guidelines focus to a greater extent on wrongdoing or concepts of law that shed doubt on the legality of the acquisition. For instance, the Dutch NMVW principles allow return in cases where the cultural objects were “collected/acquired in contravention of the standards of legality at the time”, or in circumstances where “the claimants were involuntarily separated” from the objects, due to lack of consent, duress (“forced sale”) or lack of authority of the former “possessor” to dispose of the object (e.g. “inalienable communal property”). The report of the Dutch Advisory Committee made unconditional returns dependent on proof (e.g., through provenance research) that the “objects came into Dutch possession against the owner’s will” with a “reasonable degree of certainty”. It lists “theft,

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81 F. Sarr, B. Savoy, op. cit., p. 54.
82 Ibidem, p. 61.
83 Ibidem, p. 57.
84 Ibidem, p. 58.
85 Guidelines for German Museums 2021, p. 83.
86 Ibidem.
87 NMVW Principles, § 4.2.
88 Ibidem, § 4.3.
looting, extortion or seizure of cultural heritage objects as spoils of war” as examples.\textsuperscript{90} It adds that in grey areas, such as gifts or sales in “contexts of power inequality”, it is “necessary to rely on the available information to assess the degree to which the transfer of possession was voluntary”\textsuperscript{91}

The German guidelines do not specify a definitive list of circumstances, but use similar parameters. The main test is whether “the legal and ethical standards of the time were already violated when the object was acquired, or if the circumstances under which it was acquired fundamentally contravene today’s ethical standards for museum acquisitions”.\textsuperscript{92} Relevant factors include whether the “object was taken from the original owner by the use of direct violent force”\textsuperscript{93} or as “a result of the colonial situation”, for example because “members of the communities of origin acted on behalf of the colonial masters”.\textsuperscript{94} The document recognizes that the “wrongful act” does not necessarily “have to have been committed by the staff of the museum itself or by German citizens”.\textsuperscript{95}

The Belgian principles take as a point of departure that “[a]ll colonial era collections were gathered in […] contexts of deep structural inequality” and postulate that “heritage institutions must be willing to relinquish the gains they made owing to these unequal relationships”.\textsuperscript{96} The Belgian draft law on the legal framework for restitution and return adopts a more narrow approach.\textsuperscript{97} It recognizes that assessment must go beyond the legality of the taking according to the standards of the time,\textsuperscript{98} but it lists “coercion or force” as the main examples of illegitimately-acquired objects which should be returned ex officio,\textsuperscript{99} while positing that objects whose status cannot be determined should remain in Belgian possession.\textsuperscript{100}

The Arts Council England’s guidance openly recognizes that return claims offer an “opportunity for museums to develop their collections knowledge and research, to build relationships with originating communities, [and] to open up di-

\textsuperscript{90} Ibidem, p. 55.
\textsuperscript{91} Ibidem.
\textsuperscript{92} Guidelines for German Museums 2021, p. 83.
\textsuperscript{93} Ibidem.
\textsuperscript{94} Ibidem, p. 84.
\textsuperscript{95} Ibidem.
\textsuperscript{96} Belgian Ethical Principles, § 1 and § 3 (2).
\textsuperscript{97} For a discussion of the background, see B. Demarsin, M.-S. de Clippele, Georganiseerde terugkeer van koloniaal erfgoed, “NjW” 2021, Vol. 449, pp. 706-715.
\textsuperscript{99} Ibidem.
\textsuperscript{100} Ibidem, p. 15.
logue around contested items”.\textsuperscript{101} It relies on principles of transparency, collaboration, and fairness to guide decision-making processes. It applies multiple criteria, including the significance of the object to the claimant (i.e. a country or community of origin, or to a past owner)\textsuperscript{102} and the conditions of acquisition, e.g. whether the removal occurred “in a way that was unlawful at the time or through a transaction entered into under duress or without consent”.\textsuperscript{103} It has been criticized for, \textit{inter alia}, its technical approach towards restitution and return, i.e. its lack of engagement with structures of injustice and the histories of colonial objects, and its insufficient distinction between unconditional and conditional returns. Kwame Opoku has openly questioned the relevance of the cultural significance requirement in cases of looting:

Why should I as African, Ghanaian, and Asante have to explain to an Englishman why an Asante sword in any British museum is significant for my people? […] Would a British museum official ask a Western claimant such a question?\textsuperscript{104}

One common feature of all the initiatives is that they openly challenge the traditional “salvage logic”\textsuperscript{105} which was used to justify the taking of many objects; namely the idea that objects were simply rescued from dying populations or from decay based on lack of care. They make it clear that rescuing an object does not provide a title for the guardian to keep it. The reliance on the two criteria, i.e. justice and cultural significance, extends the cases for restitution or return of objects beyond “looted art” or coercively-acquired objects. It justifies the case for redistribution of cultural objects based on both the conditions of takings and their relational significance in and throughout the world.

**Legal Underpinnings of Takings and Return: Three Models of Responsibility**

Many of the existing guidelines marginalize the legal foundations of ethical criteria. They recognize that ethical frames are important in order to address the limitations of law in relation to historical injustices created by the complexity of colonial relations or legal obstacles, such as time bars or the intertemporal rule, which requires

\textsuperscript{101} Arts Council England, op. cit., p. 2.
\textsuperscript{102} Ibidem, p. 14.
\textsuperscript{103} Ibidem, p. 15.
\textsuperscript{104} K. Opoku, \textit{Will the New Guidelines...}.
contemporary agents to assess past conduct based on the legal standards of the
time. At the same time they posit that the reality is more complex. The treatment
of cultural colonial objects is neither a purely moral nor a purely legal question,
but rather situated at the intersection of three different concepts: justice, ethics,
and human rights. It thus requires consideration of all three perspectives, i.e. “justice, morality, and human rights”.

The assessment of cultural colonial takings, such as the Benin Bronzes, is not
only governed by ethics, but also by process-related norms and legal requirements
in relation to their return. They provide an important legal foundation for ethical
instruments and challenge the idea that return is merely an act of comity rather
than something that is due.

There are three main legal approaches to assess the legality of takings or the
return of cultural objects: (i) past wrongdoing (the torts model); (ii) an ongoing struc-
tural relationship to a wrong (the unjust enrichment model); and (iii) rights of access
to culture (the human rights model). The first approach grounds responsibility in
human agency, such as that involved in the removal of cultural objects. The second
approach ties responsibility to implications arising from structural types of
injustice. The third approach derives responsibilities from the link between com-
unities and cultural objects. The combined focus on both past wrongdoing or the
involuntary loss of objects and contemporary relations towards objects, geared at
righting the future, counters the classical objection that modern-day responsibility
would blame “people living today” for the wrongs of the past.

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112 The Belgian principles refer to an “ethical responsibility heard in law”. See Belgian Ethical Principles, § 2.3.

The “torts model”: Remediing past wrongs

The first approach is the most classical approach. It is agent-based. It follows a torts model, based on perpetrator-victim schemes. The wrongdoer, i.e. the former colonial power(s), is responsible for “righting the wrong” to the former colonized subject(s).

This argument poses difficult challenges in light of the ambiguous or discriminatory nature of positivist law in the 19th century, which distinguished wars fought in Europe from colonial warfare.\textsuperscript{114} For instance, in the context of the negotiation of the Hague Conventions of 1899 and 1907, it was heavily debated to what extent the laws of war should apply in relation to “non-civilized entities”.\textsuperscript{115} Protection of cultural property was governed by double standards.\textsuperscript{116} At the same time however, colonial encounters were not a “law free zone”.\textsuperscript{117} Legally, there are at least two ways to establish a past legal wrong.\textsuperscript{118}

One possibility is to argue that certain cultural takings contravened the “principles of justice which guide the public conscience”, even in the absence of express general prohibitions.\textsuperscript{119} This argument does not simply apply today’s standards of justice to distant historical realities, since “principles of justice have [...] always existed in parallel to the laws at any given time”,\textsuperscript{120} and in particular in 19th-century international law. The protection of cultural objects was not only governed by treaty protections and “hard” customary rules of the laws of war, but informed by natural law, minimum standards of behaviour, and military ethics. The increasing codification and protection of cultural property suggests that colonial powers were governed at least by a “pre-modern realm” of natural law,\textsuperscript{121} and thus by greater positive legal obligations in the 19th century. Concepts of public conscience

\textsuperscript{114} The Lieber Code is replete with civilization narratives and distinctions between “civilized” and “barbarous armies”. Lieber Code, 24 April 1863, Art. 24.


\textsuperscript{118} For a different view, see A.A. Adewumi, op. cit., p. 240 (“the collections located in foreign museums should not, in our view, be regarded as illegal”).


\textsuperscript{120} See C. Joy, op. cit., p. 24.

\textsuperscript{121} F. Mégret, op. cit., p. 283.
and morality were not only moral categories, but part of the legal frameworks designed to ensure protection.

There is significant authority to make the argument that violent cultural takings, such as the Benin takings in 1897, violated minimum standards of protection and “principles of justice which guide the public conscience” even according to the standards of that time,122 or contravened local customs and practices prohibiting looting for personal gains or absconding with stolen objects from the enemy.123 They conflicted with the expected standards of behaviour under minimum principles of humanity, and with the principles of cultural protection and integrity asserted among “civilized” nations, such as the universalist arguments made by Antoine-Chrysostome Quatremère de Quincy (1755-1849),124 the Marquis de Somerueles case,125 or professional codes and practices. Certain forcible property takings can also be seen as treaty violations. Instruments such as the General Act of the Berlin Conference obligated the colonial powers to further “the moral and material well-being of the native populations”126 and “to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being”.127 Protectorate agreements typically involved obligations for both the colonial powers and local leaders.128 From the perspective of the Oba, the brutal looting of the city and spoliation of the Benin Bronzes may qualify as a violation of Britain’s general protective duty under the protectorate agreement.129

These conflicts were sometimes openly admitted. For instance, British Prime Minister William Gladstone (1809-1898) openly condemned the Maqdala raid in the British Parliament in 1871. He “deeply regretted” that the treasures “were ever brought from Abyssinia” and expressed sorrow that such “sacred and imposing

122 Ibidem.
125 J. Stewart, Reports of Cases, Argued and Determined in the Court of Vice-Admiralty at Halifax, in Nova-Scotia, Butterworth and Son, London 1814, p. 483 (The Marquis de Somerueles, 21 April 1813).
127 Ibidem, Art. 6.
symbols’ were “thought fit to be brought away by the British army”. Diary entries from agents, such as Marcel Griaule, show that the “collectors” were often acutely aware of the “enormity of [their] crime”, and simply decided to transgress expected norms out of opportunity, relying on the social context of colonial expeditions or in the name of the “objectivity” of science.

Another way to establish legal wrong is to look at cultural takings not only from a purely Western perspective, but also from the perspective of the context of other customs of the time, i.e. non-European practices. This argument takes into account the pluriversality of legal orders at the time. Various pre-colonial African customs reflect “principles” which can be found in modern rules of international humanitarian law. They sometimes formed part of “a genuine ethics of war which was taught to any young nobleman for his future calling as a warrior”. These customs protected, inter alia, sacred places (e.g. shrines, trees, ceremonial spaces) and their surroundings. For example, customs in Mahgreb countries protected places of worship from attack, based on a rule of conduct laid down by Hannibal in the Punic wars. Some tribes recognized the prohibition of looting for personal gain. African Indigenous law protected ownership and property entitlements, based on communal land tenure schemes and/or social customs and relationships. The existence of local customs or native forms of sovereignty challenges the perception that the acquisition of cultural colonial objects occurred in a legal vacuum, or was exclusively governed by European standards of colonial law.

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135 Y. Diallo, op. cit., p. 394.


question the taking of objects which are “not subject to individual ownership by anyone”, and “cannot justly be transferred by any individual”, including persons who belong “to the relevant culture”.140 This is gradually being acknowledged in contemporary international law. For instance, in settler colonial contexts, such as the US, Australia, or New Zealand, pre-colonial ancestral bonds between land and people are increasingly viewed as a form of “native sovereignty” (aboriginal sovereignty) that has not been extinguished by colonization.141

Structural (in-)justice: Return grounded in its contemporary relationship to a wrong

A second model, the structural injustice model, ties responsibility to a larger structural relationship with a wrong.142 This approach pays greater attention to the broader context of colonial injustice. It recognizes the identity-related nature of the removal of cultural objects, grounds responsibility in a contemporary view of a “wrong”, and may overcome some of the problems of non-retroactivity or inter-temporal law caused by classical agent-related models. This approach may enable restitution or return even in cases in which the conduct in question may have been permissible under the formal structures of law applicable at the time.

Continuing violations

The taking of objects, such as the Benin Bronzes, cannot be reduced to an ordinary property taking. For example, legal philosopher Wouter Veraart has argued that the takings were based on a “legalized structure of racial inequalities” and the “destruction of the cultural and ecological environments” of human beings.143 Bernadette Atuahene has developed the argument that property dispossessions qualify as “dignity takings” in cases where “the state takes property from a class of people that it considers sub-persons”.144 Following Atuahene’s theory, looting may not only be qualified as a removal of cultural property, but as a “dignity taking” that requires redress, i.e. an “involuntary property loss accompanied by dehumanization

or infantilization” and “community destruction”.\textsuperscript{145} Based on this approach, returns of cultural artefacts are a way of returning to the original owners and possessors the dignity and culture of their past, the taking of which marks an ongoing violation in contemporary relations. This human dignity argument is increasingly applied to justify the right to repatriate and to rebury human remains.\textsuperscript{146}

Unjust enrichment

Another avenue to address structural injustice is the concept of unjust enrichment. Holocaust historian and memory studies scholar Michael Rothberg has developed the notion of an “implicated subject” in order to emphasize the enduring responsibility of “those who have inherited or who have otherwise benefited from histories of perpetration”.\textsuperscript{147} In cultural heritage law, this idea is reflected, \textit{inter alia}, in proposals to ground the return of cultural objects removed under colonial or foreign occupation in unjust structures, namely the exploitation of unequal bargaining power in colonial contexts. For instance, Italian international lawyer Tullio Scovazzi has argued that cultural heritage law cannot be limited to existing treaties. He has defended the view that principles such as the preservation of “the integrity of cultural contexts” or “non-exploitation of the weakness of another for cultural gain”\textsuperscript{148} form part of the practices in the field which are necessary to address “shortcomings of multilateral treaties” regarding the return of cultural objects\textsuperscript{149} and “reach an equitable solution for each particular case”.\textsuperscript{150} This theory has been invoked in the context of the removal of objects during the Second World War in relation to objects which “left the possession of a person […] in circumstances deemed offensive to the principles of humanity and dictates of public conscience”.\textsuperscript{151} Scovazzi has applied the prohibition to “exploit weakness of another subject to get a cultural gain” not only to the Second World War contexts, but also to peoples subjected to colonial or foreign occupation.\textsuperscript{152}


\textsuperscript{146} C. Rassool, op. cit., pp. 653-670.

\textsuperscript{147} M. Rothberg, \textit{The Implicated Subject: Beyond Victims and Perpetrators}, Stanford University Press, Stanford 2019, p. 83.


\textsuperscript{149} Ibidem.

\textsuperscript{150} Ibidem, p. 19.

\textsuperscript{151} UNESCO Draft Declaration of Principles relating to Cultural Objects Displaced in Connection with the Second World War, 5 September 2007, UN Doc. 34 C/22, Principle II(iv).

\textsuperscript{152} T. Scovazzi, \textit{The “First Time Instance”…}, p. 18.
This approach makes it possible to take into account ethical and historical considerations which taint the acquisition of such objects based on their current implications, irrespective of whether or not the underlying transactions were “legal” in form in the past.\textsuperscript{153} It captures transactions in which colonial officials, museums, or private collectors exploited unequal bargaining power in colonial contexts, or deliberately closed their eyes to the history or conditions accompanying the taking of objects. It facilitates the requisite proof for returns, since it does not require a determination as to whether the particular action was legal or illegal according to the standards of the time.\textsuperscript{154}

Relational justice: The human rights-based approaches towards cultural heritage

The third and most contemporary model grounds responsibility in the relationship between people and objects, and the rights of people to access their culture. It is less concerned with the allocation of blame or culpability for past wrongs, but rather deals with the contemporary connection to objects. It is grounded in cultural heritage law, which has recognized the non-severability between people and objects since the 19th century,\textsuperscript{155} and modern strands in human rights law, which create “a positive obligation to take steps to protect cultural groups and communities in their exercise of [cultural] freedoms”.\textsuperscript{156} This approach recognizes requests for return as identity claims by communities. The guiding criterion is not so much to whom objects belonged in the past or where they are most visible, but rather where they “belong” culturally and socially today.

The important link between objects and people was first recognized in the context of self-determination. In a famous case concerning the return of a marble statue, the \textit{Venus of Cyrene} taken by Italian troops in Libya in 1913, Italian courts even held that the right to self-determination provides a customary law basis for the duty to return cultural objects removed as a result of colonial domination.\textsuperscript{157} Ana F. Vrdoljak has argued that the rationale for the “restitution of cultural objects

\textsuperscript{153} T. Scovazzi, \textit{Diviser c’est détruire...}, p. 370.

\textsuperscript{154} This logic is reflected, \textit{inter alia}, in the Dutch principles, which establish a balancing test for return of objects taken by other European powers. They state that the “guiding principle must be the redress of an injustice” regardless “of whether the Netherlands itself played a part in causing the original injustice, as the current owner of the cultural object it is the only party capable of rectifying that injustice”. Council for Culture, Advisory Committee on the National Policy Framework for Colonial Collections, op. cit., p. 7, Principle 7.

\textsuperscript{155} See A.F. Vrdoljak, op. cit., pp. 23, 26-27.


Beyond “To Return or Not To Return” – The Benin Bronzes as a Game Changer?

held by museums of former metropolitan and national capitals” is intimately linked to the right to self-determination under international law, including “a people’s ability to maintain, revitalize and develop their collective cultural identity”.158

Today, this approach is most visibly reflected in the growing recognition of cultural rights under human rights law and the development of the rights of Indigenous peoples. It is grounded in the right of access to and enjoyment of cultural heritage, which follows from the right to culture under Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).159 It is also reflected in the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society (the Faro Convention)160 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),161 the latter of which contains an obligation on the part of States to provide “redress” to Indigenous peoples “with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs”.162

As Evelien Campfens has noted, the novelty of this approach lies in the fact that it ties return to “the acknowledgement of a right to possess, access, or control certain involuntarily lost cultural objects on the grounds of their intangible heritage interests for specific people, independent of ownership”.163 It seeks to build and reinforce “relationships of respect and responsibility between people”, by recognizing the importance of cultural heritage to communities. It thereby goes beyond cultural nationalist approaches, which link return to sovereignty interests, such as the right of States to have a “key to their own history”.164 It facilitates return to sub-state actors, such as communities or individuals.

The Way Forward: Towards Relational Cultural Justice

One of the main innovations of the changing national or museum practices vis-à-vis the Benin objects is their contribution to a new model of cultural justice, namely a relational approach to restitution and return. This approach reflects develop-

158 A.F. Vrdoljak, op. cit., p. 300.
162 UNDRIP, Art. 11(2). In the Quimbaya Treasure case, the Constitutional Court of Colombia justified the duty to return on the basis of, inter alia, UNDRIP.
163 E. Campfens, The Bangwa Queen..., p. 106.
164 G. Robertson, op. cit., p. 30.
ments in critical museology\textsuperscript{165} and has been advocated in the Sarr and Savoy report.\textsuperscript{166} It is based on the premise that return is fundamentally about re-inventing relations, including re-assessment of historical relations and knowledge systems, and defining new pathways for objects. It breaks with the binary framing of return as a modern Shakespearean dilemma: “to return or not to return”. It takes into account that physical return is not always the “golden rule”\textsuperscript{167} or the most appropriate solution,\textsuperscript{168} but one among several options to reconcile competing interests, such as the typical divides between cultural nationalism and cultural internationalism.

The main point of the relational model is to find new ways of agreement towards contemporary forms of the ownership or display of objects. It relies on three elements: (i) the need to find a new contemporary basis of consent for “entangled objects”; (ii) the development of more inclusive procedures in line with rights of access to culture; and (iii) strategies to enable new object possibilities and engagement, including in the post-return stage.

New approaches towards consent

The first element of the relational justice approach, namely the need to establish new forms of consent, finds its basis in the three above-mentioned models of responsibility. It may be derived from both responsibility for past violations and contemporary rights of access to culture.

Cultural takings in the colonial period involve different forms of legal entanglement, ranging from takings under force\textsuperscript{169} or without consent to “objects whose acquisition was in breach of the colonial legal concepts and morality of the period”.\textsuperscript{170} It is unquestionably compelling to seek forms of consent for objects obtained through force or coercion, which violated past laws and standards of humanity, such as the taking of Benin Bronzes. For instance, Andreas von Arnauld has argued that even violation of ethical principles in cases of historical injustice may create a contemporary obligation to negotiate with the victims of historical injustice or their descendants, i.e. “meaningful negotiations in order to come to an agreed solution”.\textsuperscript{171}

\textsuperscript{165} C. Kreps, Museums and Anthropology...; eadem, Appropriate Museology...
\textsuperscript{166} F. Sarr, B. Savoy, op. cit.
\textsuperscript{169} See J. van Beurden, Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium, Amsterdam University Press, Amsterdam 2022, pp. 19, 71.
\textsuperscript{170} Guidelines for German Museums 2021, p. 58.
This argument may also be applied to certain objects acquired in contexts of colonial oppression, with an entangled voluntary consent. The importance of “free, prior and informed consent” is recognized in relation to cultural takings from Indigenous groups in settler colonial contexts.\textsuperscript{172} It may also be extended beyond settler colonial contexts, based on the application of general principles of cultural heritage law,\textsuperscript{173} such as the prohibition of loot and plunder or the duty not to benefit from the exploitation of peoples subjected to colonial or foreign occupation for cultural gain.\textsuperscript{174}

Legally, the need to establish new forms of consent may also arise from contemporary relations towards objects, namely human rights-based duties to provide access to culture. Such obligations may be derived from the right of people and communities to maintain and develop their cultural identity and enjoy access to their culture;\textsuperscript{175} the principle of “cultural integrity”;\textsuperscript{176} or the protection of “intangible cultural heritage”. These rights may trigger a procedural duty to seek a new contemporary basis of consent in relation to the status of contested colonial objects.\textsuperscript{177} The Prussian Cultural Heritage Foundation applied this logic in the context of return of the statue of Ngonso to Cameroon. It stated that return is not limited to looted objects, but can also be justified by the “special – especially spiritual – significance of an object for the society of origin”.\textsuperscript{178}

The two-step model towards return – which has been applied by Germany\textsuperscript{179} in relation to the Benin objects held in German collections and by Belgium in relation to objects acquired by force or as spoils of war\textsuperscript{180} – provides a new methodology to realize the duty to seek new forms of consent. The separation of ownership and return and the application of a phased-approach, starting with the return of ownership rights and subsequent discussion on physical return, breaks the traditional inequality in negotiations between holding countries and States and communities.

\begin{footnotes}
\item[172] Art. 11(2) UNDRIP.
\item[179] See Joint Declaration…
\end{footnotes}
requesting return. It provides a window of opportunity to find mutually-agreed solutions. It has been branded as a “pioneering model for the approach to looted art from the colonial period” by Hermann Parzinger, the President of the Prussian Cultural Heritage Foundation,\textsuperscript{181} or as a “Copernican proposal” by Thomas Dermine, Belgian State Secretary for Recovery and Strategic Investments.\textsuperscript{182} Such “immaterial returns” cannot and should not replace final consent, but they open room for a spectrum of possibilities. They may lead to agreement on the retention of certain objects or commitments to broader circulation, based on the importance or social value of objects.

Inclusive procedures

The second element of relational culture justice is an open and inclusive process concerning the past and future of objects, which goes beyond inter-state negotiation\textsuperscript{183} and offers possibilities for the participation of affected groups, communities, or stakeholders (e.g. descendants of former rulers). This entitlement may be derived from the participatory rights relating to the protection of cultural rights under international human rights law\textsuperscript{184} as well as specific cultural heritage instruments.\textsuperscript{185} In order to implement these rights it is however necessary to address the risks and pitfalls of returns. Existing experiences show that returns may “whitewash” responsibility towards the past; shift post-colonial continuities to the national realm;\textsuperscript{186} or create secondary conflicts in the societies of origin. The process of the return of the Benin objects reflects these challenges.


\textsuperscript{183} J. von Bernstorff, J. Schuler, op. cit., p. 576.

\textsuperscript{184} See Art. 15(1)(a) ICESCR and Art. 27 of the International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171. Art. 18 UNDRIP states that “indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions”.

\textsuperscript{185} See the Preamble of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003, 2368 UNTS 3, Arts. 2(3) and 7(1) of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005, 2440 UNTS 311, or Art. 3(8) of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

\textsuperscript{186} See with respect to Latin American returns, P. Losson, \textit{The Return of Cultural Heritage to Latin America}, Routledge, London 2022.
Beyond “To Return or Not To Return” – The Benin Bronzes as a Game Changer?

In Nigeria, the planned return of objects created disputes between the Oba of Benin, the Governor of Edo State, and the Federal Government. The contemporary Oba of Benin, Oba Ewuare II, argued that he is the proper owner of the cultural heritage of the Benin Kingdom and that the objects should be placed in a “Benin Royal Museum” at his court. He stated:

There is no alternative native authority and custodian of the cultural heritage of the Benin Kingdom outside the Oba of Benin, as constituted by the Royal Palace. I do not believe that the move by a privately registered company, the Legacy Restoration Trust Ltd. and the purported establishment of the Edo Museum of West African Arts (EMOWAA) are in consonance with the wishes of the people of Benin Kingdom.\(^{187}\)

The Nigerian government, in turn, argued that the Benin Bronzes are national heritage; that it is internationally entitled to receive the objects; and that the National Commission for Museums and Monuments of Nigeria has the right to determine where arts and monuments are kept, in consultation with the Edo State government and the Royal Benin Palace. Alhaji Lai Mohammed, the Minister of Information and Culture, stated that:

Nigeria is the entity recognized by international law as the authority in control of antiquities originating from Nigeria. The relevant international Conventions treat heritage properties as properties belonging to the nation and not to individuals or subnational groups […] The Federal government will take possession of these antiquities, because it is its duty to do so, in line with the extant laws. [W]e have always exercised this right in cognizance of that culture that produced the art works.\(^{188}\)

Not surprisingly, these two conflicting positions have caused delays in the progress toward returns. One of the lessons of the format of the Benin Dialogue Group is that it is imperative to establish structures for consultation and dialogue which go beyond the State-centric frame of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.\(^{189}\) Negotiations and determinations regarding the status of “entangled” colonial objects should involve multiple stakeholders: government officials; museums and curators; communities of origin; descendants of former local rulers; or private actors with a link to the objects, and provide structures to give

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\(^{189}\) 14 November 1970, 823 UNTS 231.
them a voice in the process. This approach obviously may make negotiations more complex. But it is necessary to avoid a situation whereby return procedures are simply used by governments to enhance national prestige, while sidelining the interests of affected cultural communities.

Relation-building and new object possibilities

A third element of cultural relational justice is the treatment of return as a process, rather than an act. As Felwine Sarr has argued, return is about relation-building and the development of object possibilities: “The return of objects does not mean restoring them as they once were, but reinvesting them with social function. It is not a question of return of the same, but of an ‘other same’.”

The relationship to objects and the knowledge that pertains to them may need to be renewed. This requires new forms of collaboration or sharing, based on the different meanings of objects, even after their return. It offers the possibility to recognize the multi-dimensional nature of objects, i.e. beyond just “cultural property”. The Western museum model may not always be the ideal frame. Certain objects represent the mutation of life, and as such ought to be treated as living objects, which may perish and be replaced. Return may require new forms of object mobility, or the circulation or development of new creative partnerships between the museums and local communities through which the objects are shared. For instance, Nana Oforiatta Ayim has established a mobile museum in Ghana in order to facilitate greater access to objects.

Digital access is another important element. It does not necessarily provide a viable substitute to return and carries risks of “appropriation and alienation”. But it may constitute an important means to enhance transparency, renew memory, or facilitate social re-connection with objects. The case of the Benin Bronzes...


192 Ibidem, p. 6.


196 For a critique of the “radical practice of sharing”, proposed in the Sarr and Savoy report, see L. Lixinski, op. cit., p. 80.
is unique, since it has inspired a new digital inventory and environment of Benin Bronzes: “Digital Benin”. This was supported by countries of the Benin Dialogue Group, including the British Museum, the Weltmuseum in Vienna, Oxford University’s Pitt Rivers Museum, and Berlin’s Ethnology Museum. It is the first project which re-assembled all objects in a common digital environment and traces the histories of their taking and acquisition. It has important symbolic value and contributes to meaning-making. Cultural anthropologist Kokunre Eghafona has compared it to a re-composition of a book. He noted that: “The looting was like a book being torn to pieces and then the pages were put in different places”.197 “Gathering them together in one place” restores a fuller meaning that has gone lost.

One possibility to mitigate neo-colonial dilemmas regarding digitization is the creation of “a third space” around digitized objects, i.e. an environment which presents the digital record in conjunction with contextualized narratives of histories and meanings, and offers communities the possibility to add “their own descriptions without approval from the museums that have the objects in custody” and to “decide to whom they give access to see and use their digitally curated objects and collection”.198

Beyond Ritual Guilt Relief and Atonement

In 1978, former UNESCO Director-General Amadou-Mahtar M’Bow issued his famous *Plea for the Return of an Irreplaceable Cultural Heritage to Those Who Created It*, in which it was argued that return cannot “be solved simply by negotiated agreements and spontaneous acts”.199 Are the Benin Bronzes a game changer? The jury is still out. There are both positive developments, as well as signs of caution.

It is clear that Western collections need to take a step back from the moral high ground which they have occupied for decades. The dynamics of the Benin return movement reflect in part a turn towards a new relational cultural justice approach. It offers a way to critically interrogate the role of Western institutions as “guardians of universal heritage” and to clarify the value and significance of objects through dialogue. However, there remains a lack of targeted instruments at the macro-level (e.g. conventions, resolutions, identification of common principles). Change occurs predominantly on the meso- (policy guidelines, national practices) or micro-levels (museum or university practices).


Nonetheless, the adoption of individual national guidelines and policies on colonial collections marks an important step. The German, Dutch, or Belgian principles avoid a generalized qualification of colonial injustice as looting or theft and encourage a differentiated, case-by-case assessment, based on criteria which draw on the interplay between accountability for wrongdoing, ethical responsibilities, and cultural heritage rights. They take into account justice and ethical criteria regarding the context of acquisition, as well as criteria drawing on the right of access to culture. At the same time they reflect a principled commitment to the recognition of injustice and redress as an overarching principle. This is expressly acknowledged in the Dutch principles and the Belgian guidelines, which recommend the adoption of a separate legal framework; and the German guidelines, which state that the principles in the instrument “bear witness to a value system in which, on the basis of an assumed superiority, colonial powers placed themselves above other states and their populations or parts of the population, exploiting and oppressing them”.

These guidelines and policies do not in and of themselves constitute a form of “international custom” which makes return or restitution mandatory. But they go beyond mere moral commitments. They reflect professional practices and are built not only on ethical, but also on legal criteria. They may contribute to the formation of a sense of legal obligation (opinio juris) and generate more differentiated legal principles, based on mutually-beneficial return practices. This contribution has shown that the “justice and cultural significance criteria” are based on three legal models of responsibility (past wrongdoing, contemporary relationship to a wrong, and access to culture) as well as on general principles of cultural heritage law.

However, the landscape of return continues to be governed by traces of cultural nationalism, on both sides of the equation. The overall number of existing returns remains low. Some countries, such as the UK, are still reluctant to engage in open dialogue. Change is driven by individual return practices and voluntary commitments made by museums or universities (the micro-level). There are fears that the strong focus on iconic objects, such the Benin Bronzes, is merely an act of tokenism, which may be used to provide moral absolution for other takings; embellish or distort the past; marginalize the thousands of other objects which are hidden in collections; or entail the discursive silencing of other calls for returns. The strong focus on the Benin Bronzes conceals the lack of attention to objects taken in other

201 Belgian Ethical Principles, § 2.3.
202 Guidelines for German Museums 2021, p. 12.
campaigns of violence, such as the attack on the Beijing summer palace in 1860, the Maqdala looting in 1868, the lootings in the Asante wars, or the many lesser known “punitive expeditions” carried out under colonial authority.

The time has come to rethink structures more systematically. One option is to develop a common set of UN or European principles in order to provide greater transparency with respect to objects, minimize diverging return criteria, and develop provenance research. This would prevent the movement towards return of the Benin Bronzes from being perceived as mere symbolism or a ritual of guilt, relief, and/or “self-purification”.

Another option is to work on a political declaration which recognizes the injustice of colonial takings in general and their enduring effects, i.e. a counter-document to the General Act of the Berlin Conference on West Africa of 26 February 1885.

Modalities of private acquisition deserve fresh attention. More transparency and social media action is needed to draw attention to gaps in the private sector and prevent sales on the open market, which facilitate the continued commodification of colonial art. Artefacts such as the Benin Bronzes have been offered for sale at public auctions, despite their violent acquisition. The history of objects is a tool to put pressure on private auction houses not to sell looted objects. For example, in June 2021 the Ethiopian government requested an auction house in Dorset (Busby) to stop the auction of a Coptic bible and horn beakers taken during the hostilities in Maqdala in 1868, in order to “stop the cycle of dispossession”. It mobilized a social media campaign after which the objects were withdrawn from the auction and purchased by an association.

The existing movement towards change at the meso- and micro-levels should be complemented by further action at the macro-level, including an international framework clarifying the recognized criteria of return, procedures for the handling of claims, modalities of provenance research and/or practices of re-engagement, and the strengthening of transparency requirements and due diligence duties in the private sector. These reforms need to extend beyond iconic objects such as the Benin Bronzes and cover the thousands of objects which are still kept in storage. The past cannot be undone. But it is time to make footprints for “the possibility of a just future”.

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