

Passing the Baton:

A Comparative Look at Nazi-confiscated Art and the Spoils of Benin

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Abstract

This thesis tries to compare the restitution of Nazi-plundered art to the repatriation of the Benin bronzes from museums to states and individuals. Employing a comparative approach informed by the disciplines of History, Jewish Studies, and Cultural Heritage Studies, this study investigates the divergent paths taken in addressing historical injustices and returning cultural artifacts to their ‘rightful’ owners. Drawing extensively on contemporary newspapers as primary sources, this research aims to shed light on the complexities surrounding the restitution and repatriation processes, and tries to argue that a common methodology to approach return requests is not only feasible but also pragmatic. In part, the thesis also focuses on the role of non-state actors in bringing about change and the role of recommendations and guidelines in the absence of a uniform policy to deal with plundered art.

By analysing the strategies and challenges faced by each subset, the thesis tries to offer a restorative justice as a possible solution to deal with all restitution requests. By considering the divergent paths taken in addressing these historical injustices, this study aims to contribute to broader discussions on restitution, repatriation, and the ethics of cultural heritage preservation.

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Introduction

When Blucher helped us make an end
 Of Bonaparte, the common foe,
 He came to England as a friend,
 About a hundred years ago.
 The sight of London fired his breast,
 He gazed with eagerness and wonder,
 And, brimming with Teutonic zest,
 He cried, "Oh, what a town to plunder!"

Der Tag, however, was not yet.
 A century has passed away.
 Blucher has settled Nature's debt,
 But his example lives to-day
 And kindles in the German mind
 An altar that there's no uprooting,
 Where love of power is enshrined,
 Together with a love of looting.

They spoil and pillage, smash and swill;
 And helpless cities they have racked
 Must, willy nilly, pay the bill
 For the delight of being sacked,
 That motto "Blood and Iron" is done;
 A newer one must be enscrolled;
 The carte de visite of the Hun
 Should now be printed, "Blood and Gold."
 Loot! By Jessie Pope¹

In the poem *Loot!*, Jesse Pope, the infamous 'jingoistic' British writer and poet, opines about the evolving focus of war and conquest, shifting from the 'noble' ideas of unity to being motivated by the lust for gold. She compares the Germans to the Huns from antiquity—raiding despoilers after money and gold—and signals to the evolving justifications for war. Pope attempts to motivate men to enlist for the war effort in Britain by instilling the fear of Germans looting their homes and warning men of the consequence of watching like bystanders while their beloved cities face the ravages of the Huns (Germans), ironically calling it the 'delight of

¹ Jessie Pope, *Loot!*, All Poetry. Accessed July 6, 2023.

being sacked.’ Using ‘Der Tag’ as a reference to the impending Germanisation if men did not rise to the occasion, Pope echoes the principles of ‘might makes right.’ Chalking out this important shift in goal, Pope signals a much larger trend in warfare, where the underlying motivations for conquest move beyond territorial acquisition to increasingly relying on resource control and focus in part, if not primarily, on acquiring cultural riches.

Plunder and destruction have traditionally been seen as the consequences of war; looting of priceless artworks and monuments then become mere casualties. It should come as no surprise that despite sincere efforts, restitution and repatriation is tricky when the property is displaced during a conflict. The paper trails are murky and ownership complicated and multijurisdictional. Added to the issue of disputable provenance is the adamance of collectors and museums to retain these pieces of art. Legal battles ensue—if pursued—take years, if not decades to resolve. While there is a burgeoning literature on the looting of artworks by Nazis post the end of the Cold War—owing to the opening up of many archives and documents that were previously inaccessible—much is yet to be written and discovered. Still little, in contrast, is being done in the case of looting and plunder of cultural heritage from former colonies.

Finding the 1970 UNESCO Convention to have fallen short of adequately addressing the issues pertaining to the colonial period and the looting of cultural heritage retroactively, in 1978, Amadou-Mahtar M’Bow, the Senegalese director of UNESCO, appealed for the restitution of stolen cultural heritage.² He likened cultural heritage to ‘one of the most noble incarnations of people’s genius’³ and its removal as the robbing of collective memory and a sense of self. Roughly 45 years later, today, the renewed interest in the restitution of colonial collections can be attributed to a string of events. In the years following the independence era of African nations, just as these *new* nations were adjusting to the changes of their newfound

² Sarah Van Beurden, “LOOT: Colonial Collections and African Restitution Debates,” *Origins: Current Events in Historical Perspective*, March 2022. Accessed July 6, 2023.

³ Amadou-Mahtar M’Bow, “A Plea for the Return of an Irreplaceable Cultural Heritage to Those Who Created It,” *The UNESCO Courier: A Window Open on the World*, XXXI, no. 7 (1978): 4–5.

freedom, setting up institutions for governance and formulating a working constitution that would cater to the needs of its numerous ethnic tribes, these nation-states were also trying to navigate cultural policies and how to best assert a collective sense of self. In light of these discussions, questions about colonial collections remained an important point of contention, ‘often raised behind the scenes.’⁴ Despite decades of demand, these issues have fallen on deaf ears which has led to widespread dissatisfaction, especially among the growing African diaspora communities.⁵ These communities emerged as key actors in helping understand and raising awareness of colonial collections among wider society, especially among shifting global relations.⁶

This thesis, informed by the disciplines of History, Jewish Studies and Cultural Heritage Studies, will explore the possibility of comparing Nazi-confiscated art to the spoils of the Benin Expedition. For my work, I draw primarily on contemporary newspaper coverage of restitution and repatriation pleas to museums and states by sovereign nations and individuals and the various recommendations forwarded by state and non-state actors, to acknowledge and deal with the crisis of the empty nest museum syndrome. Additionally, I will also be looking at legal proceedings and their implications. By doing so, I would like to analyse the various types of reconciliation and restoration mechanisms—restitution, repatriation, and reparation—or their permutation and combination employed by states and/or museums to deal with nazi-plunder and colonial loot. Through a comparative approach, I will try to examine the key aspects and circumstances of events when restitution is carried out. I will also try to look if a uniform policy for restitution can be implemented when working with various demands. And try to analyse the reasons for the disproportionate number of restitutions in the case of colonial loot when compared to nazi-plunder. Lastly, and perhaps most importantly, I will try to argue

⁴ Sarah Van Beurden, *LOOT*.

⁵ See also, Bénédicte Savoy, *Africa's Struggle for Its Art: History of a Postcolonial Defeat* (Princeton, NJ: Princeton University Press, 2022).

⁶ Sarah Van Beurden, *LOOT*.

that a comparison between nazi-plunder and colonial loot is not only feasible but also desirable to understand larger attitudes towards return.

In chapter 1, I show through the case study of Wally, the various tumultuous legal hoops, claimants have to jump through to make any headways for claiming confiscated property. And how the Portrait of Wally sets the tone for everything we talk about today. I look at the changes propelled as a product of the Wally case and the changing attitudes of museum professionals and those in the art market, especially with respect to provenance research, which emerges as an important discipline at the end of the twentieth century thanks to debate surrounding Wally. And how the Portrait establishes precedence challenging the contentious statute of limitations as well as the claim to title in Nazi-era plunder.

But what triggers this wave? Regula Ludi postulates that this was not a product of a radical shift in mentalities coupled with a desire to right past wrongs; instead, she argues that the changing economic landscape in relation to the changes brought about through post-Communist de-collectivization in Central and Eastern Europe were responsible for the resurgence of Holocaust demands both in Europe and abroad at the end of the twentieth century.⁷ Upon further scrutiny of this economic theory, we can concur that opening up of Communist archives, which were previously inaccessible, as well as making former Communist states accountable for their role in the Holocaust, in part, is responsible for the resurgence of restitution efforts, but this would not have been possible without the continued efforts of survivors and civil actors. Further, by the end of the twentieth century, survivors were in a relatively better position to file and assert their claims. Moreover, Wally empowered people and so did the various debates that emerged from her civil forfeiture leading to the formulation of the Washington Principles. While the latter is not without its shortcomings, the

⁷ Regula Ludi, "Second-wave Holocaust Restitution, Post-communist Privatization and the Global Triumph of Neoliberalism in the 1990s," *Yod*, no. 21 (2018).

former paved the way for claims to be filed in the US Supreme Court.⁸ And a true domino effect began that has since never stopped.

Similarly, in chapter 2, I will look at the sharp rise in interest to return the Benin Bronzes and the various actors and claimants involved in this debate. And if and which group can claim good title to the loot, especially when there are conflicting moral and ethical considerations. I argue that multiple actors also present a multitude of possibilities and solutions.

So, what are the barriers to restitution? Restitution is more often than not a political act. While claimants often encounter legal barriers to restitution, there are general concessions made on humanitarian grounds to circumvent these. That does not, however, negate the experience of several claimants, especially nations demanding the return of colonial loot, who are bogged by a plethora of shifting reasons. For instance, while concessions are made in the United Kingdom regarding deaccessioning of Nazi-plundered art, the same does not extend to colonial loot, like the Benin bronzes. And those against return can clamour down on claimants and pass the baton to the state legislature, knowing full well that in the absence of legal recourse, these requests fall to deaf ears.

Thus, laws and legislation can come to play an important role in the fate of restitution. The United States and the United Kingdom are common law countries, and their legal system is largely based on judicial decision-making, so legal precedence plays an important role. Similarly, Nigeria, much like other developing nations has a mixed form of governance, mainly derived and adapted from their British common law legacy to accommodate customary/traditional law and religious laws (Sharia). While in civil law countries of Europe, the system is based on established legislative enactments, statutes, and code, and the judges

⁸ It should be noted that Germany has challenged the jurisdiction of U.S. courts in internal matters as concessions made by the Foreign Sovereign Immunities Act does not allow for calling to question ‘seizures’ of private property by one’s own government.

play a less significant role in the development of the law. Thereby, making the need for new legislation to deal with plunder necessary. Besides the separate systems of law in the US and Europe, another contributing factor to the way restitution requests are treated pertains to ownership of major museums. In the US most prestigious collections are privately owned compared to Europe where museums are state-owned. And so, in the absence of a uniform law, it becomes hard to mandate restitution requests, especially to private museums.

Terminology and Definitions: Should we lose our marbles over it?

In 2017, when French President Emmanuel Macron announced the ‘temporary or permanent restitution’ of African heritage from French institutions to Africa, he revitalised the discussion on restitution.⁹ While the President did not anticipate the wave of change his statement would bring about, the effect it had on the art market and the policies of collection ethics of museums is undeniable.

The act of handing back of property to the original possessor or owner is known variously as restitution, return and reparation.¹⁰ However, these are not interchangeable terms, and their usage has different implications. According to Alexander Herman, ‘restitution’ means to make amends for crimes of the past and the term is most commonly used for property pillaged in times of war or for stolen property.¹¹ Restitution suggests guilt, perhaps looting.¹² ‘Return’ on the other hand is preferred for property displaced for the benefit of the colonial power and restored to its country of origin, and also for cases of unlawful export.¹³ What constitutes unlawful remains contested. If removal was not unjust by the standards of the time, should present possessors need to make restitution just because standards have changed?¹⁴ Does might indeed make right? Should present owners then be legally required to part with objects which they have purchased in good faith? The situation only further complicates itself in the absence of a uniform international law to govern the trade of cultural property between

⁹ Anna Codrea-rado, “Emmanuel Macron Says Return of African Artifacts Is a Top Priority,” *The New York Times*, November 29, 2017. Accessed July 6, 2023.

¹⁰ Marc-André Renold and Marie Cornu, “New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution,” *International Journal of Cultural Property* 17 (2010): 1.

¹¹ See also, Alexander Herman, *Restitution: The Return of Cultural Artefacts* (Lund Humphries Publishers, Limited, 2022).

¹² Geoffrey Lewis, “The Return of Cultural Property,” *Journal of Royal Society of Arts* Vol 129, No. 5299 (1981): 435

¹³ Renold, New Developments, 2.

¹⁴ Janna Thompson, “Cultural Property, Restitution and Value,” *Journal of Applied Philosophy* Vol. 20, No. 3 (2003): 254.

nations.¹⁵ And finally, ‘repatriation’, according to Marc-André Renold, is most often used in claims of indigenous peoples and specifies restitution whose destination can vary: either to the country the cultural property belongs to or to the ethnic group that owned it.¹⁶

In the context of the Second World War and Nazi-plundered objects and art, these terms come to occupy a different meaning. ‘Recovery’ comes to signify the act when Allied troops locate/find objects and move them to a separate location for processing. ‘Repatriation’ denoted Allied efforts to chalk out whom these objects belonged to, and subsequently, due to lack of jurisdiction, handing over recovered objects to the country of origin.¹⁷ Henceforth making the country of origin responsible for the return of objects to their rightful owners. So, literally, returning a nation’s patrimony. Replacement-in-kind came to denote ‘restitution.’ States felt that it was only right that select items which had been looted from their lands be replaced with the same if not a comparable piece. This led to a series of abuses; nations would essentially claim for instance three Van Goghs if they had lost three Van Goghs during the period. Lastly, ‘reparations’ came to be symbolic monetary compensations handed out to aggrieved parties, not in the least equivalent to the value they had lost. To put it crudely, ‘reparation is a cheque in the mail, (you) accept whatever has been offered.’ Often these were accompanied with agreements that if and when an object was found, it would be returned to the rightful owner in exchange for the money received previously.

And for all these ‘technical’ terms, there is a new emerging umbrella solution, ‘restorative justice.’ The Canadian Intergovernmental Conference Secretariat describes restorative justice as ‘an approach to justice that seeks to repair harm by providing an

¹⁵ One of the primary aims of the “Return & Restitution” Intergovernmental Committee, was to seek ‘ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin.’ (‘Return & Restitution’ Intergovernmental Committee,” UNESCO, March 29, 2023. See also, Renold, New Developments.)

¹⁶ Renold, New Developments, 2-4.

¹⁷ Initially Monuments Men (and Women) did return property to owners as opposed to the country of origin. However, this was quickly put to rest and the responsibility was transferred on to states.

opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime.’¹⁸ A more compassionate redressal method, it allows for dialogue between the aggrieved and the aggravator to allow for healing and reparation. Proposed initially by Erich Hatala Matthes, in his article, *Repatriation and the Radical Redistribution of Art*,¹⁹ and elaborated further in a legal historical essay by Gwyneth Pheasant Lust, University of Alberta, restorative justice proposes a means to address the ‘the human, moral and ethical elements’ of Nazi-confiscated restitution pleas.²⁰ Inspired from this line of argument, I wish to explore the possibility of extending restorative justice to arrive at a solution for all restitution pleas. By doing so, it will shift the focus back to the object and those who possess it (past and present), and allow for the scope of collaborative effort within everyone’s limitations.²¹ This could range from an informative placard wherever the item is displayed (like in the case of *Portrait of Wally*) or morph into more proactive ‘put your money where your mouth’ is positions of investing in museums when returning hoards to ‘origin’ countries.

¹⁸ Canadian Intergovernmental Conference Secretariat, “Principles and Guidelines for Restorative Practice in the Criminal Matters,” Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety (2018). Accessed July 6, 2023.

¹⁹ Erich Hatala Matthes, “Repatriation and the Radical Redistribution of Art,” *Ergo*, an Open Access Journal of Philosophy 4, no. 20201214 (2017).

²⁰ University of Alberta, “Law Student Makes Award-Winning Case for How to Restore Nazi-Looted Art,” *Folio*, December 15, 2022. Accessed July 6, 2023.

²¹ University of Alberta, Law Student Makes Award-Winning Case.

Historical Review

Something is the cultural property of a collectivity if and only if a) it was legitimately acquired by the collective or its members — that is, not taken without consent or justification from others — or possession of it has been made legitimate by changes in circumstances; b) the item plays an important role in the religious, cultural or political life of people of the collectivity by functioning as a symbol of collective ideals, a source of identity for its members, as a ceremonial object, a focus of historical meaning, an expression of their achievements, or as a link with founders or ancestors.²²

Restitution of cultural property has a long history. The first large-scale instance in history was the restitution of amassed treasures of churches, museums and palaces during the Napoleonic wars. Although the question of recovery of stolen artworks was discussed, the framework that the Congress of Vienna of 1815 provided did not explicitly ask for the return of cultural property from the regions they had been originally displaced.²³ Only with the inception of UNESCO, post the two World Wars, do we see important developments in the attitude of both world and supra-national communities towards cultural property.²⁴ Based initially on the idea that a nation's work of art and science constitutes part of its permanent intellectual heritage, this concept later develops towards the idea that such property belongs and should be cared for by mankind at large.²⁵ This evolving nature of our understanding of cultural property is reflected by two important conventions: the Hague Convention for the Protection of Cultural Property in 1954 and the UNESCO Convention of 1970.

The successor of the 1939 review by the International Museums Office, which suggested that States holding rich collections of art were acting as mere depositories for

²² Thompson, *Cultural Property*, 252.

²³ Tullio Scovazzi, "The 'First Time Instance' as Regards Restitution of Removed Cultural Properties," *Agenda Internacional* 19:30 (2012):11.

²⁴ Lewis, *The Return*, 435.

²⁵ Lewis, *The Return*, 436. See also, Lyndel V. Prott, "The International Movement of Cultural Objects," *International Journal of Cultural Property* 12, no. 2 (2005) for a critique on John Merryman's liberal concept of 'cultural property internationalism' in contrast to the alternate, 'cultural nationalism.' Finding 'cultural internationalism' rooted in ethnographic museums in the West, and in the practice of various dealers and collectors, she argues it is more apt to label this exchange as 'cultural imperialism.'

the benefit of mankind, the Hague Convention gave legal standing to the idea that cultural property belonging to any people whatsoever should be recognized as ‘the cultural heritage of all mankind’.²⁶ This idea plays on a universal responsibility to protect cultural property. Conversely, promoting the idea of returning cultural property to its country of origin, the UNESCO Convention of 1970 views cultural heritage as that of a particular country instead of mankind at large. It helped strengthen national legislation by prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.²⁷

The Convention of 1970 was greeted with widespread opposition. Countries objected to the return of objects to developing countries where there was a lack of museums and facilities to adequately store cultural property.²⁸ There was also a general feeling that museums in the West provided a better platform to display, study and understand the cultures of these nations. Professionals involved in conservation and preservation efforts also stated that the continued preservation of these objects was only due to their removal.²⁹ Both museums and states cited the Hague Convention to back their claims and responsibilities towards the ‘cultural property of mankind’ and questioned the return of certain items.³⁰ However, for critics like Fiona McKenzie, any study of these objects that takes place within a western museum is done within a Western framework of assumptions and values. The economic domination of Third World countries by the West and the Westernization of traditions led to a greater need for the Third World to assert their cultural heritage.³¹ It should be noted here that the 1954 Hague Convention was introduced in the

²⁶ Lewis, *The Return*, 436.

²⁷ Lewis, *The Return*, 437-438. Also see, Prott, *The International Movement*, 227-8, for a discussion on a restrictive interpretation of cultural property and how what constitutes as important objects for one country can vary greatly from another, and thus become harder to justify and standardize.

²⁸ Lewis, *The Return*, 437.

²⁹ Lewis, *The Return*, 439.

³⁰ Arguing for universal heritage (‘cultural internationalism’), Dr. D.M. Wilson (Director, British Museum) emphasized the British Museum’s dedication to the principles framed by the Hague Convention of 1954 for preserving cultural heritage of all mankind. (Lewis, *The Return*, 443)

³¹ Lewis, *The Return*, 442.

backdrop of armed conflict, post-World War II, whereas the 1970 UN Convention was a peacetime measure, when newly independent countries were increasingly asserting their autonomy.

The second half of the nineteenth century also saw the formation of new sovereign states which further muddled the legacy of cultural objects. The International Council of Museums' (ICOM) preliminary survey findings of Bangladesh in the late 1970s exemplified these complexities.³² The survey found that since Bangladesh was a part of the British Indian Empire till 1947 and then transferred over to Pakistan from 1971, upon its independence, the culturally rich nation had none of its earlier repositories. Much of its important artefacts were housed in the museums of Calcutta and Lahore, leaving the Museum at Dacca lacking. Its traditional sculptures were dispersed in many countries to an extent that the full understanding of its heritage remains unknown to its people.³³ For Geoffrey Lewis, the situation in Bangladesh brings forth important questions regarding the criteria for 'country of origin'. Does it mean the country of manufacture, the nationality of the maker, the last country to hold the object before its removal or, in the case of an archaeological item, the site of its discovery?³⁴ Further, the composition of objects might complicate matters even more as these may be assemblages drawn from several sources and may represent the work of an individual or a group of individuals.³⁵ It is in situations like this that universal cultural heritage begins to take on real meaning.

Lewis postulates that if the cultural property was the heritage of all mankind, then certain museums *do* a fitting job of providing access to this world heritage. They act as the custodians of the cultural property of mankind. And instead of scrutinizing these

³² Lewis, *The Return*, 437.

³³ Lewis, *The Return*, 438.

³⁴ Lewis, *The Return*, 439.

³⁵ Lewis, *The Return*, 439.

collections housed in Western museums, an active effort should be made towards the gradual development of other such museums elsewhere. He also agrees with UNESCO's recommendation of 1976, which calls for an international exchange of cultural property.³⁶ Efforts in this direction have been made under the aegis of ICOM's Museum Exchange Programme (MUSEP), which allows for the exchange and loan of materials through exhibitions in participating museums.³⁷

Additionally, issues central to restitution debates in the second half of the twentieth century pertained to morality of collections and their collecting practices. In the post-colonial phase, newly independent countries sought to create national identities tied to their cultural heritage. For Lewis, however, colonization was very much a fact of history, and much of the material present in museums like the British Museum was part of Britain's heritage as much as any other country's heritage. Further, Dr Wilson, Director of the British Museum (1977-1992), critiqued the demand for restitution as a political stunt of new governments, which was very often not in consensus with the curators and directors of museums.³⁸ Those against restitution also believe that museums were within their right to deny restitution for the greater good of humanity. The values mentioned in the Declaration on the Importance and Value of Universal Museums, signed by museum directors of museums such as MET, Rijksmuseum, Bavarian State Museum, etc. are also in the same vein.³⁹ To this effect, K.J. Warren opines that no one 'owns' artefacts as possessors are mere trustees. Their right to act in this position presumably depends on their

³⁶ Recommendation concerning the International Exchange of Cultural Property (November 26, 1976). Based on this recommendation, Sharon Williams and Peter Cannon-Brookes developed an idea that suggests that a representative collection of the world's significant cultural heritage should be formed which could be circulated to public museums across the world, managed by an independent third-party/international agency. Such a collection should constitute a new sort of property, owned by the international community itself. (Lewis, *The Return*, 440)

³⁷ Lewis, *The Return*, 440.

³⁸ Lewis, *The Return*, 442.

³⁹ [Declaration on the Importance and Value of Universal Museums](#), (2002).

ability to take care of the things entrusted to them.⁴⁰ But this view takes away from communities the right to exercise power over their own artefacts. For instance, we cannot force an Aboriginal group to reveal its secret knowledge or put on display objects that it uses in its secret ceremonies, however interesting these things are to scholarship.⁴¹ Or penalise a group for not keeping ancient items of worship in mint condition as they would in a museum. Thus, Janna Thompson concludes restituting an object does not depend on whether returning the object is the best way to protect human values.

⁴⁰ Thompson, *Cultural Property*, 258.

⁴¹ Thompson, *Cultural Property*, 259.

Literature Review

Keeping in mind the relevance of restitution debates in the current cultural and political climate, several scholars have addressed issues pertaining to the scope and limitations of restitution in comprehensive monographs. A careful perusal of these scholarly works has, thus, informed my study. These distinct yet interwoven studies allow me to navigate what principles dictate the complex relationship of objects and their rightful ownership, particularly in the context of loot and plunder. The *Guilt of Nations* by Elazar Barkan examines how ideas of morality and ethics have dictated the approach of nations today to re-examine the past vis-à-vis victim-perpetrator relations and make amends for it. ‘This national self-reflexivity’ he writes ‘is the new guilt of nations.’ Barkan is meritorious in tackling a variety of injustices including war reparations, colonial looting and treatment of indigenous cultures. By comparing and contrasting these inequities, he seeks to arrive at an umbrella theory of restitution that could be applicable to all. This approach sets the foundation of comparison and analysis of the varied means of redressal available to aggrieved parties which I then employ to understand restitution politics within museum and state apparatus. Although he employs a comparative approach, he steers clear from drawing direct parallels to genocides and various injustices; instead focussing on the similarities to arrive at a conclusive solution. For him, this is an uphill battle for victims, and their collective arsenal boils down to persistence, organisation, and public discourse and awareness. Without these tools, these communities fight for naught.

The redemption arc, albeit not applied to the national context, is similarly employed by Geoffrey Robertson, in *Who Owns History? Elgin's Loot and the Case for Returning Plundered Treasure*, to propose to individuals and professionals at the museum level to reconsider their position as universal custodians and caretakers. He cautions against the museum’s dominance over cultural heritage and their ability to sanitise them from their ethnic or cultural identities. However, with no clear methodology, and formal sources, the book falls short in efficiently

summarising the present debate surrounding the Elgin Marbles, which are at the heart of the discussion. Thus, by trying to cover all bases, it is stretched too thin.

Hector Feliciano's work in the *Lost Museum* which investigates the role of the art market in enabling the movement and fate of displaced items successfully moves away from simply being an academic appraisal of the subject to providing the grim and gritty ground reality of the circumstances of return. Initially, microhistorical in nature, Hector focuses on famous families (Rosenbergs, Rothchild, Schloss, etc.) and artists to offer a vivid description of the life cycle of these artworks and then moves on to elaborate the larger network of these exchanges. As a French case study, the *Lost Museum* provides an excellent stencil and methodology, albeit largely restricted to the French archival material.

The works of Alexander Herman (*Restitution*), Hannes Hartung ('*Praeda Bellica in Bellum Justum?*' *The Legal Development of War-Booty from the 16th Century to Date: A Chance of Bettering Museum Practice?*) and Kate Fitz Gibbon (*Who Owns the Past?: Cultural Policy, Cultural Property, and the Law*) helped me to contextualise the restitution debate in the legal discourse. These authors not only aptly scrutinize contemporary notions of justice but also emphasize the significance of terminology in debates. Gibbon's attempt to refocus the attention to law as opposed to morality and ethics, allows one to conceptualise legal restrictions/barriers/remedies in place to govern the movement of cultural property. Aptly titled, '*Who Owns the Past?*,' the monograph, written as a series of essays 'to make cultural property debate comprehensible to all,'⁴² carefully addresses the issue of multiple stakeholders and their claims. This task is accomplished very well, especially, in light of the fact that contributors to the book come not only from the legal academic field but also from professionals in the art market. Similarly, Hartung's keynote lecture turned article, '*Praeda*

⁴² Kate Fitz Gibbon, introduction, in *Who Owns the Past? Cultural Policy, Cultural Property, and the Law* (New Brunswick, NJ: Rutgers University Press : in association with The American Council for Cultural Policy, 2007), xiii.

Bellica in Bellum Justum?,’ allows one to trace the legal development of war booty and what implications these changes have for the ‘right to spoils’ during wartime, especially in the present discourse. He discusses various theories propounded by philosophers and thinkers to delineate what can rightfully be confiscated during wartime to arrive at solutions for the 21st-century dilemma of how, if restitution needs to be carried out, can amicably occur. A didactic text, its appraisals of theories is unique and enhances one's understanding of war booty and how museums can best position themselves in light of contentious objects in their collections.

Further, I have extensively explored the various interpretations of cultural property discussed by Janna Thompson (*Cultural Property, Restitution and Value*) and Geoffrey Lewis (*The Return of Cultural Property*) to understand the positioning of critics and those against restitution. For Thompson, definitions become central, as does the preservation of educational and aesthetic values that can override restitution claims even when legitimate. Arguing for collective ownership of objects, Thompson’s arguments are similar to principles drawn by the Hague Convention of 1953 and seek to justify the claim that museums are the ultimate custodians of culture, even if arguably not the best.⁴³ Geoffrey Lewis agrees in principle to this idea but seeks a more proactive approach in chalking out ways to expand ‘universal museums’ to beyond the frontiers of the west. Lewis opines that colonization was very much a fact of history, and these objects which were displaced and moved from one place to another, thus become part of British heritage, even if contested.

And lastly, two seminal texts: *The Rape of Europa* by Lynn Nicholas and *Multidirectional Memory* by Michael Rothberg help offer a deep understanding of the fate of Nazi plundered artworks in Europe, and how the same memory is revisited by several participants to explore not only the various cultural underpinnings of Hitler’s confiscation and plunder policy but to also understand the multitudinous yet so strikingly similar ways the art

⁴³ Thompson, *Cultural Property*, 261.

market operates in different contexts. Nicholas explores the foundations of the post-war German art market built on the incessant looting during the Third Reich, and it is difficult not to draw parallels to the flourishing German art market of the late 19th to early 20th century flooded with antiquities from Africa. Sinister webs of art market operators to small time collectors map the journey of culturally significant objects as well as replicas. The rather large cast of key actors both become the merit and demerit of the work.

For Rothberg, this multidirectional push and pull helps him hypothesis the complexity in memory formation and the harm of unidirectional memory. But perhaps his most significant takeaway is his understanding of the Holocaust in light of the post-colonial debate development in the West. Rothberg not only questions the power dynamics in embedded memory but also brings forth the issue of such a unidirectional approach. He proposes fluidity and diversity in both voices and perspectives to understand the intersection of memory so as to allow us to not evaluate historical events in a vacuum. Arguably, *Multidirectional Memory* goes over and beyond in providing a successful argument to rethink common knowledge or memory and provides a framework to understand and remember complex historical experiences through a heterogenous perspective. Critics of his work, however, argue and postulate on the uniqueness of the Holocaust experience, which if questioned or worse compared, would lead to relativization of horrors of Shoah. This criticism, in part, is also part of a much larger discourse on what qualifies as a legitimate critique of the State of Israel and what is considered antisemitic. This incommensurability of the Holocaust memory is what is questioned by Rothberg. He argues that the Shoah and colonial experience can not only co-exist in the same space but also open up scholars to ‘unexpected resonances and exchanges.’⁴⁴ Most significantly, he argues that the juxtaposition of the Shoah to colonial violence is not a new

⁴⁴ Michael Rothberg, “We Need to Re-Center the New Historikerstreit,” *ZEIT ONLINE*, July 24, 2021. Accessed July 6, 2023.

conception and has been brought forth by ‘prominent European Jewish intellectuals who lived through the Nazi period such as Hannah Arendt and André Schwarz-Bart and influential Black thinkers such as Aimé Césaire, Frantz Fanon, and W.E.B. Du Bois.’⁴⁵ By isolating the Holocaust experience and labeling it as unique, it cements one narrative/memory of the Holocaust and does not allow the space to tie together similar histories and experiences. The legacies of colonialism influence our day to day interactions, our histories similarly are not written in isolation, despite being commemorated so, therefore, it becomes important to allow for comparative historical approaches, in this particular case, to draw out reflections on race and space and how these are informed by the colonial experience among other lived memories.

⁴⁵ Rothberg, *We Need to Re-Center*.

Tackling Nazi Plunder and its Aftermath

The Holocaust, in particular, and the WW II, in more general terms, went hand in hand with the forcible transfer and seizure of property of all kinds belonging to the victims of Nazi/Fascist persecutions. These forcible transfers and seizures reshaped the wartime economies of Europe and laid the foundations of a new economic order that stretched into the postwar era.

Marc Masurovsky, *A New Paradigm for Restituting Looted Cultural Property?*⁴⁶

Even the most educated estimation of the value of Jewish assets displaced and stolen during the Holocaust by the Nazis and their collaborators does not encompass the sheer amount of wealth—economic as well as intellectual—that was lost during the regime of the National Socialists. Mark Masurovsky estimates that several million ‘cultural objects’ were displaced from Jewish families alone; this number rose to at least 5 million, excluding books, silverware and accessories, if one considered all victimised households in occupied Europe.⁴⁷ According to investigative journalist Andrew Decker, the lootings, thefts, and forced sales carried out during the Holocaust era constitute one of history’s most extensive and systematic art plunders. By 2007, however, less than 20% of Jewish assets had been restored, despite concentrated restitution efforts in the mid-1990s which only resulted in the return of 3% of stolen Holocaust property.⁴⁸

In this chapter, I will analyse how Allied efforts post-war have shaped restitution politics for Nazi plunder in the long run, especially for bringing about restorative justice for victims of National Socialism. As a case study, I will be looking at the *Portrait of Wally* by Egon Schiele, and how one painting changed the way we understood the right to title and the significance of due diligence while collecting. All this will be evaluated under the guiding

⁴⁶ Marc Masurovsky, “A New Paradigm for Restituting Looted Cultural Property?” in *Prague Conference on Holocaust Era Assets*, 2011.

⁴⁷ Masurovsky, *A New Paradigm*.

⁴⁸ Sidney Zabłudoff, “At Issue: Restitution of Holocaust-Era Assets: Promises and Reality,” *Jewish Political Studies Review* 19, no. 1/2 (2007): 3.

The works of art stolen and displaced in particular belonged to Jewish collectors, dealers as well as artists.

principles of the Washington Conference, 1998, which for better or for worse have dictated state-level restitution policies and legislature to date.

From the get-go, efforts were made on the Allied front ‘to ensure return of property stolen, confiscated, or taken under duress,’ found in German-occupied territories or Nazi hands.⁴⁹ It became policy and practice for the US military to transfer found works to governments of origin. This was done in principle under the presumption that receiving countries would determine whether these objects were looted or not, and then restitute them to the respective families. Howard N. Spiegler, the attorney responsible for the restitution of the Portrait of Wally, contends this transfer of responsibility, at least in the case of Austria, was mostly politically motivated to ensure that Austria would not fall ‘under the influence of the Soviet Union.’⁵⁰ Further, in the Potsdam Declaration of July 1945, it was agreed that reparations would not be extracted from Austria ⁵¹ as it was widely understood that Austria was the ‘first free country to fall victim to Hitlerite aggression.’⁵² This US legal position, according to Benjamin Ferencz, ‘encouraged the Austrian refusal to recognise any restitution obligation .. and that was reflected in everything else that the Austrians did after the war.’⁵³

In 1951, the state of Israel submitted a request claiming \$1.5 billion for the resettlement of 500,000 victims, estimating approximately \$3,000 per capita from West Germany.⁵⁴ While accepted in principle, there was widespread unrest in Israel on whether it would be correct to accept ‘blood money.’ After several negotiations, West Germany agreed to carry out payments

⁴⁹ Zabludoff, *At Issue*, 4-5.

In addition to the 1907 Hague Convention on international warfare (specifically Articles 46, 47, 56 stipulating that private property (including religious centres, educational bodies, art and science institutions) cannot be confiscated and that pillage is forbidden), on 5th January 1943, the first of several wartime multinational proclamations was issued by the Allies backing the 1907 Convention and working towards restoring private property displaced during the Holocaust. (Zabludoff, *At Issue*, 4-5)

⁵⁰ Howard N Spiegler, “U.S. Experience: Portrait of Wally and the Leopold Museum,” in *Holocaust Art Looting and Restitution Symposium* (Milan, 2011): 3.

⁵¹ Potsdam Agreement, *Protocol of the Proceedings*, Sec. VII, pp. 09, August 1, 1945.

⁵² Andrew Decker, “A Legacy of Shame,” ARTnews, December 1984, 60-61.

⁵³ Decker, *A Legacy*, 60-61.

⁵⁴ Jewish Virtual Library, “*Holocaust Restitution: German Reparations*”. Accessed July 6, 2023.

of \$1 billion in 1952, ‘while reserving the right to claim the balance from East Germany.’⁵⁵ However, the actual payment carried out was equivalent to \$845 million, paid in annual instalments over a fourteen-year period.⁵⁶ In 1988, an amount of \$125 million was additionally allocated for monthly allowances to survivors amounting to \$290/month (or approximately \$745 adjusted for inflation at the time of writing).⁵⁷

The following decade brought with it the second wave of Holocaust restitution marked by ‘a distinct flavour of human rights.’⁵⁸ It caught everyone by surprise, especially those that considered the matter closed. Compensation requests for Jews and non-Jews were brought forth again, but this time against various German industrial houses.⁵⁹ To put a pin on the matter and guarantee ‘legal peace’ for the German industry, the ‘Remembrance, Responsibility and the Future’ Foundation was set up in the early 2000s, which allocated money, about € 5.11 billion, to be given out to male and female forced labourers, victims of medical experiments, and as cover for other damages (health and income: pension settlements).⁶⁰ Here, one questions whether there was a certain German consciousness at play, or whether reparations were reluctantly carried out to pacify public scrutiny and tackle growing claims of victims and their descendants. The agreement was also in line with the larger discourse of projecting the need to move forward and let sleeping dogs lie. However, in setting up the Foundation, Germany undertook concrete practical measures to carry out transitional justice, especially for victims of slave and forced labour persecuted during the regime of the National Socialists. To this

⁵⁵ Jewish Virtual Library, Holocaust Restitution: German Reparations.

It should be noted that East Germany never entertained negotiations or ever provided compensations due to Israel.
⁵⁶ \$100 million of this amount was allocated to the Claims Conference while the remainder was to purchase crude oil, metals and agricultural products from United Kingdom and Germany. (Jewish Virtual Library, Holocaust Restitution: German Reparations)

⁵⁷ Jewish Virtual Library, Holocaust Restitution: German Reparations.

⁵⁸ Michael Robert Marrus, *Some Measure of Justice: The Holocaust Era Restitution Campaign of the 1990s* (Madison, WI: University of Wisconsin Press, 2009), 81.

⁵⁹ Among the German industries that came under legal scrutiny were Deutsche Bank AG, Siemens, BMW, Volkswagen, and Opel. See also, Jewish Virtual Library, Holocaust Restitution: German Reparations; and Ludi, Second-wave Holocaust Restitution, 1-3.

⁶⁰ Landesamt für Finanzen Rheinland-Pfalz, “Charity Reminder, Responsibility and the Future,” *Amt für Wiedergutmachung*. Accessed July 6, 2023.

effect, by December 2005, 98% of the funds (\$5.1 billion/€4.625 billion) had already been paid out and the remaining were earmarked to be fulfilled within the next six months.⁶¹

Often time these settlements went hand in hand with larger trends in understanding the entanglements and repercussions of Nazi entanglements in everyday life, especially for small and big businesses. ‘Research revealed, for example, the (widespread) involvement of private business in the exploitation of slave labour and showed that large sectors of national economies, even in unoccupied and neutral countries, benefited from the spoliation of Jews and the cloaking of Nazi flight capital.’⁶² For instance, in Austria, the famous Ankerbrotfabrik was Aryanised as early as March 15, 1938, and employed Hungarian Jewish forced labourers to carry out day-to-day operations. In an article for *Der Standard*, Olga Kronsteiner notes that Anker is yet to come to terms with its Nazi past, with the company providing scarce details regarding the manner of its operations during the Anschluss.⁶³ And this can be attributed to Austria’s official position as the victim and the first free country to fall.⁶⁴

Another key development in Holocaust restitution history was the civil forfeiture lawsuit against the Leopold Museum, brought forth by the heirs of Lea Bondi, in the case *US v. Portrait of Wally, A Painting by Egon Schiele*, 99 Civ. 9940 (MBM). What differentiated 99 Civ. 9940 (MBM) from others? Spiegler opines that the Wally case was different because it was commenced by the United States government. While this drew sharp criticism as public funds were employed to settle a seemingly private matter, the court concluded that ‘there is a

⁶¹ Bureau of European and Eurasian Affairs, “Report to Congress: German Foundation ‘Remembrance, Responsibility, and the Future,’” *U.S. Department of State*, March 2006.

⁶² Ludi, *Second-wave Holocaust Restitution*, 2.

⁶³ Olga Kronsteiner, “Verhärteter Blick: Historiker Forschen Zur Arisierung Der Ankerbrotfabrik,” *DER STANDARD*, January 26, 2020. Accessed July 6, 2023.

⁶⁴ ‘In 1938, it had been the only nation to be annexed in its entirety by Nazi Germany, a fact that raised consistent questions during the war about the extent to which the country was a victim of Nazi aggression or whether it had been a collaborator.’ (U.S. Department of State, Archive, “Austrian State Treaty, 1955.”) As the punch line goes, ‘What’s the greatest trick the Austrians ever pulled off? They convinced the world that Beethoven was Austrian and Hitler was German.’

strong federal interest' in discouraging 'both the receiving of stolen goods and the initial taking.'⁶⁵

⁶⁵ Spiegler, U.S. Experience, 14-15.

The Painting That Launched a Thousand Lawsuits

She can teach us about justice, even justice that comes after more than seven decades: how fidelity to basic values ... and no small measure of hard work can help to get some things right.

David Marwell, Director, Museum of Jewish Heritage, New York ⁶⁶

Aptly described as the painting ‘that changed everything’ or ‘that launched a thousand lawsuits,’ the Portrait of Wally is an oil painting from 1912 by Austrian Secessionist artist Egon Schiele. Painted as a set of two portraits, one a self-portrait, the other a rendition of the artist’s muse and lover, Walburga ‘Wally’ Neuzil, painted as a redhead in a black dress peering intently at the viewer. Today, Schiele’s infamous pair is housed at the Leopold Museum. But how did it get there?

Wally was acquired sometime in the 1920s by Lea Bondi Jaray, a Jewish collector and gallery owner, and became part of her private collection. In the late 1930s, in the wake of the Anschluss and the recently adopted Aryanisation laws⁶⁷ in Austria prohibiting Jewish business ownership and allowing for its systematic takeover, Nazi art dealer Friedrich Welz forcefully acquired Bondi’s gallery in Vienna.⁶⁸ Having successfully bought her collection, he visited her in her apartment and took a fancy to Wally, Bondi, however, refused to hand Wally over claiming it was part of her private estate and not part of the acquired Gallery. According to a complaint forwarded in the civil forfeiture case for Wally, ‘Welz continued to pressure Bondi for the painting. Bondi’s husband finally told her that, as they wanted to leave Austria, perhaps

⁶⁶ Lee Rosenbaum, “‘Portrait of Wally’ Settlement: What’s Wrong With This Picture?,” *artsJournalblogs*, August 4, 2010. Accessed July 6, 2023.

⁶⁷ “Arisierungsakten,” *Findbuch für Opfer des Nationalsozialismus*. Accessed July 6, 2023.

⁶⁸ Highly ambitious, Welz commercial success and extensive success would not have been possible without his ‘personal connections’ to the National Socialists. His acquisition of Bondi’s Galerie Würthle on 3 April 1938 further brought him closer to Nazi ideology. In July of the same year, he was admitted to the NSDAP and his membership only expired with the eventual collapse of the regime in 1945. By his own self assessment, Welz was merely pursuing his passion of collecting and ‘fruchtbringend etwas aufzubauen, wozu sonst in Salzburg kein Mensch in der Lage gewesen wäre’ (fruitfully building something in Salzburg that no one else had done so far). Towards the end of his life, he donated a significant part of his collection to the Salzburg province and Gallery Welz became famous for printing catalogue raisonnés for artists like Oskar Kokoschka and Gustav Klimt. (Land Salzburg, “Friedrich Welz Und Sein Plan,” *Salzburger Landessammlungen: Provenienzforschung und Restitution*. Accessed July 6, 2023.)

as soon as the next day, she should not resist Welz because “you know what he can do.” Bondi surrendered Wally to Welz.⁶⁹ Similar was the fate of Dr Heinrich Rieger's collection, among others, who was also forced into selling his collection to Welz.

When the US military eventually intervened in May of 1945, they arrested Welz, seized his collection—including Wally, and transferred it to the Austrian Government. Virtually all paintings were handed over to Austrian officials by the US military with the expectation that ‘every effort to return the works to the extent they had not already done so.’⁷⁰ Due to a mix-up with Wally, the portrait was clubbed together with the Rieger collection.⁷¹ The Americans recognised this and duly notified the Austrian authorities, to no avail. Subsequently, when the Riegers eventually decided to sell their collection to the Austrian National Art Gallery, Wally was still in the mix, and consequently housed at the Belvedere Palace.⁷² Bondi, who now lived in London, upon learning that her painting was at the Belvedere, appealed for its return but was ignored. She later sought the help of Dr Rudolf Leopold, a fanatic Schiele collector, who had paid her a visit confirming Wally's presence in Belvedere's collection. But this proved counterproductive:

But instead of helping Bondi retrieve her painting, Leopold quickly entered into an agreement with the Belvedere whereby he exchanged a Schiele painting from his own collection for the Wally, and kept the Wally for himself. When Bondi discovered Leopold's deceit years later, she retained lawyers to attempt to convince Leopold to return her painting to her, but to no avail. She never brought a lawsuit, however, believing that it was futile to try to defeat Leopold in an Austrian legal proceeding. As she said in one of her letters, she felt that “everyone,” including her lawyers, “was siding with Dr Leopold.”⁷³

⁶⁹ Spiegler, U.S. Experience, 2.

⁷⁰ Decker, A Legacy, 57.

⁷¹ One entry listed among the Rieger's documented collection before Nazi takeover was a Schiele drawing of his wife Edith Harms. None of the drawings from the Welz seizure matched this description and it was presumed Wally was the listed drawing, despite warnings from the US military stating otherwise, Austrian authorities ignored the fact that Schiele's wife was Edith and not Wally, and that more importantly, a drawing is not a painting. (Spiegler, U.S. Experience, 3-4.)

⁷² United States Department of Justice, “United States Announces \$19 Million Settlement in Case of Painting Stolen by Nazi,” July, 2010, 2.

⁷³ Spiegler, U.S. Experience, 4-5.

Lea's plight was shared by several others. Although one of the key Allied war aims was to reinstate stolen, confiscated, and property taken under duress, in the absence of any uniform law or recommendation, Jewish claimants were largely unsuccessful in retrieving their property displaced and stolen during the Holocaust.⁷⁴ While the Allies had agreed that individual Jews were entitled to reparations for lost property and other damages from Germany the four nations could not agree on a uniform policy, so individual laws were enacted in Britain, France and the United States; little is known about Soviet restitution policy, it was largely unfavourable to claimants of private property.⁷⁵ Thus, in practice, the Allies were able to introduce restitution laws only in the areas of their stronghold and could not intervene in individual cases when state apparatus failed. It is important to note that these laws were not enacted in a vacuum, and it was the collaborative effort of individuals as well as Jewish institutes which were instrumental in urging governments to bring about change in legislation. Chaim Weizmann, on behalf of the Jewish Agency, emerged as a key actor demanding 'reparations, restitution, and indemnification due to the Jewish people from Germany for its involvement in the Holocaust.'⁷⁶

As for Wally, she remained part of Dr Leopold's collection, who at this point had begun exhibiting his collection worldwide in prestigious museums. And on one such fateful expedition, Wally travelled to New York as part of a travelling exhibition entitled, 'Egon Schiele: The Leopold Collection, Vienna,' slated for viewing at the Museum of Modern Art (MoMA). The exhibition was scheduled from October 8, 1997 to January 4, 1998. Leopold made a significant alteration to the provenance of the Portrait, including Rieger in the line of title after Bondi.⁷⁷ Nonetheless, this attempt to fabricate Wally's provenance did not prevent

⁷⁴ Spiegler, U.S. Experience, 5.

⁷⁵ Norman Bentwich, "International Aspects of Restitution and Compensation for Victims of the Nazis," *British Year Book of International Law* 32 (1955): 204-5. See also, Zabudoff, At Issue, 6. For the Soviet zones, private claimants were excluded from discussions of return and negotiations were limited to 'democratic organisations.' Further, monetary compensation was only provided to those Jews that chose to stay back in Soviet territory.

⁷⁶ Zabudoff, At Issue, 6.

⁷⁷ Magdalena Dabrowski and Rudolf Leopold, *Egon Schiele: The Leopold Collection, Vienna* (Cologne: DuMont Buchverlag, 1997), 195-197, pl. 78. See also, Spiegler, U.S. Experience, 5.

the heirs of Bondi, who resided in the USA, to figure out their aunt's beloved painting was in the mix, and they wrote extensively to the MoMA requesting the museum to withhold the painting until 'a proper legal investigation as to the ownership status of the painting was completed.'⁷⁸

A protracted and intricate legal conflict emerged, encompassing multiple courts and jurisdictional venues. As no federal immunity protection was sought for the painting, a federal warrant was authorized for the confiscation of the artwork on the basis that there was sufficient cause to believe that Wally was illegally imported to the United States.⁷⁹ This subpoena from the New York District Attorney's office 'resulted in a statement from the Austrian Minister of Culture, Elisabeth Gehrler, stating that "this deals a heavy blow to the international exchange of art [...] and shakes the foundation of trust that one should also be given back pictures one has lent out."'⁸⁰ The MoMA asserted that Leopold did not steal Wally and had acquired it through legitimate means.⁸¹ The dispute wore on for another decade, only coming to close after the passing of Dr Leopold with both parties agreeing to settle outside the court for a sum of \$19 million to the estate of Lea Bondi Jaray.

⁷⁸ Rafael Ramos, "Analysis of Lea Bondi Jaray Case," *Historical Society of the New York Courts*, 2. See also, Spiegler, U.S. Experience, 5-6.

⁷⁹ Spiegler, U.S. Experience, 8.

⁸⁰ Nout van Woudenberg, "Portrait of Wally Case," *State Immunity and Cultural Objects on Loan* (Leiden: Martinus Nijhoff, 2012), 185.

A probable reason why the MoMA did not apply for immunity from seizure can also be attributed to the protections granted by the New York state statute, which stipulates that 'art loans from out of state lenders—Leopold Museum—to not-for-profit institutions in New York—like MoMA—are exempt from court seizures.' (Spiegler, U.S. Experience, 6.) This statute was also applied by the defendant.

Immunity from Seizure: International loan of artworks and other cultural materials are becoming increasingly common to encourage the dissemination of knowledge and education. To ensure these objects are not subject to legal processes within the receiving country including any form of legal action in both state and federal courts as well as in civil and criminal proceedings, states provide provisions within the law to help protect art works on loan through a return guarantee. In the USA, Immunity from Seizure Act (ISA) provides these concessions. United Kingdom (Tribunals, Courts and Enforcement Act 2007, Chapter 15, Part 6, *Protection of Cultural Objects on Loan*, ss. 134–38) and Austria too have similar provisions in certain circumstances.

⁸¹ United States District Court, S.D. New York, "U.S. v. Portrait of Wally," 663 F. Supp. 2d 232 (S.D.N.Y. 2009), Sep 30, 2009, p. 36-37. Forming a coalition, MoMA and the Leopold Museum attempted to dismiss the case in its entirety. They were supported by a coalition of nine major museums (*amicus curiae*) in this effort.

And while Bondi's heirs were able to arrive at a settlement, Leopold never admitted guilt and to the end believed himself to be right in the case.⁸² In his defence, he asserted he had made no attempt to hide his possession of Wally, including her in various exhibitions around the world.⁸³ Nonetheless, almost a century after her conception, Wally once again became the muse of several claimants as they looked at her for inspiration in the form of precedent and were rejuvenated in their effort to seek justice.

⁸² Rosenbaum, Portrait of Wally' Settlement.

⁸³ United States District Court, U.S. v. Portrait of Wally, p. 34. See also, Spiegler, U.S. Experience, 8.

The Austrian Pandora's Box

Several structures and legal provisions were established to dispose of the vast amounts of unaccounted/unclaimed Jewish property post-war. Numerous Jewish associations were involved in refugee relief. The idea of auctioning proceeds from the sale of unclaimed goods was brought up in Austria as early as the 1950s. The money generated from the sales of these auctions would be earmarked for refugee relief, resettlement and building Jewish communities. So, by the law of 13 March 1957 on Organisations for the Collection of Heirless Property, the Austrian government set up two independent collecting agencies—Sammelstelle A and B—which were entitled to claim heirless property and use the proceeds of its sales for the welfare of victims of Nazi persecution.⁸⁴ Sammelstelle A was responsible for property which on December 31, 1937, belong to those of Jewish faith, and Sammelstelle B, similarly, was responsible for property belonging to all other victim.⁸⁵

Ignaz Seidl-Hohenveldern argues, due to the inherent nature of the Holocaust dependence on any deadline would end up being problematic.⁸⁶ Operations like this, carried out for the supposed benefit of the Jewish community, and other victims at large, thus beg one to question the larger motive. Granted that the post-war period was tremulous, with a huge refugee crisis, and large-scale rebuilding of not only infrastructure and communities, nonetheless, solutions proposed were hasty and arguably the easier route to tackle a burgeoning crisis. The time frame available to claimants to piece together their lives and get their affairs in order was negligible at best. To expect survivors and descendants to be able to settle into their new reality all the while gathering extensive documentation to assert claims is an unreasonable

⁸⁴ Ignaz Seidl-Hohenveldern, "The Auction of the 'Mauerbach Treasure,'" *International Journal of Cultural Property* 6, no. 2 (1997): 252. See also, Decker, *A Legacy*, 57-8, 67.

⁸⁵ Seidl-Hohenveldern, *The Auction*, 252.

⁸⁶ Seidl-Hohenveldern, *The Auction*, 252.

proposition doomed from the start, to say the least. Not to mention, several restitution policies had the added burden of a statute of limitations, which did not help matters.

So how were nations like Austria, handling unclaimed property? In 1984, for the journal *ARTnews*, Andrew Decker documented Austria's handling of the return of works, calling into question the government's neglect and ineptness: 'Forty years after World War II, thousands of officially "heirless" paintings and other objects are still hidden in a monastery outside Vienna that is off limits to everyone except Austrian officials,' read the investigative article's subtitle.⁸⁷ This fourteenth-century Carthusian monastery in Mauerbach (near Vienna) in question was a depot of the Bundesdenkmalamt (Federal Monuments Office) till the 1980s and comprised mainly of works taken over from the Central Art Collecting Point in Munich. Austria claimed that this stock of artworks which included several thousand objects—decorative arts, manuscripts, monographs, furniture, paintings—remained in the depot as no one had come forward to claim them despite efforts to make the inventory public.⁸⁸

Decker, however, reported that countless 'heirless' pieces had been moved to museums in Austria and officials were reluctant to put a number on this newly 'inherited' Austrian property. And by 1984, 359 'unclaimed' paintings, drawings and prints had found their way to Austrian institutions.⁸⁹ Further still, several officials investigated by Decker held that a part of the collection left behind belonged to Nazis who had fled following the collapse of the Reich, but Monuments Officer, Dr Edith Podlessnig, curator of state-owned or controlled property between 1947 and 1983, recognised that while the property was abandoned by Nazi officials, these were initially confiscated from the Jews and Catholics.⁹⁰

⁸⁷ Decker, *A Legacy*, 55.

⁸⁸ Passed in 1969, the Final Settlement of Heirless Property law, required Austria to publish a list describing items in its holding to return to claimants that could prove pre-1945 title to the works. The law further stipulated that any unclaimed property would then be transferred to the Austrian state. See also, "Die Mauerbach-Auktion von 1996," *Kunstdatenbank: Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus*. Accessed July 6, 2023.

⁸⁹ "Die Mauerbach-Auktion von 1996," *Kunstdatenbank*. Also see, Decker, *A Legacy*, 57.

⁹⁰ Decker, *A Legacy*, 57.

More troubling than the shifting of artworks into public institutions was the stonewalling of the attempts by individuals and diplomats to peruse the Mauerbach stock. Decker's investigation found the Austrian government having fallen short of its responsibility to locate pre-Nazi regime heirs. And it was only in 1969 that the government published a list of 8,423 unclaimed objects in its repository in *Wiener Zeitung*, a semi-official newspaper.⁹¹ However, no one was allowed to peak inside Austria's pandora box. Diplomat inquiries were not entertained, interested parties were refused admission, and save a few Austrians, the contents of Austria's Mauerbach stock were a mystery. Further still, claims received post-1973 were not entertained as the statute of limitations had come to pass. And in 1984, there were plans of holding a possible auction to clear the Mauerbach stock and transfer the proceeds to a worthy cause as the administration grew restless by the day to dispose of it.

'Growing awareness in Austria, as well as criticism from abroad, led to the adoption of the Second Law on Clarification of Title to Artistic and Cultural Property on 13 December 1985 which, once more, set a new deadline for filing individual claims until 30 September 1986.'⁹² Under the stipulations of the law, Austria would be at liberty to auction off the remaining unclaimed assets for the 'benefit' of the victims. In fact, 12 years later, Austria's infamous 'Mauerbach Auction' of 1996, in partnership with Christie's, came under flak. While theoretically, it was a move by Austria to show by example that they did not intend to hold onto the unclaimed works of looted art, in reality, it was a means to wash their hands off the Mauerbach stock, as it was very much possible to identify and restitute many of the objects.⁹³ By passing the stock onto the Federation of Jewish Communities of Austria, the state passed the baton to the Federation, to take the responsibility of not just completing the race of restitution but also of the repercussions of future claimants.

⁹¹ Decker, *A Legacy*, 58.

⁹² Seidl-Hohenveldern, *The Auction*, 254.

⁹³ Leonhard Weidinger, "The Mauerbach Stock – Where Did the so-Called Ownerless Objects Come From?," *Treuhänderische Übernahme Und Verwahrung*, Göttingen: Vienna University Press, 2018, 71.

Recommendation and Principles

This year, Christie's Restitution Department set out to celebrate and honour the 25th anniversary of the Washington Principles with a series of events spread across locations, planned throughout the year.⁹⁴ The yearlong event is set to honour the legacy of the Principles that have dominated the debate around restitution and the moral obligations of institutions to re-examine their collections for Nazi-plundered art. But how have these articles withstood the test of time? And are these recommendations helpful?

Formulated in the backdrop of the Wally case, the Washington Principles were devised in December of 1998, after months of deliberation. Wally became the catalyst, successfully putting art on the agenda, and setting the tone of everything we talk about today. The Principles, however, have not been a success. Formulated as recommendations, they are yet to be codified in law by any country, not even by the participating nations which signed on article 11, 'Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.'⁹⁵ Vaguely written, they provide more loopholes than solutions on how restitution processes should look henceforth. For instance, article 4 dictates, 'In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.'⁹⁶ What constitute as unavoidable gaps and who do they benefit? Should consideration be extended more towards museums and/or current holders or to those claimants who may fall short in producing extensive proof to establish ownership? 'Passage of time' invokes the statute of limitations, thereby granting it legitimacy. When new

⁹⁴ "Reflecting on Restitution: 25 Years of the Washington Principles on Nazi Confiscated Art," *Christie's*. Accessed July 6, 2023.

⁹⁵ Office of the Special Envoy for Holocaust Issues, "Washington Conference Principles on Nazi-Confiscated Art," *U.S. Department of State*, December 3, 1998.

⁹⁶ Office of the Special Envoy for Holocaust Issues, Washington Conference Principles.

data is constantly coming to light with the digitalisation and opening of more and more archives, how can there be an enforceable statute of limitations, without exceptions?⁹⁷

Further still, Article 6 provides the recommendation to form a central registry. Today, there are numerous databases, and most are incompatible with each other. So, which body will be in charge of its upkeep and funding? How often are these registries to be updated? And perhaps the most contentious article, number 7, which suggests that ‘Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.’⁹⁸ This article completely disregards the losses of small families and individuals. More often than not families have no knowledge of what they have lost. Most families are not the Rothchilds and thus, to make assumptions about how people organise themselves would work against the claimants as opposed to in their favour. Notwithstanding its limitations, the Principles nudged governments to discuss restitution and provide the foundation for further conversation and legislation.

In Austria, for example, The Art Restitution Act was adopted in 1998 and thereafter amended in 2009. Similarly, in Germany, the Advisory Commission on the return of cultural property seized as a result of Nazi persecution was created which stresses on implementing the Washington Principles. In Germany, the Advisory Commission’s role is limited to cases where (1) ‘just and fair solution’ cannot be reached and (2) claimants and defendants agree to approach the commission to arrive at a solution.⁹⁹ The Commission further proposed the creation of a wider network to tackle issues of Nazi looted art and the ‘Network of European Restitution Committee’ was born in 2019.

⁹⁷ Article 2 of the Washington Principles encourages more document transparency for researchers, if applied, this would mean more and more information would come to light, thereby encouraging victims and their families to assert their claims more legitimately.

⁹⁸ Office of the Special Envoy for Holocaust Issues, Washington Conference Principles.

⁹⁹ Benjamin Lahusen and Gesa Vietzen, “Towards a new restitution law?,” *Network of European Restitution Committees on Nazi-Looted Art- Newsletter*, May 2022, 5.

Instead of forming more commissions and writing further recommendations, would a single restitution law not be more feasible? Professors of legal history, Benjamin Lahuse and Gesa Vietzen, try to answer this very question in their editorial titled, ‘Towards a new restitution law?’ for the May 2022 Newsletter of the Advisory Commission. They argue that proponents of a uniform law find that such legislation would not only provide clarity to all parties involved but more importantly, ‘sovereignty for reparation for Nazi injustice,’ could be decided at home and not by US courts.¹⁰⁰ However, the Commission’s position and lack of jurisdiction over Nazi-plundered art are brought to question. To this effect, the Federal Government in Germany seeks to not only ‘strengthen the Advisory Commission but also improve the restitution of Nazi-looted art by standardizing the right to information, excluding the statute of limitations for restitution claims and striving to establish a central place of jurisdiction.’¹⁰¹

However, Lahusen and Vietzen opine that it is necessary to move with caution. They point to a key limitation of the Commission: cases reviewed by the commission have a history of unsuccessful mediation.¹⁰² In such a scenario, it is not a lack of legal clarity that prevents arriving at a conclusion but a different interpretation of facts. Further, the genesis of the Commission was born out of the need to resolve ‘based on moral and ethical categories than by legal action.’¹⁰³ So a move towards legal recourse would defeat its purpose. This should by no means act as a hindrance to the standardisation of restitution practices. On the contrary, standardisation of the claims process would allow claimants an easier route to reconciliation

¹⁰⁰ Lahusen et al., Towards a new, 5.

It is important to note here, that the interference of United States is subject to exceptions. The US might and can put its sovereign interests over the interests of claimants. The Sovereign Foreign Immunities Act, defines when a foreign sovereign would have immunity and when there would be exceptions to that immunity.

¹⁰¹ Lahusen et al., Towards a new, 5.

¹⁰² Lahusen et al., Towards a new, 6.

¹⁰³ Lahusen et al., Towards a new, 6. See also, Federal Government press release, No. 157/03, 9 April 2003.

and should therefore include solutions that are rule-bound.¹⁰⁴ There is a need to be claimant first and not possessor first in newly formulated legislation.

¹⁰⁴ Lahusen et al., Towards a new, 7.

‘The tracing of stolen property is subject to diminishing returns.’¹⁰⁵

The law of diminishing returns states that as investment (money or energy) in a particular area increases, output will proportionally get smaller, and after a certain point, will not continue to increase if other variables remain constant. Can this economic phenomenon be used to explain dwindling numbers of successful returns after 1955? How effective has new legislation and recommendations been? Over the years, we have seen increase in recommendation formulated by committees while other factors such as investment in research, progress on a central database, arguments put forth by lawyers and claimants, and methods employed by states to verify the validity of a claim, have more or less remained constant. Could the law of diminishing returns, thus, be used to provide an appraisal for the sincerity of restitution efforts?

¹⁰⁵ Seidl-Hohenveldern, *The Auction*, 252.

The Scramble for Benin

.. if we go back to things that happened in the nineteenth century and judge them by our values of today, it's completely unacceptable. But my concern about this is where do you actually draw the line with this? The collections of our great national institutions have been developed over many many centuries, in many times, in questionable circumstances. I think the question now is about what we do with these. I love the Benin Bronzes. I have seen them many times throughout my life, and I think them being in the British Museum, which is a world repository of heritage, allows people to see it ..¹⁰⁶

Oliver Dowden, British MP
Former Culture Secretary

The above is a brief segment from an interview with British MP Oliver Dowden, echoing the need to keep the Benin Bronzes at the British Museum. He touches upon several themes which will become important in the course of my argument when looking at the Benin Bronzes. By granting voice to all major participants of the Benin repatriation debate, I wish to validate the various voices engaged in the discussion, to arrive at meaningful conclusions. The various stakeholders engaged in the debate and discussed in this chapter include German Museums, the State of Nigeria and the Royal Family of the Kingdom of Benin, and civic actors.

Museums house millions of cultural artefacts, a fraction of which we see on display, with the majority stowed away. While arguments and campaigns for the repatriation of colonial loot are numerous, the actual facilitation of their return is encumbered by various legal as well as political obstacles.¹⁰⁷ Here, the British have perhaps emerged as the most reluctant to part with what they perceive as cultural objects under their stewardship, with laws restricting deaccessioning from museums set in stone, the only exception being objects that were confiscated during the Holocaust period.¹⁰⁸ Least to say, this has hindered claims of restorative

¹⁰⁶ Channel 4 News, *Nigeria's Battle to Reclaim Looted Benin Bronzes* (Youtube, 2021). Accessed July 6, 2023.

¹⁰⁷ Erich Hatala Matthes, "Repatriation and the Radical Redistribution of Art," *Ergo, an Open Access Journal of Philosophy* 4, no. 20201214 (2017), 1.

¹⁰⁸ Martin Bailey, "UK's Restitution Powers to Be Extended Indefinitely for Nazi-Era Loot," *The Art Newspaper*, September 28, 2021. Accessed July 6, 2023.

While writing this thesis, the following British collections: University of Cambridge and Horniman Museum and Gardens have decided to give up their bronzes. The Horniman successfully conducted a ceremony transferring

justice for several entities. Museum authorities as well as Members of Parliament, like Dowden echo the guiding principles of the Hague Convention¹⁰⁹ and do not, at least, not in the near future, see themselves changing tones.

Just by analysing the brief segment of Dowden's interview above, we can highlight the several themes/arguments that have emerged in the course of Britain defending its right to retain the bronzes housed in its various museums. First, Dowden talks about judging actions of the past with the values/morals of today. Second, he addresses, the issue of time, and if and when modern values can be employed to evaluate the ethics and legality of past actions. Third, he acknowledges the dubious origins of Western collections but projects a need to move forward and decide (not collectively) what needs to be done with these objects. Fourth, he tries to establish his and by extension the British public's connection to the bronzes and how they have come to play a role in their collective heritage. And lastly, he re-establishes the role of the British Museum vis-à-vis cultural property of the world, claiming that it is a 'world repository of heritage'. This attitude summarises some of the major concerns and reservations of those hesitant to restitute and repatriate colonial loot. The situation in Germany, in contrast, is markedly different; with more than 11,000 bronzes in German museums already transferred over to Nigeria as their cultural property, it is now up to Nigeria to decide which cultural objects

ownership of 72 objects to Nigeria and physically handing back 6. The others will remain in London for at least a year. But how the remaining physical returns will be carried out is undecided as of now. Further, two artefacts worth GBP 2.5 million—a cockerel (okpa) and Oba head (Uhunwun Elao)—were repatriated from Jesus College, Cambridge University and University of Aberdeen, Scotland, respectively. (Tony Osauzo and Ighomuaye Lucky, "Oba of Benin Receives £2.5 Million Worth of Looted Artifacts," *The Sun Nigeria*, February 19, 2022. Accessed July 6, 2023.)

¹⁰⁹ The successor of the 1939 review by the International Museums Office for the League of Nations which suggested that States holding rich collections of art were acting as mere depositories for the benefit of mankind, the Hague Convention gave legal standing to the idea that cultural property belonging to any people whatsoever should be recognized as "the cultural heritage of all mankind". This idea plays on a universal responsibility to protect cultural property.

they want to retain and which among them will remain under German stewardship as cultural ambassadors of Nigeria.¹¹⁰

But what constitutes colonial loot? Is it the same as war booty? Are they interchangeable in the contemporary context? Are Dowden's concerns valid? Colonial loot refers to the plunder of cultural objects, human remains, and art that were removed, often forcefully, as a product of colonialism and imperialism. Lack of individual/community agency, as well as unequal power structures, often dictated collection practices during these conquests or loot. A diverse range of actors engaged in collecting (looting), from soldiers and missionaries to administrators and diplomats. Removal of objects, thus, carried a layer of meaning, for some it was a pursuit of curiosity and for others a show of power.¹¹¹ Sarah Van Beurden argues that the Bronzes started off as military trophies and eventually became prestigious objects in national collections. For the missionaries that engaged in widespread collecting, they believed that a better understanding of the culture would enable them to be more successful in their Christianisation project.¹¹² War booty, on the hand, refers specifically to spoils of war due to ongoing conflict, and can include weapons, equipment and other resources that are essential to waging war. Spoils of war is contestably considered 'fair game'¹¹³ despite being part of a broader system of exploitation and subjugation. This difference becomes central

¹¹⁰ In April 2021, the German government set out plans to return the Benin Bronzes and signed a declaration agreeing to publish an inventory replete with the provenance of the artefacts by the end of the year. The declaration, a welcome move, stressed that Germany remained hopeful that some Bronzes would remain in the country (Alex Marshall, "Germany Sets out Plans to Return Benin Bronzes," *The New York Times*, April 30, 2021. Accessed July 6, 2023.)

¹¹¹ In *Objects of Culture: Ethnology and Ethnographic Museums in Imperial Germany*, H. Glenn Penny notes the scientific motivations behind collecting items of curiosity in Imperial Germany. He argues the desire of German ethnologists to collect and study was not motivated by racial hierarchies and imperialist desires but to the more scientific pursuit of knowledge through museum collections.

¹¹² 'Knowledge was power, and knowledge came from cultural objects.' (Sarah Van Beurden, LOOT.)

¹¹³ We are witnessing largescale plunder of art and antiquities in Ukraine by Russian forces. Experts assert that this constitutes the largest art theft since World War II by the Nazis, with the intention of depriving Ukraine of its cultural heritage. This large-scale loot should be classified not as war booty but a deliberate attempt to loot a country of its cultural heritage, thereby undermining its sovereignty. (Jeffrey Gettleman and Oleksandra Mykolyshyn, "As Russians Steal Ukraine's Art, They Attack Its Identity, Too," *The New York Times*, January 14, 2023. Accessed July 6, 2023.)

to Dowden's understanding and contention regarding stewardship of the Bronzes and their arrival in Britain, in the background of Britain's expedition into sub-Saharan Africa.

Until the late 19th century, one of the major powers in West Africa was the Kingdom of Benin. Capital of the Edo Kingdom, Benin City had established trade and diplomatic relations, first with Portuguese and later with European envoys and traders, as early as the fifteenth century when merchant ships began to visit coastal West Africa. Soon, Benin rose to an important intermediary between the inland peoples and Europeans on the coast. Slaves were the principal commodity traded up until the nineteenth century. 'The volume of slave exports was at first small, but it increased rapidly in the second half of the 17th century, when this area became known to Europeans as the 'Slave Coast,' and remained high until the 1840s.'¹¹⁴ Slaves exported were mainly captured from neighbouring regions of Benin and this had a deleterious impact on its population even leading to widespread militarisation of society; still others were sent as tribute by conquered local chiefs.¹¹⁵ By the mid-nineteenth century, the transatlantic slave trade was in decline,¹¹⁶ further disrupted by a British naval blockade forcing King Gezo to accept a treaty abolishing the slave trade.¹¹⁷ This marked the shift in the balance of power in favour of Europeans in the nineteenth century, as trade in palm oil was nowhere near as lucrative as the slave trade, and the British made significant advances into the Nigerian coast in the second half of the nineteenth century. Richard Burton was the first Britisher to visit Benin

¹¹⁴ Robin Law and Dov Ronen, "History of Benin," *Encyclopaedia Britannica*. Accessed July 6, 2023.

¹¹⁵ The British Museum, Benin: An African kingdom, November 2015, 4.

¹¹⁶ Philip A. Igbafe, "Slavery and Emancipation in Benin, 1897–1945," *The Journal of African History* 16, no. 3 (1975): 409–10.

Colonial rule signified the end of slavery for many parts of African and Nigeria, however, manumission in Benin particularly was carried out for two reasons as argued by Philip A. Igbafe: first, as a means to facilitate British expansion and second, due to changing societal morals and principles.

¹¹⁷ 'The export of slaves to foreign countries is for ever abolished in the territories of the King of Dahomey, and the law made and proclaimed in accordance with a former Treaty between Her Majesty the Queen of England and King Gezo of Dahomey, dated January 13, 1852, shall continue in force for ever.' (The Broad Arrow, England, 25 August 1877)

in 1962. He reported on the general degeneracy of the people and savage customs describing Benin ‘as a kingdom of “gratuitous barbarity which stinks of death.”’¹¹⁸

According to Philip A. Igbafe, while it might be tempting to argue that further inroads into Benin post-Burton’s visit were motivated by the idea of the civilising mission, the events succeeding his visit do not bear this contention. He postulates commercial interests superseded the projected humanitarian interests of the British consuls. Soon, the industrialised Europeans began to exert greater power across the African continent, leading to the infamous territorial land grab—‘Scramble for Africa.’

Subsequently, the appointment of Captain H.L. Gallwey in 1891 as the first permanent Vice-Consul to the Benin River district was instrumental, as he managed to push through a protection treaty which ‘provided Britain with the legal grounds for subsequently holding [the] Oba Ovonramwen¹¹⁹ accountable for practices which were adjudged obstructionist and hostile to British commerce and the British policy of penetration into the interior of the country,’¹²⁰ paving the way for British colonial and commercial aspirations. Noting that the agreement was ‘eloquently specific on commercial issues,’ Igbafe argued that the treaty did not specifically mention anything about bloody customs or barbaric primitive practices. It is important to emphasize that African rulers had very little say in the matter when it came to signing treaties of protection and were compelled to sign the treaty based on the explanations provided by British officials translated twice over with no means of checking accuracy.¹²¹ ‘In fact, as

¹¹⁸ Philip A. Igbafe, “The Fall of Benin: A Reassessment,” *The Journal of African History* 11, no. 3 (1970): 385.

¹¹⁹ Oba of the Kingdom of Benin from c. 1888 till the British punitive expedition of 1897.

¹²⁰ Igbafe, *The Fall of Benin*, 386-387.

¹²¹ Igbafe, *The Fall of Benin*, 387.

Gallwey himself explains, the Oba refused to touch the pen, though he allowed his name to be written and his advisers to sign the treaty.’¹²²

Despite the stringent conditions of the treaty, the Oba was able to retain sufficient powers to control his court, trade, and traditions, much to the dismay of the British. It was almost as if there had been a serious miscommunication regarding the conditions of the treaty causing the Oba to constantly butt heads against the vested interests of the British. For Acting Consul-General Sir Ralph Moor, this was unacceptable, and as early as September 1885, Moor had advocated for a punitive expedition to remove the Oba and install a puppet ruler in his place. ‘I now consider, he wrote, “that if the efforts now being made continue unsuccessful until the next dry season, an expeditionary force should be sent about January or February to remove the king and his jujumen from the country..”¹²³ Noting that a clash was inevitable, Igbafe postulated that failed attempts to contact the Oba about his misdemeanours, coupled with protests by the traders against inaction, and Foreign Office’s demand for a report detailing steps taken to move inland, there was little to be done but wait for a sanction from the Foreign Office to carry out a military attack. One of the main reasons for the conflict between the British and the Oba was trade motivated as only a few merchants were allowed to travel inland and engage in trade relations, and these permissions were seldom granted to Europeans.¹²⁴

Thus, in an attempt to gain further control of the trade in Benin, the British sent an envoy of eight delegates to pressure the Oba in January of 1887. However, things took a quick turn when negotiations failed and ‘seven (or perhaps five) Englishmen’¹²⁵ along with 230

¹²² F.O. 84/2194, “Gallwey's Report on visit to Ubini (Benin City), the Capital of the Benin Country,” 30 March 1892, in Macdonald to F.O. no. 26 of 16 May 1892. As cited in Igbafe, *The Fall of Benin*, 388.

¹²³ Igbafe, *The Fall of Benin*, 394.

¹²⁴ *The British Museum, Benin*, 5.

¹²⁵ Dan Hicks notes details of the attack come from the autobiographical adventure story of Alan Boisragon, one of the two survivors of the ‘peaceful’ expedition. In his account, Boisragon fails to acknowledge the numbers of those lost in and around the city of Benin during the 18-day retaliation attack, or the extent of death and injury in the several previous as well as incoming ‘expeditions.’

porters¹²⁶ were massacred. Following this ‘the British government sent a “punitive expedition” of 1,200 marines to Benin City with the goal of devastating the city and placing Benin under direct colonial control.’¹²⁷ Armed with modern artillery, the army stormed the palace, capturing the King of Benin and looting the palace of its contents, including numerous sculptures and regalia made mostly of brass, despite the more popularised term ‘Benin Bronzes;’ the group also includes works in ivory, leather, coral and wood. A large proportion of the looted artworks came from royal altars and several among them were cast brass plaques, dated between 1550-1650, fashioned to adorn the pillars of the palace.¹²⁸ These important works immortalised a vivid picture of the kingdom and court, proclaiming and glorifying the king’s prestige, status, and achievements.

The King who was at the centre of a large trade network exchanging slaves, ivory and other important goods, eventually fled once the troops burnt down most of the city on 19-20 February, coming back only in August.¹²⁹ What they found inside the city were elaborate bronzes and ivories, sophisticated in construction and highly symbolic, whose value was unbeknownst to them. Ethnographer and collector, Felix von Luschan, noted that what the British had stumbled upon was much more than war booty.¹³⁰ Following the decimation of Benin’s population and the devastation of its city, news spread across Europe that the British had acquired unique objects from the palace.¹³¹ From the palace ivory alone, the soldiers were able to make roughly GBP 800 (or approximately GBP 85,000 adjusted for inflation at the time of writing) by the middle of March 1897.¹³² Initially, they were dealt to ship captains,

¹²⁶ Deadria Farmer-Paellmann and Restitution Study Group v. Smithsonian Institution (United States District Court for the District of Columbia October 7, 2022): 14.

¹²⁷ H. Glenn Penny, “Benin Bronzes: Colonial Questions,” *In Humboldt’s Shadow: A Tragic History of German Ethnology*, 2021, 85.

¹²⁸ The British Museum, Benin, 4.

¹²⁹ Igbofe, *The Fall of Benin*, 398.

¹³⁰ Penny, *Benin Bronzes*, 85.

¹³¹ Penny, *Benin Bronzes*, 81.

¹³² Igbofe, *The Fall of Benin*, 398.

merchants, and pawnshops in London; but antiquities dealers and auctioneers followed soon after.¹³³ As demand increased, so did the commercial networks dealing with African art. '[T]he war booty from the conquest of Benin (18 February 1897) constituted the greatest surprise that had ever been visited upon ethnology.'¹³⁴ But most curious was the distribution of the Benin booty throughout Europe.

Even today, people have difficulty explaining why by 1919 there were some 580 objects from Benin in Berlin's collections and a mere 280 in London, or why about half of what British soldiers seized from the city ended up in German museums. The British Museum received only a few hundred items from the Foreign Office in 1897. Much of the rest went up for sale—the state sold some, but British officers and soldiers, who had seized these artifacts for themselves, sold many more.¹³⁵

Luschan swiftly acquired several cultural artefacts for the collections in Berlin, often competing with several museum directors and private entities as interest in this 'exotic' African Art burgeoned. Today, Germany holds the second-largest collection of Benin bronzes, almost half of the repository in Britain, thanks to the initial efforts of Luschan.¹³⁶

¹³³ Penny, *Benin Bronzes*, 82.

¹³⁴ Felix von Luschan, *Altertümer von Benin* (*Antiquities of Benin*), 1919. As cited in Igbofe, *The Fall of Benin*. Also see, Penny, *Benin Bronzes*, 81-83.

¹³⁵ Penny, *Benin Bronzes*, 84.

¹³⁶ The British Museum holds the most number of Benin bronzes at 944, twice as many as the Ethnologisches Museum, Berlin which comes in at second with a count of 518. (Digital Benin Online Database)

‘it will be shipped’

These objects which for a large part have been ripped away from their cultures of origin by way of colonial violence, but which were welcomed and cared for by generations of curators in their new places of residence, from now on bear within them an irremediable piece of Europe and Africa. Having incorporated several regimes of meaning, they become sites of the creolization of cultures and as a result they are equipped to serve as mediators of a new relationality.¹³⁷

In the concluding remarks, for their seminal¹³⁸ 2018 report, ‘The Restitution of African Cultural Heritage: Towards a New Relational Ethics,’ Felwine Sarr and Bénédicte Savoy noted that French national collections were taking a step in the right direction by preparing (and arguably paving) the path towards restitution of African cultural heritage objects. Recognising the legitimacy of these requests, Sarr and Savoy argued, allowed both for recognition of colonial violence and the possibility of establishing new ethical relations, which would not be limited to the cultural sphere.¹³⁹ The report was a direct product of French President Emmanuel Macron announcing the ‘temporary or permanent restitution’ of African heritage from French institutions to Africa¹⁴⁰ which was an instrumental and unexpected proclamation, given that till only year ago, France had adamantly rejected the idea of returning any cultural heritage objects to Benin due to the inalienable nature of public French art collections.¹⁴¹ This propelled a domino effect, with the German Museums Association (Deutscher Museums Bund - DMB) coming out with a similar report in 2018, updated in 2019, laying out the ‘Guidelines on Dealing with Collections from Colonial Contexts’ with two objects: raise awareness in relevant institutions (primarily for museums and university collections) and offering them practical

¹³⁷ Felwine Sarr and Bénédicte Savoy, “The Restitution of African Cultural Heritage: Toward a New Relational Ethics,” trans. Drew S. Burk, *Ministère de la culture*, November 2018, 87.

¹³⁸ According to Historian Sarah Van Beurden, the report by Savoy and Sarr is widely seen as the starting point of colonial restitution debates and has inspired a string of other similar initiatives across Europe. Similarly, for Nazi-looted artworks, the 1998 Washington Conference Principles have been widely accepted as the first set of guiding principles. Although non-binding, and problematic in its structure and wording, they promote fair and just solutions and have helped victims and their descendants to reclaim artworks lost involuntarily.

¹³⁹ Sarr et al, *The Restitution of African Cultural Heritage*, 87-88.

¹⁴⁰ Anna Codrea-rado, “Emmanuel Macron Says Return of African Artifacts Is a Top Priority,” *The New York Times*, November 29, 2017. Accessed July 6, 2023.

¹⁴¹ Sarr et al, *The Restitution of African Cultural Heritage*, 1.

guidance. Objects from the Kingdom of Benin were classified under the category ‘1a: The object is from an area that was under formal colonial rule at the time of collection of manufacture, acquisition or export of the object,’ and declared historically sensitive as they were appropriated during a ‘British “punitive expedition.”’¹⁴² The revised guidelines, in agreement with Sarr and Savoy’s earlier position, asserted that these objects do not exist in a vacuum but have to be understood individually as well as within a wider historical context.

Similarly, in December 2019, the Welt Museum, Vienna, published a booklet ‘A Colonial Thing,’ compiled by Joy Slappnig and curator Claudia Augustat. They sought to provide an appraisal of four contemporaneous guidelines on the restitution of cultural property from colonial contexts. They carried this out by answering five questions:

1. What do they understand as the colonial period?
2. What can or should be returned?
3. How should it be returned?
4. Where should it go?
5. How can we shape the future of ethnographic museums?¹⁴³

Concise questions, noting the main takeaways of the recommendations and reports, this appraisal allows us to examine what is of substance within these expansive reports. Unlike the Washington Conference principles, which were a set of succinct guidelines to be implemented, the guidelines formulated for the restitution of colonial loot are expansive, filled with numerous reasons and justifications, all to supply verification on why a return is desirable.

I will be focusing on three of the four guidelines¹⁴⁴ employed by them to conduct this analysis. The first ‘Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects’ proposed by Jos van Beurden, the second, The Restitution of African Cultural

¹⁴² Deutscher Museums Bund, “Guidelines for Museums: Care of Collections from Colonial Contexts, 2nd Edition,” 2019, 26.

¹⁴³ Claudia Augustat and Joy Slappnig, “A Colonial Thing,” *Welt Museum*, December 4, 2019.

¹⁴⁴ The fourth guideline analysed pertains to the issues of indigenous remains and cultural objects, exclusively in Canada, developed by representatives of the First Nations: *Indigenous Repatriation Handbook*, Canada, 2019.

Heritage discussed earlier, compiled in the French context by Sarr and Savoy, and lastly, the revised ‘Care of Collections from Colonial Contexts,’ developed by the DMB in 2019. Augustat and Slappnig acknowledge that guidelines pertaining to the return and restitution of cultural property are not recent and have been proposed and recommended previously by several institutes and international bodies, including ICOM and the United Nations. What is recent, however, is the focus given to specific collections in museums and states and the reversal of the ‘burden of proof.’

Dutch researcher, Jos van Beurden in his monograph ‘Treasure in Trusted Hands’ understands the ‘colonial period’ as split into three phases: ‘Phase 1 is characterised by the initiation of trade relations and the subsequent appropriation of land; Phase 2 comprises settler colonialism and the economic exploitation of the colonies; Phase 3 covers the period of decolonisation (roughly since 1945).’¹⁴⁵ And each of these phases was marked by its own collection practices, peaking in Phase 2. This approach is broadly in line with the methodology approached by the DMB, who employ the term ‘colonial contexts,’ which is an extension of the ‘colonial period.’ However, for Savoy and Sarr, while the formal colonial period began with the Berlin Conference of 1884/1885 and ended with independence of African nations in the 1960s, the overarching imbalance and injustice can not be formally categorised and existed before the colonial period and continued till much after.¹⁴⁶ And while classification of the colonial period is more or less agreed upon, the question of which objects must be returned creates more discord. Would it be correct to classify all items as loot? Or should segregations be made defining where victims lacked agency and where they willingly exchanged bronzes and other artefacts in exchange for weapons and other material goods?

¹⁴⁵ Augusta et al, A Colonial Thing, 3.

¹⁴⁶ Augusta et al, A Colonial Thing, 4.

Accession/ Location	Until 1884	1885-1960	1961	Unknown	Total
Benin	14	2284	596	263	3157
Namibia	-	7	-	-	7
Nigeria	41	257	840	10	1148

*Table 1: The numbers of objects housed at the Musée du quai Branly-Jacques Chirac at the core of the 'Africa' Cultural Heritage Collection according to the period of their registration into the inventory records. The 'Unknown' column represents items lacking a specific registration year in their inventory numbers. (Sarr et al, *The Restitution of African Cultural Heritage*, 140-141, Fig 3)*

From Table 1 above, analysing just one collection in France, focussing on three countries, it becomes clear that the majority of displacement occurred post-1884, in the second and third phases, as proposed by Beurden and others. One reason for this can be attributed to inroads made by British envoys further into the Kingdom. Still, however, this does not imply all exchanges in this period were marked by undertones of colonial violence.

While DMB and Beurden both agree that objects of cultural or historical importance must be returned if community of origin so demands, Savoy and Sarr adopt a more radical stance, contending that the majority of European museum collections originated from imbalanced colonial practices. Consequently, they argue for the complete repatriation of objects from sub-Saharan Africa, prioritizing the return of items that have already been requested by countries and communities seeking restitution.¹⁴⁷ Shifting the 'burden of proof' from communities to museums, Savoy and Sarr argue that museums should prove if their collections have been ethically sourced or 'explicit evidence or information witnessing to the

¹⁴⁷ Augusta et al, *A Colonial Thing*, 5. See also, Sarr et al, *The Restitution of African Cultural Heritage*, 3-4.

full consent on the part of the owners or initial guardians of the objects at the moment when the objects were separated from them.’¹⁴⁸ Return or repatriation is then carried out based on bilateral agreement or returned to various groups (communities or countries of origin) from whereon their future movement can be negotiated by these entities. For Beurden too this presents the most pragmatic solution, despite its shortcomings. All three guidelines signal a change in museum policy for the future. The shift ranges from an increase in critical evaluation and provenance of objects to changing role of the museums as ‘round tables’ for conversation and negotiation amongst the various stakeholders to determine the best course of action for objects.

Critics of repatriation, like Dowden, however, disagree. Arguments put forth by museum professionals against repatriation have ranged from protecting the integrity of the museums’ collections to cultural objects being the wealth of humanity in general. Academics, additionally, have echoed these concerns, especially with regard to accessibility to collections, and how this adds to the world’s knowledgebase. Yet, how can we make a justifiable case for accessibility, especially considering how most Nigerians, and descendants of Benin, have never seen the bronzes in their lifetime or see it for the first time in Western collections? At what cost is this accessibility? Despite the best of intentions to save material traces of Benin and its history for posterity,¹⁴⁹ much of it is lost, simply because of the way the loot was carried out; entire histories etched in the bronzes, jumbled and displaced. Today, ‘the Benin bronzes and ivories have become the poster children for *Raubkunst* (looted art)’.¹⁵⁰ But unlike its counterparts in the United Kingdom, Germany is making efforts to return the bronzes and other artefacts in its collections. In July, this year, Germany physically handed over two bronzes and

¹⁴⁸ Sarr et al, *The Restitution of African Cultural Heritage*, 57-58. See also, Augusta et al, *A Colonial Thing*, 5.

¹⁴⁹ Penny, *Benin Bronzes*, 107.

¹⁵⁰ Penny, *Benin Bronzes*, 107.

started the process to repatriate 1000 more artefacts.¹⁵¹ These artefacts come from various museums all over Germany. However, not all Benin artefacts will be shipped to Nigeria, some of them will remain on display under custodial agreements. German official, Andreas Goergen, who helped negotiate the agreement, declared ‘if Nigeria ever asks for an item back, “it will be shipped.”’¹⁵² Transfer of ownership and permanent loans are increasingly becoming the norm in repatriation negotiations around the world. These form perhaps the most amicable solution of all, to the question of return. German foreign minister, Annalena Baerbock, was quoted, ‘It was wrong to take the bronzes and it was wrong to keep them. This is the beginning to right the wrongs.’¹⁵³ A watershed moment, not just because it brings discussions regarding Germany’s colonial heritage to the limelight but because of what the return and its magnitude represents for other state and private collections. Nigeria’s deal with Germany is its largest yet.

But is there a statute of limitations (prescriptive period) on these ‘wrongs’? Janna Thompson finds if something is unjustly taken from its owners, then those wronged can demand reparations, but it does not follow that the wrongdoer is obliged to restore the property to them—particularly if time has passed and conditions have changed. There should be reason to believe that artefacts were and continue to be, important to the collective life of those from whom they were unjustly taken.¹⁵⁴ J Waldron interestingly, contends that the entitlement of groups does not wear out quickly which would mean that the resilience of religious and cultural traditions may allow claims to be valid for over a hundred years. Notably, most restitution claims today concern cultural property that was taken away less than 200 years ago, including

¹⁵¹ Philip Oltermann, “Germany Hands over Two Benin Bronzes to Nigeria,” *The Guardian*, July 1, 2022. Accessed July 6, 2023.

¹⁵² Marshall, Germany Begins Return.

¹⁵³ Thomas Rogers, Rahila Lassa, and Alex Marshall, “How Germany Changed Its Mind, and Gave the Benin Bronzes Back,” *The New York Times*, December 20, 2022. Accessed July 6, 2023.

¹⁵⁴ Thompson, Cultural Property, 253.

the Benin Bronzes, and thus, it would be difficult to argue that claims have been superseded by the effects of time.

However, not all returns have been received kindly. Most notably, the Smithsonian National Museum of African Art's attempt to tackle its Benin collection has faced severe backlash and a lawsuit from the 'Restitution Study Group: Looking into the Past to Create the Future (RSG).' Created to promote slavery justice, the group challenges the Smithsonian's move to transfer ownership of 29 Benin bronzes to Nigeria and the Benin Kingdom as a 'breach of trust for failing to protect the interests of United States citizens descended from enslaved people'.¹⁵⁵ Using DNA to assert claims to cultural heritage among other historical injustices, RSG represents a class DNA descendants of enslaved people who can trace their ancestry to today's Nigeria and whom the Beni trafficked and sold. Employing metallurgical experts to verify if the European origin of the copper alloy, RSG advocates for the return of a certain set of Benin Bronzes. In a bizarre turn of events, one sees the extensive application of science (or rationality) to assert material claims.

'According to RSG's leader, Deadria Farmer-Paellmann, the artefacts (Benin Bronzes) should remain in Western museums so that descendants of slaves can learn about the slave trade, instead of the items returning to the descendants of slave traders.'¹⁵⁶ Elaborating further, Paellmann argues that the real victims of the Benin tragedy were not the nobles/rulers in Benin, whose descendants now seek to profit from the repatriation of the bronzes instead the real victims were the slaves, that paid with their lives in exchange for the bronze that was used to

¹⁵⁵ Restitution Study Group, "Smithsonian Hit with Lawsuit to Stop Benin Bronze Transfer to Nigeria." Accessed July 6, 2023.

¹⁵⁶ Segun Adewole, "US Group Opposes Benin Bronzes' Return to Nigeria," *Punch Newspapers*, August 17, 2022. Accessed July 6, 2023.

cast the intricate bronzes.¹⁵⁷ This group finds Western museums as the proper custodians of the artefacts as this allows descendants of slaves, spread across the globe, to not only access the bronzes but keep them away from the profiteering hands of the Nigerian State. Paelmann was further quoted as claiming, ‘Black people do not support slave trader heirs just because they are black. Nigeria and the Kingdom of Benin have never apologised for enslaving our ancestors.’¹⁵⁸ Her petition to co-own the cultural heritage of the Kingdom of Benin has 400 signatories, some of whom claim to be descendants of chattel slaves.

¹⁵⁷ Trade with the Portuguese in Benin led to the growth of brass casting in the region. Benin's own supply of metal was insufficient to sustain the casting industry. However, the Portuguese provided brass ingots, known as ‘manillas,’ which were used as currency, often exchanged for people the kingdom captured and sold into the Transatlantic slave trade, and melted down by Benin's brass workers. This trade facilitated the expansion of the casting industry and added grandeur to the king's palace. (The British Museum, Benin, 4.)

¹⁵⁸ Restitution Study Group, Smithsonian Hit with Lawsuit.

The Nigerian Prince [Scam]

The slave trade is the ruling principle of my people. It is the source and the glory of their wealth..the mother lulls the child to sleep with notes of triumph over an enemy reduced to slavery.¹⁵⁹

King Gezo, 1840, emphasising the significance of slave trade to his people.

The role and image of the Oba is very central to Benin society and appears frequently as a theme in regalia. Crowned and dressed in a tunic made of coral beads, the Oba radiated exuberance, especially with the rare and valuable coral symbolic of the long-distance trade relations with the Mediterranean.¹⁶⁰ Similarly, the iconography of Mudfishes is also recurrent, and symbolises the dominance of the King on both the land and water.¹⁶¹ Today, the Oba retains symbolic power and prestige and has been an active contributor to the issue of return of the Bronzes. However, bilateral agreements have insofar been signed only with the state of Nigeria with the understanding that these would be returned to the country and on display at public museums. So, it should come as no surprise when Nigerian President Muhammadu Buhari's decision to recognise the Oba or Ewuare II, as the owner of the Bronzes has led to widespread discontent.¹⁶² This decision has split opinion in three halves. There is one group, which continues to assert restitution is significant and it does not matter to whom the object is transferred once it returns to the country of origin as it officially becomes an internal matter, the second group are those people who are against restitution in its entirety, and now the emerging third group, who support restitution but are uncertain about the fate of the objects. And cautiously so.

¹⁵⁹ BBC, The Story of Africa.

¹⁶⁰ Corals are associated with the sea-God Olokun who an ancient king of Benin defeated in a wrestling match and took his coral from him. (The British Museum, Benin, 5.)

¹⁶¹ Mudfish can live on both land and sea, akin to the authority of the King in both domains. (The British Museum, 'Benin: an African kingdom,' 5.)

¹⁶² In a government gazette from 23 March, 2023, the government of Nigeria declared Oba Ewuare II as the 'rightful owner and custodian' of the heritage and culture of the people of Benin. According to the The Guardian, Nigeria, the Oba is 'now on a path to a \$30 billion fortune.' (Ifeanyi Ibeh, "Repatriation of Benin Bronzes Faces Opposition from African-American Group," *The Guardian Nigeria News*, April 30, 2023. Accessed July 6, 2023.)

It is unclear as of now where the Oba will house the Bronzes as President Buhari does not lay out a set plan for their display. Speculations contend they might be housed in the Oba's palace or anywhere else he deems secure.¹⁶³ Further still, each Bronze will be vetted by the Oba and cannot be moved without his express permission.¹⁶⁴ This decision applies retroactively and to all future repatriation; the Oba has, thus, emerged as the original owner and beneficiary. This has inadvertently undermined the rationale behind arguing for the preservation for a national collection. And the Germans, for their part have washed their hands, declaring it an internal matter.

Describing it as a 'fiasco,' *The Times*, UK, was one of the few Western dailies to be critical of the return. In an opinion piece for the *Frankfurter Allgemeine*, similarly, the transfer of the Bronzes to the Oba and Germany's reluctance to act once it has passed the baton was criticised as being economically motivated as opposed to serving the moral and ethical dilemmas of housing colonial loot. Professor Emeritus of Anthropology, Brigitta Hauser-Schäublin, stated, 'What politicians thought of as the return of cultural heritage to the "Nigerian nation" has instead turned into a present to a single royal family.'¹⁶⁵

The transfer of the Benin Bronzes was originally slated to Nigeria's National Commission for Museums and Monuments. To this effect, plans for a memorandum of understanding between the Smithsonian and NCMM were underway to facilitate educational programmes for educators, students and artists. It is unclear, whether this MOU will be honoured by the Palace.

¹⁶³ Barnaby Phillips likened Ewuare II's newly vested powers not just blindsiding but also damaging to the position it has put the Nigerian government's National Commission for Museums and Monuments, (NCMM), who had previously spearheaded the negotiations. (Barnaby Phillips, "Nigeria Benin Bronzes: Buhari Declaration 'blindsides' Museum Officials," *BBC News*, May 10, 2023. Accessed July 6, 2023.)

¹⁶⁴ Phillips, Nigeria Benin Bronzes.

¹⁶⁵ Oliver Moody, "Berlin's Benin Bronze Return a 'fiasco' as Artefacts Vanish," *The Times*, May 7, 2023. Accessed July 6, 2023.

‘Politicians should not try to outdo each other with pronouncements.’¹⁶⁶

Calling it political appeasement, in a 2018 interview with *Der Tagesspiegel*, Hermann Parzinger tried to make a case for the complexity of the issue and argued that it was not as simple as sending it all back. Speculations about why Germany was so hasty to sign off the return also deliberate if the Humboldt Forum and the provenance of its contents had not caused a widespread uproar, will the return of the Bronzes have occurred so quickly? Prof Jürgen Zimmerer from the University of Hamburg connects the return to earlier restitutions made for Nazi-looted art, ‘People know that looted art is something you give back.’¹⁶⁷

In her class action complaint filed on October 7, 2022, against the Smithsonian Museum (Defendant), Paellmann alleged an anticipatory breach of trust by the Defendant’s ‘planned transfer of the Benin Bronzes made during the trafficking and enslavement period from the 16th to 19th century.’¹⁶⁸ The case concerned itself, first and foremost with the preliminary (and later permanent) injunction to prevent the transfer of 29 of 39 Benin Bronzes as gifts, valued at over \$200 million, to the Federal Republic of Nigeria’s National Commission for Museums and Monuments (NCMM). It is important to distinguish that Paellmann’s complaint concerns itself, particularly with only those Bronzes that were fashioned between a specified time frame (16th to 19th century) and that were made from metals traded in exchange for enslaved people of Western Africa. Further still, she asserts that the United States should principally be protecting the interests of those citizens whose ancestors were trafficked by the ‘greed of the Beni traffickers.’

Here, Paellmann’s argument is in line with the Hague Convention where she finds the Smithsonian Institute as a ‘trust instrumentality’ for all people of the United States. Created as

¹⁶⁶ Rogers et al, *How Germany Changed Its Mind*.

¹⁶⁷ Rogers et al, *How Germany Changed Its Mind*.

¹⁶⁸ In a class action lawsuit, a plaintiff (Paellmann and Restitution Study Group) sues a defendant(s) (Smithsonian) on behalf of a group or a class of absent parties (in this case, those perceived to be similarly situated, including DNA descendants).

a trust instrumentality of the United States, the Smithsonian holds assets of British chemist and mineralogist, James Smithson, ‘who bequeathed them to the United States “for the increase and diffusion of knowledge among men.”’¹⁶⁹ The museum thus becomes a centre for learning and education and carries out these functions through its role as an observatory, laboratory and library.

Paellmann simplified the greed and commercial interests of those involved in the network: higher agricultural profits for Europeans and copper-based metal in the form of manillas for the Beni traffickers to fashion into iconic sculptures. And this acts as a starting point for the history of the Benin expedition, without the abduction of several slaves, and the subsequent creation of the Bronzes, there would be no plunder of the sculptures by the British in the 19th century. Thus, Paellmann extends the timeline of the course of events to broaden our understanding of the Benin plunder and allows us to contextualise the creation of the bronzes; a tactic more subtly employed by the British Museum.¹⁷⁰ By effectively bracketing off the history of the Bronzes to have begun from its displacement and ending with their return, the Smithsonian has ignored a key part of its creation politics. RSG rightly questions this logic and the ethicality and morality behind the museum’s actions, especially in deciding the ‘rightful’ owners. However, the Smithsonian defends its position by claiming that the role of the Kingdom of Benin in the slave network is far less documented than its counterparts and that this narrative has emerged as a part of a misinformation campaign.

The complaint also questions the perception of a combined interest of all Africans and reinstates that the RSG has no interest in ‘returning the payment that Beni royalty received.’

¹⁶⁹ Deadria Farmer-Paellmann and Restitution Study Group v. Smithsonian Institution (United States District Court for the District of Columbia October 7, 2022): 5.

¹⁷⁰ Both in the brochure and on the official website, the British museum outlines the role of the Oba in the transatlantic trade, thereby, signalling to the barbarity of the Beni and more importantly suggesting that they are not without fault. Similarly, in an article published by the Smithsonian Institute, titled ‘The Royal Art of Benin: In the Collection of the National Museum of African Art (1987), the publication notes the cost of a single slave equalled fifty-seven manillas, in contrast, an eighty pound tusk was exchanged for forty-five manillas.

And lastly, Paellmann questions the rationale behind rewarding traffickers when ‘the Government of United States has thwarted efforts to make any reparations to descendants of African enslaved people.’

94. If Defendant Smithsonian Institution “gifts” the Benin Bronzes to the royal Beni traffickers, it would be an agent of (1) the unjust enrichment of those who engaged in all-too-common crimes against humanity, without receipt of any compensation; and (2) the unjust impoverishment of those whose lives were lost and destroyed for such metals and the objects fashioned therefrom.

Economic interests play a central role in how repatriations are discussed too, much like nazi plunder. It is common for newspaper outlets to quote the more quantifiable monetary value over the less qualitative cultural value these objects possess. And RSG is no exception.

Interestingly, museums making a profit from replicas among various other kinds of merchandise is never brought to question. For instance, once can purchase a Benin ‘Court Dwarf,’ in two sizes, mini and full-sized, at EUR 29.95 and EUR 350, respectively, at the Kunst Historisches Museum, Vienna. Based on early examples of court dwarfs from the Welt Museum, these replicas are fashioned from resin and artificial stone and fetch a staggering price for anyone who wants to acquire them. What are the rights of museums pertaining to copyright issues is still undefined. Who owns cultural property? What happens to cultural property once repatriated? Can museums still sell merchandise at their gift shops?¹⁷¹

¹⁷¹ In the Joint Declaration on the Return of Benin Bronzes and Bilateral Museum Cooperation, signed between Germany and Nigeria in July 2022, both sides agreed that the issue copyright and associated issues will be considered in the transfer agreements. There is no demarcated bottom line these two nations will be following and copyright issues will be negotiated at a later stage. Important to note here, the signatories of the agreement from the Nigerian side did not include the Oba.

Conclusion

Better if they had let those civilisations develop and flourish rather than offering up scattered limbs, these dead limbs, duly labelled, for us to admire. After all, by itself the museum is nothing. It means nothing. It can say nothing.¹⁷²

Aime Cesaire, *Discours sur le colonialisme* 1955
(translation by Dan Hicks, The Brutish Museum)

Here, the work of Restitution Support Group not only brings to light the several intricacies surrounding return and restitution, but also asks a bigger question: With conflicting ownership, especially between states, individuals and communities, do museums thus emerge as the proper, dare I say, impartial custodians of cultural heritage? Who owns cultural heritage? Does the Kingdom of Benin, and present-day Nigeria have a bigger moral claim to the bronzes? Or do descendants of slaves have a higher moral authority?

And if yes, how is one supposed to calm sceptics and their concerns regarding what I call the convoluted empty nest syndrome of museums, where instead of objects finding their way in the big world, they find their way back home? It is impossible for museums of developing nations, for that matter even developed nations, to care for the sheer amount available at the disposal of museums. At any point, only 10% of a museum's collections are on display, and so even in the worst case scenario they have to deaccession everything on display they are still left with 90% of what they began with. And most claimants do not ask for a complete return. They acknowledge that similar care cannot be partaken by them so they make the case for transferred ownership rights or permanent loans. This sort of exchange might even facilitate indigenous knowledge exchange which might particularly be beneficial for ethnographic museums and their vague descriptions on exhibits.

Further still, just like the presence of Benin Bronzes in western museums encourages dialogue and discourse regarding the brutal means of their displacement, the same would be

¹⁷² Dan Hicks, foreword, in *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (London: Pluto Press, 2021), vi.

possible upon their return to Nigeria, only this time, educators and curators can interact with the complicated histories of their creation. This is not to say that Benin Kingdom's role in the slave trade requires the physical presence of the bronzes but that it might usher in new ways of understanding national history in Nigeria as well as the role Beni played in this network.

In her complaint, Paellmann argues, '(30.) Plaintiffs have personal stakes in the outcomes of this action insofar as the metal of which the Benin Bronzes made *are* and *represent* monetary or in-kind metallic value that European slavers used to pay royal Beni traffickers for the lives and liberties of Plaintiffs' enslaved ancestors.'¹⁷³ But can repatriation or even reparations be carried out based on the material of objects? How will that look for objects composite of several metals and materials from various parts of the world? Will the region of material source then trump the region of origin (creation)? And what about the craft that goes into making these objects? There have always existed networks of trade and exchange, and so what does this mean for goods available in our state collections which were not produced with local products? Can co-ownership of the Benin Bronzes with its various stakeholders be a viable solution? Could objects be rotated annually to its various stakeholders?

¹⁷³ Paellmann, United States District Court, 8.

Conclusion

To openly speak of restitutions is to speak of justice, or a re-balancing, recognition, of restoration and reparation, but above all: it's a way to open a pathway toward establishing new cultural relations based on a newly reflected upon ethical relation.¹⁷⁴

It is easy to chalk out the differences between Nazi plunder and colonial loot. Historically, there have been attempts from the very beginning to reinstate Jewish property. Allied officials attempted to salvage some of the looted plunder and tried to reinstate it to the rightful owner. No such attempt was made on the colonial front, instead, there was continued plunder and division of lands with no regard to tribal boundaries. Restitution of Nazi loot insofar has been evidence-based, with a strong focus on documentation to prove title, most restitution requests for Benin bronzes on the other hand have been made on moral and ethical grounds, and have remained outside legal jurisdiction; except for the case of the Restitution Study Group whose claims take on a new character motivated by scientific and lineage-based evidence. The location of a bulk of Benin Bronzes is widely known, the same cannot be said about Nazi-plundered art. And the legislation formulated to deal with Holocaust claims is more complex and intrinsic whereas, museums are only recently looking into their collections to evaluate the presence of looted colonial artefacts.

But if one were to look past these superficial differences, at its core, one would recognise, both situations are similar: there is an invading force that comes in or a new regime that targets individuals for what they are, and this is followed by a removal process, guided by the regime's considerations, this could be in the form of a civilising mission or an Aryanisation process, the bottom line being that it is forced and non-consensual, and part of a much larger policy to marginalise target groups based on prejudices and stereotypes. Cultural objects and artefacts play an important role in this equation. Be it as objects of curiosity or 'degenerate'

¹⁷⁴ Sarr et al., *The Restitution of African Cultural Heritage*.

art, artefacts valuable to the community are removed and monetised to oil the cogs of the regime. Subsequently, the role that these objects play also metamorphosizes from objects of cultural significance to tools of propaganda to justify untold violence, eventually ending up on a museum shelf, mislabelled. So, should a distinction between how these objects travel to end up in a museum be significant for current discussions on restitution and repatriation? Because once these objects are removed, what is so unique about how they travel? The differentiating element here of course is how they are removed, from whom, and when. But once removed, there is a point of congruence in how these objects travel from one place to the next, are sold, and then resold, only to be acquired by important figures and/or museums. So, the question to ask is, can there be a generic approach to how we treat these objects removed through forced seizures?

Both Nazi-plundered art and colonial loot were demonised in the beginning only to be appraised for its value and later sold at high profits. The sale of these stolen artworks also helped finance the costs of further expeditions, much like the sale of ‘degenerate’ art in the Nazi regime. There was a real interest in collecting art and ‘Hitler and Goering’s interest in art bred a mania for collecting that spread throughout Germany and Austria as well as occupied countries, and there was an enormous supply for collectors.’¹⁷⁵ This was seen previously as well with ethnological museums of the West. So would it be right to ignore these commonalities? And the economic benefits reaped by these regimes? What is so horrible in seeking monetary compensation? Why cannot an object have both cultural and monetary value? And why is it more moral to seek the return of a cultural object?

From the perspective of a museum director with an encyclopaedic collection acquired over the years, if all of a sudden you find yourself confronted with a range of demands requesting the return of indigenous items, colonial loot, products of illegal archaeological

¹⁷⁵ Decker, *A Legacy*, 60.

excavations, smuggled antiquities, and Holocaust-era confiscations, would it be more feasible to have a different strategy for all these objects? Or would a common strategy be more pragmatic? This common strategy could be as simple as a refusal to give them back. Could be a bit more layered, like providing complex reasons to not return objects, such as objects are too big or fragile, alternatively, questioning the circumstances of the removal and the present nature of stewardship in receiving countries. Or it could be simplified by working with claimants to understand their demands and offer the most pragmatic solution.

How do we move forwards? ‘Restitution and documentation are organically linked.’ So, open access to archives allows researchers to reconstruct historical reality and plot the paper trail necessary to establish provenance. Red tapes and restrictions only protect the identity of perpetrators and prevent restorative justice to be successfully carried out. Access to historical archives, thus, becomes crucial for restorative justice. And restricting access to these records would then imply an attempt to conceal history or worse, rewrite it. For Masurovsky, the removal of restrictions to access to archives is further emphasised and necessary for ‘records created by private owners, gallery directors, museum officials, art historians, insurance executives, corporate officers, foundations, auction houses and so forth.’

The art market similarly needs more transparency and regulation. As Lynn Nicholas says, ‘Provenance research is restitution research.’ If museums continue to apply caution to their collections both temporary and permanent, then it would be easier to mediate solutions in the long run. Collaborative effort and stewardship also allow for positive outcomes as can be seen through the Benin Project Database. Meticulously recorded through collective effort, the Project highlights the benefits of long-term collaboration and exchange of knowledge. Further still, there is a need to look beyond reparations and compensation, and emphasize the ‘correction of the record.’ This provides public recognition of the true historical facts. Displaying items in Museums, in the East or West, with correct context, be it in a Holocaust

remembrance museum or an ethnological museum, thus allows for the ongoing recognition to correct a historical wrong.

Through the case of the Benin bronzes what becomes clear is that there is no clean-cut ‘heroes versus villains’ narrative. Issues that arise vary from multiple claimants and disputable ownership to ideas of cultural patrimony. Ethically, do descendants of the Benin Kingdom have more rights over the bronzes than descendants of the slaves who wish to keep the bronzes in museums across the world? How effectively can the state of Nigeria assert community claims? To make matters more interesting, there have been instances of persecuted Jewish collectors owning Benin Bronzes. What is the best course of action in those cases? Return? To whom?

Bibliography

“800 Slaves Sacrificed in Tribute on the Death of GEZO the Great Slave King of Dahomey 1858.” Bahamianology, December 2, 2018. <https://bahamianology.com/800-slaves-sacrificed-in-tribute-on-the-death-of-gezo-the-great-slave-king-of-dahomey-1858/>.

Adewole, Segun. “US Group Opposes Benin Bronzes’ Return to Nigeria.” Punch Newspapers, August 17, 2022. <https://punchng.com/us-group-opposes-benin-bronzes-return-to-nigeria/>.

Agency Report. “Nigerian Govt to Construct Palace Museum for Repatriated Artefacts.” Premium Times, March 1, 2022. <https://www.premiumtimesng.com/news/more-news/514483-nigerian-govt-to-construct-palace-museum-for-repatriated-artefacts.html?tztc=1>.

“Arisierungsakten.” Findbuch für Opfer des Nationalsozialismus, <https://www.findbuch.at/aryanization-files>.

Attorney for the Southern District of New York and Immigration and Customs Enforcement, United States Announces \$19 Million Settlement in Case of Painting Stolen by Nazi § (2010).

Augustat, Claudia, and Joy Slappnig. “A Colonial Thing.” Welt Museum, December 4, 2019. https://www.weltmuseumwien.at/fileadmin/user_upload/WMW_Koloniales_Ding_Folder_en.pdf.

“Austrian State Treaty, 1955.” U.S. Department of State, Archive, <https://2001-2009.state.gov/r/pa/ho/time/lw/107185.htm>.

Auswärtiges Amt. “Historische Rückgabe von Bronzen an Nigeria.” Auswärtiges Amt, January 1, 2022. <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/kultur-und-gesellschaft/-/2540200>.

Bailey, Martin. “UK’s Restitution Powers to Be Extended Indefinitely for Nazi-Era Loot.” The Art Newspaper, September 28, 2021. <https://www.theartnewspaper.com/2017/09/13/uks-restitution-powers-to-be-extended-indefinitely-for-nazi-era-loot>.

Barkan, Elazar. *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: Norton, 2000.

BBC. The story of Africa, <https://www.bbc.co.uk/worldservice/africa/features/storyofafrica/9chapter2.shtml#:~:text=King%20Gezo%20said%20in%20the,an%20enemy%20reduced%20to%20slavery%E2%80%A6%22>.

Bentwich, Norman. "International Aspects of Restitution and Compensation for Victims of the Nazis." *British Year Book of International Law* 32 (1955): 204–17.

Beurden, Sarah Van. "LOOT: Colonial Collections and African Restitution Debates." Origins: Current Events in Historical Perspective, March 2022. https://origins.osu.edu/read/loot-colonial-collections-and-african-restitution-debates?language_content_entity=en.

British Museum. Benin: An African kingdom, November 2015. https://www.britishmuseum.org/sites/default/files/2019-09/Benin_art_Nov2015.pdf.

Bureau of European and Eurasian Affairs. "Report to Congress: German Foundation 'Remembrance, Responsibility, and the Future.'" U.S. Department of State, March 2006. <https://2001-2009.state.gov/p/eur/rls/rpt/64401.htm>.

Canadian Intergovernmental Conference Secretariat. "Principles and Guidelines for Restorative Practice in the Criminal Matters." Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety, 2018. <https://scics.ca/en/product-produit/principles-and-guidelines-for-restorative-justice-practice-in-criminal-matters-2018/>.

Carroll, Marisa. "The Painting That Launched a Thousand Lawsuits." Hyperallergic, May 31, 2012. <https://hyperallergic.com/51575/andrew-shea-portrait-of-wally/>.

Channel 4 News. *Nigeria's battle to reclaim looted Benin Bronzes*. Youtube, 2021. <https://youtu.be/BFbEU6pDlVw?t=429>.

Codrea-rado, Anna. "Emmanuel Macron Says Return of African Artifacts Is a Top Priority." The New York Times, November 29, 2017. <https://www.nytimes.com/2017/11/29/arts/emmanuel-macron-africa.html>.

Cornu, Marie, and Marc-André Renold. "New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution." *International Journal of Cultural Property* 17, no. 1 (2010): 1–31. <https://doi.org/10.1017/s0940739110000044>.

Dabrowski, Magdalena, and Rudolf Leopold. *Egon Schiele: The Leopold Collection, Vienna*. Cologne: DuMont Buchverlag, 1997.

Deadria Farmer-Paellmann and Restitution Study Group v. Smithsonian Institution (United States District Court for the District of Columbia October 7, 2022).

Decker, Andrew. "A Legacy of Shame." *ARTnews*, December 1984, 55–76.

"Declaration on the Importance and Value of Universal Museums." Internet Archive, 2002. <https://archive.org/details/cmapr4492>.

Deutscher Museums Bund. "Guidelines for Museums: Care of Collections from Colonial Contexts, 2nd Edition," 2019.

Deutscher Museums Bund. “Guidelines on Dealing with Collections from Colonial Contexts,” 2018.

“Die Mauerbach-Auktion von 1996.” Kunstdatenbank: Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus, <https://www.kunstdatenbank.at/die-mauerbach-auktion-von-1996>.

Digital Benin, <https://digitalbenin.org/>.

The Federal Republic of Germany and The Federal Republic of Nigeria. “Joint Declaration on the Return of Benin Bronzes and Bilateral Museum Cooperation,” July 1, 2022.

Lewis, Geoffrey. “The Return of Cultural Property.” *Journal of Royal Society of Arts* 129, no. 5299 (1981): 435–43.

Gettleman, Jeffrey, and Oleksandra Mykolyshyn. “As Russians Steal Ukraine’s Art, They Attack Its Identity, Too.” *The New York Times*, January 14, 2023. <https://www.nytimes.com/2023/01/14/world/asia/ukraine-art-russia-steal.html>.

Gibbon, Kate Fitz. Introduction. In *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*. New Brunswick, NJ: Rutgers University Press : in association with The American Council for Cultural Policy, 2007.

Hauser-Schäublin, Brigitta. “Benin-Bronzen Werden Privatbesitz Des Oba: War Das Der Sinn?” *Frankfurter Allgemeine Zeitung*, May 5, 2023. <https://www.faz.net/aktuell/feuilleton/debatten/benin-bronzen-werden-privatbesitz-des-oba-war-das-der-sinn-18872272.html>.

Herman, Alexander. *Restitution: The Return of Cultural Artefacts*. Lund Humphries Publishers, Limited, 2022.

Hicks, Dan. Foreword. In *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution*. London: Pluto Press, 2021.

“Holocaust Restitution: German Reparations.” Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/german-holocaust-reparations>.

Ibeh, Ifeanyi. “Repatriation of Benin Bronzes Faces Opposition from African-American Group.” *The Guardian Nigeria News*, April 30, 2023. <https://guardian.ng/news/repatriation-of-benin-bronzes-faces-opposition-from-african-american-group/#:~:text=A%20group%20of%20African%2DAmerican,collection%20of%20the%20looted%20artefacts>.

Igbafe, Philip A. “Slavery and Emancipation in Benin, 1897–1945.” *The Journal of African History* 16, no. 3 (1975): 409–29. <https://doi.org/10.1017/s002185370001433x>.

Igbafe, Philip A. “The Fall of Benin: A Reassessment.” *The Journal of African History* 11, no. 3 (1970): 385–400. <https://doi.org/10.1017/s0021853700010215>.

- Kronsteiner, Olga. "Verhärteter Blick: Historiker Forschen Zur Arisierung Der Ankerbrotfabrik." DER STANDARD, January 26, 2020. <https://www.derstandard.at/story/2000113722879/verhaerteter-blick-historiker-forschen-zur-arisierung-der-ankerbrotfabrik>.
- Lahusen, Benjamin, and Gesa Vietzen. "Network of European Restitution Committees on Nazi-Looted Art- Newsletter," May 2022.
- Land Salzburg. "Friedrich Welz Und Sein Plan." Salzburger Landessammlungen: Provenienzforschung und Restitution, https://web.archive.org/web/20070930155756/http://www.salzburg.gv.at/themen/ks/kultur/archiv-3/galerie/galerie-geschichte/ge_plan.htm.
- Law, Robin, and Dov Ronen. "History of Benin." Encyclopædia Britannica. Accessed May 21, 2023. <https://www.britannica.com/place/Benin/History#ref517004>.
- Ludi, Regula. "Second-wave Holocaust Restitution, Post-communist Privatization, and the Global Triumph of Neoliberalism in the 1990s." *Yod*, no. 21 (2018): 1–28. <https://doi.org/10.4000/yod.2597>.
- Marrus, Michael Robert. *Some Measure of Justice: The Holocaust Era Restitution Campaign of the 1990s*. Madison, WI: University of Wisconsin Press, 2009.
- Marshall, Alex. "Germany Begins Return of Benin Bronzes to Nigeria." The New York Times, July 1, 2022. <http://www.nytimes.com/2022/07/01/arts/design/germany-benin-bronzes-nigeria.html>.
- Marshall, Alex. "Germany Sets out Plans to Return Benin Bronzes." The New York Times, April 30, 2021. <https://www.nytimes.com/2021/04/30/arts/design/benin-bronzes-germany.html>.
- Masurovsky, Marc. "A New Paradigm for Restituting Looted Cultural Property?" In *Prague Conference on Holocaust Era Assets*, 2011. <https://plunderedart.org/2011/04/09/a-new-paradigm-for-restituting-looted-cultural-property-by-marc-masurovsky/>.
- Matthes, Erich Hatala. "Repatriation and the Radical Redistribution of Art." *Ergo, an Open Access Journal of Philosophy* 4, no. 20201214 (2017). <https://doi.org/10.3998/ergo.12405314.0004.032>.
- Moody, Oliver. "Berlin's Benin Bronze Return a 'fiasco' as Artefacts Vanish." The Times, May 7, 2023. <https://www.thetimes.co.uk/article/berlins-benin-bronze-return-a-fiasco-as-artefacts-vanish-jq9xsn9cf>.
- M'Bow, Amadou-Mahtar. "A Plea for the Return of an Irreplaceable Cultural Heritage to Those Who Created It." *The UNESCO Courier: a window open on the world* XXXI, no. 7 (1978): 4–5. <https://unesdoc.unesco.org/ark:/48223/pf0000046054>.
- Nicholas, Lynn H. *The Rope of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War*. New York: Vintage Books, 1995.

- Office of the Special Envoy for Holocaust Issues. "Washington Conference Principles on Nazi-Confiscated Art." U.S. Department of State, December 3, 1998. <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.
- Oltermann, Philip. "Germany Hands over Two Benin Bronzes to Nigeria." *The Guardian*, July 1, 2022. <https://www.theguardian.com/world/2022/jul/01/germany-hands-over-two-benin-bronzes-to-nigeria>.
- Osauzo, Tony, and Ighomuaye Lucky. "Oba of Benin Receives £2.5 Million Worth of Looted Artifacts." *The Sun Nigeria*, February 19, 2022. <https://sunnewsonline.com/oba-of-benin-receives-2-5-million-worth-of-looted-artifacts/>.
- Penny, H. Glenn. "Benin Bronzes: Colonial Questions." In *Humboldt's Shadow: A Tragic History of German Ethnology*, 2021, 80–107. <https://doi.org/10.23943/princeton/9780691211145.003.0004>.
- Penny, H. Glenn. *Objects of Culture: Ethnology and Ethnographic Museums in Imperial Germany*. Chapel Hill: The University of North Carolina Press, 2010.
- Phillips, Barnaby. "Nigeria Benin Bronzes: Buhari Declaration 'blindsides' Museum Officials." *BBC News*, May 10, 2023. <https://www.bbc.com/news/world-africa-65531736>.
- Phillips, Barnaby. "The Art Dealer, the £10m Benin Bronze and the Holocaust." *BBC News*, March 14, 2021. <https://www.bbc.com/news/world-africa-56292809>.
- Pope, Jessie. *Loot!*, <https://allpoetry.com/poem/8605733-Loot--by-Jessie-Pope>.
- Potsdam Agreement: Protocol of the Proceedings, August 1, 1945. https://www.nato.int/ebookshop/video/declassified/doc_files/Potsdam%20Agreement.pdf.
- Prott, Lyndel V. "The International Movement of Cultural Objects." *International Journal of Cultural Property* 12, no. 2 (2005): 225–48.
- Ramos, Rafael. "Analysis of Lea Bondi Jaray Case ." Historical Society of the New York Courts, <https://history.nycourts.gov/wp-content/uploads/2019/07/2018-Garfinkel-Winning-Essay-3rd-Place-Ramos-min.pdf>.
- "Recommendation Concerning the International Exchange of Cultural Property." UNESCO.org, November 26, 1976. <https://www.unesco.org/en/legal-affairs/recommendation-concerning-international-exchange-cultural-property>.
- "Reflecting on Restitution: 25 Years of the Washington Principles on Nazi Confiscated Art." Christie's, <https://www.christies.com/en/events/reflecting-on-restitution-25-years-of-the-washington-principles/about>.
- Restitution Study Group. "Smithsonian Hit with Lawsuit to Stop Benin Bronze Transfer to Nigeria." Restitution Study Group (RSG), <https://rsgincorp.org/>.

“‘Return & Restitution’ Intergovernmental Committee.” UNESCO, March 29, 2023.

<https://en.unesco.org/fightrafficking/icprcp>.

Rheinland-Pfalz, Landesamt für Finanzen. “Charity Reminder, Responsibility and the Future.” Amt für Wiedergutmachung, <https://afw.lff-rlp.de/en/topics/compensation-payments-from-the-federal-republic-of-germany/charity-reminder-responsibility-and-the-future>.

Rogers, Thomas, Rahila Lassa, and Alex Marshall. “How Germany Changed Its Mind, and Gave the Benin Bronzes Back.” The New York Times, December 20, 2022. <https://www.nytimes.com/2022/12/20/arts/benin-bronzes-nigeria-germany.html>.

Rosenbaum, Lee. “‘Portrait of Wally’ Settlement: What’s Wrong With This Picture?” artsJournalblogs, August 4, 2010. https://www.artsjournal.com/culturegrl/2010/08/portrait_of_wally_settlement_w.html.

Rothberg, Michael. “We Need to Re-Center the New Historikerstreit.” ZEIT ONLINE, July 24, 2021. https://www.zeit.de/kultur/2021-07/dealing-with-the-holocaust-historikerstreit-controversy-genocide-english?utm_referrer=https%3A%2F%2Fwww.google.com%2F.

“Royal Benin Art in the Collection of the National Museum of African Art,” Smithsonian Exhibition Catalogue, September 28, 1987 – February 28, 1988, <http://www.si.edu/Exhibitions/Details/Royal-Benin-Art-in-the-Collection-of-the-National-Museum-of-African-Art-1211>.

Savoy, Bénédicte. *Africa’s Struggle for its Art: History of a Postcolonial Defeat*. Princeton, NJ: Princeton University Press, 2022.

Savoy, Bénédicte. “The Restitution of African Cultural Heritage: Toward a New Relational Ethics.” Translated by Drew S. Burk. Ministère de la culture, November 2018.

Scovazzi, Tullio. ‘The “First Time Instance” as Regards Restitution of Removed Cultural Properties’. *Agenda Internacional* 19(30) (2012), 9–19.

Seidl-Hohenveldern, Ignaz. “The Auction of the ‘Mauerbach Treasure.’” *International Journal of Cultural Property* 6, no. 2 (1997): 247–66. <https://doi.org/10.1017/s0940739197000325>.

Smithsonian Institution. “Smithsonian Returns 29 Benin Bronzes to the National Commission for Museums and Monuments in Nigeria.” Smithsonian Institution, October 11, 2022. <https://www.si.edu/newsdesk/releases/smithsonian-returns-29-benin-bronzes-national-commission-museums-and-monuments#:~:text=The%20Smithsonian’s%20National%20Museum%20of,British%20Oraid%20on%20Benin%20City>.

Spiegler, Howard N. “Holocaust Art Looting and Restitution Symposium.” In *U.S. Experience: Portrait of Wally and the Leopold Museum*. Milan, 2011.

- Thompson, Janna. “Cultural Property, Restitution and Value.” *Journal of Applied Philosophy* 20, no. 3 (2003): 251–62. <https://doi.org/10.1046/j.0264-3758.2003.00251.x>.
- United States District Court, S.D. New York, “U.S. v. Portrait of Wally,” 663 *F. Supp. 2d* 232 (S.D.N.Y. 2009), Sep 30, 2009.
- University of Alberta. “Law Student Makes Award-Winning Case for How to Restore Nazi-Looted Art.” Folio, December 15, 2022. <https://www.ualberta.ca/folio/2022/12/law-student-makes-award-winning-case-for-how-to-restore-nazi-looted-art.html>.
- Van Beurden, Sarah. “LOOT: Colonial Collections and African Restitution Debates.” Origins: Current Events in Historical Perspective, March 2022. https://origins.osu.edu/read/loot-colonial-collections-and-african-restitution-debates?language_content_entity=en.
- Weidinger, Leonhard. “The Mauerbach Stock – Where Did the so-Called Ownerless Objects Come From?” *Treuhänderische Übernahme und Verwahrung*, 2018, 71–84. <https://doi.org/10.14220/9783737007832.71>.
- Woudenberg, Nout van. “Portrait of Wally Case.” Essay. In *State Immunity and Cultural Objects on Loan*, 184–200. Leiden: Martinus Nijhoff, 2012.
- Zabludoff, Sidney. “At Issue: Restitution of Holocaust-Era Assets: Promises and Reality.” *Jewish Political Studies Review* 19, no. 1/2 (2007): 3–14.