

Cultural Heritage Management and International Law: Restitution of the Benin Bronzes

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I. Introduction

Recent calls for racial justice have given new life to a movement that seeks to reckon with, and dismantle, the remnants of colonialism. One focus of this movement is to deal with troubling vestiges of colonial rule and violence that are evident in museums, on college campuses, and at other institutions, so as to not glorify the violence of colonialism and the racism associated with it. For example, racial justice activists have called for the removal of statues glorifying colonial elites, such as Cecil Rhodes. The Rhodes Must Fall campaign at Oxford University sought the removal of a prominent statue of Rhodes, arguing that the sculpture celebrated Rhodes's colonialist history. Activists argue that placing such objects on a pedestal – quite literally – glorifies their racist histories.¹ A similar effort relating to European and North American cultural institutions has gained momentum and prominence within and beyond museum communities. It seeks the restitution of cultural items stolen or obtained under duress by colonial powers, from colonized nations. These items, many of which now are held in museums throughout the Western world, have become a flashpoint in the debate over who truly owns tangible cultural heritage. Formerly colonized nations have repeatedly expressed their desires for the restitution of their cultural property while museums, and the states that often support them, have until now largely resisted these claims with various legal and scholarly justifications.

One such case, which has gained increasing attention in recent years, is the case of the so-called Benin Bronzes. A collection of over 3,000 pieces of art from the Kingdom of Benin in West Africa, the Benin Bronzes were stolen in a violent raid by British forces at the end of the 19th century.² Through private collector and museum trading, these art pieces were scattered across the collections of 161 museums in Europe and North America.³ Nigeria, home of the former Kingdom of Benin and cultural heir to the Bronzes, has sought their repatriation, but to little avail, as few museums or countries have been willing to part with the valuable artifacts.⁴

In an effort to seek justice through the restitution of stolen cultural property, one might turn to the international legal system. Unfortunately, the gaps within international cultural heritage management law are significant, as the systems in place do not cover the protection or repatriation of objects stolen before the turn of the 20th century. The international legal system is a complex one, made up of interlocking national and international courts, treaties, and customary laws. While a stolen object may be easily more returned through a domestic court, things become more complicated on the international level. Thus far, there has been no international legal incentive or pressure for Western institutions to repatriate the Benin Bronzes.

The discussion within this paper is not novel. I build on the work of several eminent scholars, most notably, and most recently, Dan Hicks, a curator at the Pitt-Rivers Museum (Oxford University) and the author of *The Brutish Museums*, a ground-breaking examination of the Benin Bronzes, their violent colonial history, and their problematic place in Western museums.⁵ Hicks's book is, in many ways,

¹ Sean Coughlan, "Oxford College's Rhodes Statue Staying Until Next Year," *BBC News*, July 21, 2020, <https://www.bbc.com/news/education-53487991>.

² Neil Brodie, "Benin Bronzes and Ivories in Historical Context," in *Unmasking Ideology in Imperial and Colonial Archaeology: Vocabulary, Symbols, and Legacy*, ed. Bonnie Effros and Guolong Lai (Los Angeles: Cotsen Institute of Archaeology Press, 2018), 61

³ Dan Hicks, *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution*, (London: Pluto Press, 2020), 3

⁴ Farah Nayeri, "France Vowed to Return Looted Treasures. But Few Are Heading Back," *The New York Times*, November 22, 2019, <https://www.nytimes.com/2019/11/22/arts/design/restitution-france-africa.html>.

⁵ Charlotte Lydia Riley, "The Brutish Museums by Dan Hicks Review – Return Everything," *The Guardian*, November 6, 2020,

shocking, as he argues that museums uphold colonialism by “hous[ing] unending violence [and] ceaseless trauma” and that every stolen item should be returned.⁶ Although perhaps foundation-shattering for the fields of curatorship, anthropology, and archaeology, Hicks’s bold, well-evidenced argument, which attacks the issue of the Benin Bronzes from a distinctly museum-centered perspective, is a new nail in the coffin of Western museums’ stronghold on such artifacts. Another author whose work this paper builds upon, Folarin Shyllon, was a legal scholar who wrote prolifically about cultural heritage management law, African artifacts generally, and the Benin Bronzes specifically. Shyllon also contributed to the international treaties on cultural heritage protection of the 1970s and 1990s, discussed later in this paper, and was a leading expert in the field. Shyllon died on January 17th, 2021, not long before the writing of this paper; his work in cultural heritage management, and his fight for the restitution of African cultural heritage objects, deserve great recognition.⁷

In this paper, I examine the situation surrounding the Benin Bronzes through a lens of international law. I will first provide a background on the Benin Bronzes themselves, including their cultural and artistic value, the colonial context of their theft, and their current place in museums around the Western world. This will include an overview of current debates over ownership of these objects, as well as a broader look at what cultural heritage management is and why cultural heritage is more than merely property. Diving into a more specific case, I will describe the state of African object repatriation in France. I will then give an overview of the international legal regime relating to cultural heritage management, covering major international conventions that govern the protection of cultural property. This discussion will also look at national legislation in France, which is currently being used as a domestic legal means to push the repatriation of African objects. This paper will conclude with a critique of the current international legal framework for cultural heritage management, which allows the restitution of the Benin Bronzes to fall through the cracks. These stolen items must be returned to their cultural owners, so that they no longer sit as trophies and sources of profit in the halls of those who stole them. I argue that, in an ideal world, this solution should come in the form of an international, binding legal code, but that the complexities of colonial restitution mean that voluntary national restitution laws may presently be the most realistic legal solution available.

II. Background

Contrary to their name, the Benin Bronzes are not all bronze. Of the roughly 3,000 art pieces, about 900 are brass plaques, from which the collection of objects received its common name; however, the collection also includes carved ivory statues, wooden heads, masks, and carved elephant tusks, among other items. These pieces, at the time of their seizure by the British, were already centuries old, with many of the plaques dating to the 16th and 17th centuries.⁸ Ownership of the Bronzes was restricted to the Oba (King) of Benin, and the custom-made pieces were royally commissioned, making them unique and significant within Benin society.⁹

<https://www.theguardian.com/books/2020/nov/06/the-brutish-museums-by-dan-hicks-review-colonial-violence-and-cultural-restitution>.

⁶ Riley, “The Brutish Museums.”

⁷ “A Tribute to the Late Professor Folarin Olawale Shyllon, Who Fought for over 50 Years against Illicit Trafficking of Cultural Property,” *UNESCO*, January 22, 2021,

<https://en.unesco.org/news/tribute-late-professor-folarin-olawale-shyllon-who-fought-over-50-years-against-illicit>.

⁸ Alex Marshall, “This Art Was Looted 123 Years Ago. Will It Ever Be Returned?” *The New York Times*, January 23, 2020, <https://www.nytimes.com/2020/01/23/arts/design/benin-bronzes.html>.

⁹ Folarian Shyllon, “Restitution of Antiquities to Sub-Saharan Africa: The Booty and Captivity: A Study of Some of the Unsuccessful Efforts to Retrieve Cultural Objects Purloined in the Age of Imperialism in Africa,” *Art Antiquity and Law* 20, no. 4 (December 2015): 383.

The Benin Bronzes, however, were more than merely decorative art pieces for the Kingdom of Benin. Rather, they were – and remain – an important set of cultural items that were a key part of the kingdom’s social fabric. For example, the Bronzes served as a documentary system, recording Benin’s history pictorially. Some were tributes to Obas past and present, illustrating their achievements and memorializing them. Furthermore, the Bronzes played a role in Benin’s religious life, as many carvings were found by the British on sacrificial altars.¹⁰ The cultural and historical value of the Bronzes is perhaps best summarized by Oba Omo N’Oba Erediauwa, the 39th Oba of Benin, in an introductory note for a traveling exhibition of the Bronzes. He stated that “they were not originally meant to be mere museum pieces simply to be displayed for art lovers to admire. They were objects with religious and archival value to my people... the bronzes were records of events in the absence of photography. Those of the works, which were not made for record-keeping, were made for a religious purpose and kept on altars.”¹¹ In examining the place of the Benin Bronzes in Western museums today, it is important to remember that they were not created only for aesthetic purposes, but instead had important religious and historiographical functions and meanings.

At the turn of the twentieth century, the British Empire sought control of the rich store of palm oil within the interior of Africa. This supply was largely controlled by Africans, and a trade system had developed, in which raw palm oil was produced in the interior of Africa and brought to the coast, where it was traded and processed by the British and shipped abroad. Unsurprisingly, however, the colonial power sought domination of the industry, and it did so by establishing colonies in the interior of Africa through military force. One such colony, or technically, protectorate, was the Oil Rivers Protectorate in Nigeria. Near this protectorate, Oba Ovonramwen of the Benin Empire held significant control over the oil trade in Benin. To diminish the Oba’s trade control and increase British profits, the first vice-consul of the protectorate, Henry Gallwey, entered into treaty negotiations with the Oba. This treaty effectively “ceded sovereignty to Britain” and gave British citizens full trade rights within the Benin Kingdom. The circumstances of this negotiation were dubious, as neither the Oba nor his translators were legal experts, and it is unclear whether they understood the stipulations of the legal agreement that the Oba agreed to.¹²

This treaty expanded the protectorate to include the Kingdom of Benin, but the Oba continued to claim and exercise control over the oil trade within his kingdom. This angered British merchants in the protectorate and, as a result, an armed British delegation set out for the kingdom, planning to use force and without warning. Upon arrival in the kingdom, Benin soldiers attacked the delegation and killed most of its members. The British retaliated swiftly, sending in thousands of soldiers in an organized and brutal punitive attack that resulted in the British seizing, looting, and burning the kingdom. Following this violence, British troops discovered and seized what are now known today as the Benin Bronzes. These pieces were then brought to Britain, where they were “sold to help defray the costs of the military expedition.”¹³

Through a network of art sales, the Bronzes ended up in museums and collections around the world. Dan Hicks provides in *The British Museums* a useful inventory of known locations of the brass plaques, perhaps the most highly prized and renowned of the looted Benin objects, as well as a larger list of collections that may or may not hold Benin Bronzes. The two largest collections of known brass plaques are European, held by the Ethnologisches Museum of Berlin State Museums and the British Museum, London. Nigeria holds only the third largest collection of bronze plaques, a mere sixty-four in

¹⁰ Salome Kiwara-Wilson, “Restituting Colonial Plunder: The Case for the Benin Bronzes and Ivories,” *DePaul Journal of Art, Technology and Intellectual Property Law* 23, no. 2 (2013): 385.

¹¹ Shyllon, “Restitution of Antiquities,” 383.

¹² Brodie, “Benin Bronzes,” 64.

¹³ Brodie, “Benin Bronzes,” 66.

comparison to the 255 and 192 of the Berlin and London museums, respectively.¹⁴ Many of Nigeria's pieces were also bought (back) on the open market, something which is both sad and ironic.¹⁵ There is also an unknown number of Benin Bronzes in private collections, which, although of great importance in the debate for restitution, are less easily accounted for and fall into private, rather than public, law.¹⁶ Some of the Bronzes in Nigerian possession were sold to the state by the British Museum, and others are on loan; Nigeria is currently seeking to open a museum in Benin City with 300 Bronzes on loan from European institutions.¹⁷ It should be noted that there is a clear colonial power imbalance in ownership of the Bronzes; looking at Hicks's list of brass plaques, less than 10% are held in postcolonial, non-European or American museums.¹⁸

As demonstrated by the history and lasting social importance of the Benin Bronzes, cultural property serves far more purposes than mere aesthetics. Cultural property is not always a clearly defined term, and its definition varies treaty to treaty.¹⁹ In her analysis of the UNESCO and UNIDROIT treaties surrounding cultural heritage management (which will be discussed later), legal scholar Zsuzsanna Veres writes that both treaties stipulate that objects, which can be movable or immovable (i.e. buildings and monuments), must be "important on religious or secular grounds to archaeology, prehistory, history, literature, art or science."²⁰ Such items are important to the cultural identity of those to whom they originally belonged. The nonprofit Blue Shield, an organization dedicated to the protection of cultural heritage and named after the UNESCO symbol designating cultural property, states that "cultural property is a powerful tool in determining what is remembered – and what is forgotten or obscured" and that these cultural memories are "key to [the] identity, well-being, decisions and actions" of their communities.²¹ Losing sight of the importance of items such as the Benin Bronzes is easy when they are removed from their original contexts, but it is crucial to remember that before they sat in glass cases, they served multiple functional and meaningful purposes beyond simple decoration.

Complicating matters of repatriation are larger arguments about who owns the Benin Bronzes, or more broadly, who owns cultural property. If one considers cultural property to be a basic element of *national* culture, as implied by the 1970 UNESCO convention, then modern-day Nigeria, heir to the late Kingdom of Benin, would be the rightful owner of the Bronzes. The Edo State of Nigeria has an "active cultural and artistic heritage that is descended directly from the nineteenth-century kingdom of Benin," and thus the state of Nigeria, although not the Kingdom of Benin, has a valid cultural and historical claim to ownership of the Bronzes.²² However, one of the claims used to justify keeping such objects in Western museums is the approach of cultural *internationalism*, the "object-oriented" idea that art and cultural objects belong to the world to experience, rather than being tied to certain national identities. This approach overlooks the fraught contexts of the acquisition of objects such as those taken in the Benin raid.²³ Furthermore, it ignores the undeniable fact of where the Bronzes are held: the Bronzes are not

¹⁴ Hicks, *The British Museums*, 243.

¹⁵ Afolasade A. Adewunmi, "Possessing Possession: Who Owns Benin Artefacts," *Art Antiquity and Law* 20, no. 3 (October 2015): 240.

¹⁶ Hicks, *The British Museums*, 243.

¹⁷ Marshall "This Art."

¹⁸ Hicks, *The British Museums*, 243-244.

¹⁹ "Defining Cultural Heritage and Cultural Property," *Blue Shield International*, February 11, 2020, <https://theblueshield.org/defining-cultural-heritage-and-cultural-property/>.

²⁰ Zsuzanna Veres, "The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention" *Santa Clara Journal of International Law* 12, no. 2 (2014): 103

²¹ "The Importance of Cultural Heritage," Blue Shield International, accessed March 22, 2021, <https://theblueshield.org/why-we-do-it/the-importance-of-cultural-heritage/>.

²² Brodie, "Benin Bronzes," 76.

²³ Brodie, "Benin Bronzes," 75.

equally distributed in museums globally for all the peoples of the world to enjoy, but are disproportionately concentrated within the very same countries that themselves were colonial powers.²⁴

At the center of current discourse on cultural heritage ownership and restitution of African objects, France has taken a bold position relative to some of its international peers. In 2018, French President Emmanuel Macron promised to repatriate twenty-six African items held in French museums taken in similar circumstances to the Benin Bronzes, as well as to more broadly focus on the loan or permanent restitution of African cultural property. He also commissioned a report in that same year by Felwine Sarr of Senegal and Bénédicte Savoy of France, which examined French collections of Sub-Saharan items taken in colonial contexts.²⁵ Two years after Macron's statements and the accompanying report, the French government began to deliver on these promises. In 2020, the French government passed a bill authorizing "the restitution of twenty-seven objects looted from Africa during the colonial era," with twenty-six items being returned to the Republic of Benin and one to Senegal.²⁶ This group of items does not include the Benin Bronzes. However, this French bill is the first to begin to actualize Macron's promise of working to repatriate France's 90,000-object collection of Sub-Saharan African items, a collection which, as noted by Shyllon, includes items from the Kingdom of Benin.²⁷ Although perhaps slow moving, France's national model for restitution may serve as a more realistic, if less comprehensive, framework for the future restitution of items like the Benin Bronzes.

It would be impossible to discuss cultural property and restitution without briefly mentioning the Elgin Marbles, perhaps the most famous case among international restitution debates. The Elgin Marbles are a series of Greek sculptures and carvings in relief, which once resided in the Parthenon of Athens, Greece, created by the legendary sculptor Phidias. These sculptures now line the halls of the British Museum, having been removed and sold in the 19th century under dubious circumstances. The City of Athens and the modern-day nation-state of Greece have made calls for the restitution of the marbles for decades, claiming that the British retention of the sculptures was illegal. So far, these calls have been to no avail.²⁸ The British Museum has long claimed that Athens's museum facilities were inadequate for housing the marbles. However, the construction of a state-of-the-art museum, created especially for housing the sculptures, has still not led to their return.²⁹ This rigid refusal on the part of the British Museum illustrates just how resistant some institutions are to the repatriation of cultural items in their collections.

Setting aside legal considerations, national or international, which will be discussed later, there is a strong historical argument for the repatriation of the Benin Bronzes. Lawyer Salome Kiwara-Wilson, writing about how the allied powers required the return of Napoleonic spoils of war to European nations, states that "in the nineteenth century, there was a rising national consciousness among European states, recognizing that cultural goods belonging to the nation-state contributed to the definition of its identity. Thus, the basis for restitution became the new principle of protecting the integrity of the national cultural

²⁴ Hicks, *The British Museums*, 243.

²⁵ Felwine Sarr and Bénédicte Savoy, *Restituer le patrimoine africain* (Paris: Philippe Rey and Editions Seuil, 2018). [Also available as an open access white paper via: <http://restitutionreport2018.com/>.]

²⁶ Olga Symeonoglou, "French Bill Would Authorize Permanent Restitution of 27 Objects to Former French Colonies," *Cultural Heritage Partners*, August 3, 2020, <http://www.culturalheritagepartners.com/french-bill-would-authorize-permanent-restitution-of-27-objects-to-former-french-colonies/?fbclid=IwAR0BZr2IMWlxvPzkauBeQUH8WK6-4MX5Lr5nojlzk4R2X4bLt8OYf7oXGvY>.

²⁷ Symeonoglou, "French Bill;" Shyllon, "Restitution of Antiquities" 384.

²⁸ Helena Smith, "Product of Theft' Greece Urges UK to Return Parthenon Marbles," *The Guardian*, June 20, 2020, <http://www.theguardian.com/world/2020/jun/20/product-of-theft-greece-urges-uk-to-return-parthenon-marbles>.

²⁹ Sylvia Poggioli, "Greece Unveils Museum Meant For 'Stolen' Sculptures," *NPR*, Oct. 19, 2009, <https://www.npr.org/templates/story/story.php?storyId=113889188>.

heritage.³⁰ These concepts of restitution and the importance of cultural heritage began to solidify as customary international law prior to the theft of the Benin Bronzes. However, it should also be noted that, while the allied powers mandated the return of European objects stolen by Napoleon, they excluded the restitution of Egyptian objects.³¹ Kiwara-Wilson writes that this falls into the broader context of colonized nations' exclusion from the protections of customary international law in the 19th century.³² Ultimately, Kiwara-Wilson argues that the aims of repatriation efforts are not merely the physical return of an object, but that "it is often an attempt to reclaim a cultural past erased by years of colonial domination and subjugation."³³ Although it cannot undo the painful and traumatic damages of colonialism, the restitution of cultural property is an important gesture. While for formerly-colonized countries, restitution claims work to shirk the narrative of colonialism and victimhood, restitution efforts can also be important gestures for the colonial owners of the property. Repatriation signals an attempt to rectify and reckon with their colonial past, rather than displaying it in museums with pride.

III. Legal Framework

The international legal framework for the protection and restitution of cultural heritage consists of a series of major international conventions, beginning in the late 19th century. Although, as Kiwara-Wilson points out, there had already been a set of legal customs regarding the repatriation of cultural heritage long before the turn of the 20th century, the first major treaty that considered the protection of cultural property was the Hague *Convention on Laws and Customs of War on Land* of 1899.³⁴ This treaty, largely centered around peace and protections during wartime, established the idea that cultural property should be protected during armed conflict. Following the theft and destruction of cultural property by the Nazis during WWII, the Hague *Convention for the Protection of Cultural Property in the Event of Armed Conflict* of 1954 sought to further implement safeguards for tangible cultural heritage during war.³⁵ In one of the most monumental treaties on cultural heritage management, the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* provided means of preventing the trade of cultural heritage.³⁶ Similarly, the 1995 International Institute for the Unification of Private Law (UNIDROIT) *Convention on Stolen or Illegally Exported Cultural Property* builds upon the UNESCO treaty by expanding pathways for restitution.³⁷ These four treaties, and the undercurrent of customary international law as mentioned previously, constitute much of the international legal framework for cultural heritage management as it relates to the Benin Bronzes.

As noted previously, there was a foundation of customary international law for the protection and repatriation of cultural property long before the theft of the Benin Bronzes or any formal international treaties on the topic. Eighteenth century legal scholars "acknowledged that the private property of [a] king and his subjects was protected during war, and also subject to restitution." This acknowledgment was cemented into international legal custom through the repatriation of Napoleonic spoils, ordered during the Vienna Congress of 1815.³⁸ The subsequent Hague Convention of 1899 only "codified or sanctioned the

³⁰ Kiwara-Wilson, "Restituting Colonial Plunder," 389.

³¹ Kiwara-Wilson, "Restituting Colonial Plunder," 388.

³² Kiwara-Wilson, "Restituting Colonial Plunder," 392.

³³ Kiwara-Wilson, "Restituting Colonial Plunder," 393.

³⁴ Kiwara-Wilson, "Restituting Colonial Plunder," 388.

³⁵ "1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict," UNESCO, accessed March 22, 2021, <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention/>.

³⁶ Veres, "The Fight," 97.

³⁷ Veres, "The Fight," 100.

³⁸ Kiwara-Wilson, "Restituting Colonial Plunder," 388.

existing state of international law, and did not create any new obligations of restitution.”³⁹ Building upon the previously ordered repatriations around Europe in the early 19th century, the Vienna Congress established that “there was broad agreement that the French confiscations of cultural objects were contrary to contemporary rules of law and that objects could not remain in Parisian collections.” The restitution of predominantly-European cultural objects taken by the Napoleonic government – enacted out of a sense of obligation by the allied powers prior to the theft of the Benin Bronzes – indicates the establishment of customary international law protecting cultural heritage taken during warfare. These protections, however, were not extended to the colonies of those very same states that ordered cultural heritage restitution.⁴⁰

The Hague Convention of 1899 largely focused on warfare, but included provisions for the protection of cultural property, essentially codifying the international customs described earlier. About this treaty, Hicks writes that, in addition to banning civilian attacks, “the Convention undertook to ‘spare as far as possible edifices devoted to religion, art, science, and charity’ and the destruction or seizure of property.”⁴¹ Part of Hicks’s argument, which is important to take note of, is the timing of the 1899 convention, only two years after the punitive raid on the Kingdom of Benin. This indicates that there was already general acceptance among European political elites that the theft and destruction of cultural heritage during armed conflict was unethical.⁴²

The Hague Convention of 1954, similar to that of 1899, focused on protecting cultural property during times of war. The 1954 Hague Convention was created in direct response to the egregious destruction and theft of cultural heritage during WWII, and was “the first international treaty with a world-wide vocation focusing exclusively on the protection of cultural heritage in the event of armed conflict.”⁴³ Legal scholar Afolasade A. Adewumi provides a strong summary of this convention in her article on the Benin Bronzes, writing that the 1954 treaty “focused on non-military use of cultural property and non-destruction of cultural property” and covered issues “relating to the restitution of cultural property,” stating that it eventually led to the 1970 UNESCO Convention and later the 1995 UNIDROIT Convention. The 1954 convention is not retroactive, and is only effective once parties (i.e. ratifying nations) incorporated the agreements of the treaty into their national legal system.⁴⁴

The 1970 UNESCO Convention was a landmark treaty in international cultural heritage management law. Whereas preceding treaties focused on establishing the importance of cultural heritage and encouraging parties to protect it, Veres notes that the 1970 convention “was one of the first conventions to provide *solutions* [emphasis mine] for the protection of cultural property.” The UNESCO convention sought to restrict the trade of stolen objects with tangible measures, including restitution provisions, as well as trade monitoring, sanctions, inventories, among other methods. Veres writes that the UNESCO treaty did not itself “prohibit the exportation of cultural property,” but instead required parties to create national laws to enact the goals of the treaty. As of 2014, 125 states had ratified the convention. One of the key aspects of the 1970 UNESCO treaty to note is that it was not explicitly retroactive, and thus it only applies to objects stolen and traded after 1970. While Article 15 of the treaty encourages bilateral negotiations to resolve issues of restitution on objects stolen prior to ratification, the treaty itself does not apply retroactively to thefts like those of the Benin Bronzes.⁴⁵

³⁹ Kiwara-Wilson, “Restituting Colonial Plunder,” 390.

⁴⁰ Folarian Shyllon, “Benin Bronzes: Something Grave Happened And Imperial Rule Of Law Is Sustaining It!” *Boasblogs*, July 14, 2019, <https://boasblogs.org/dcntr/benin-bronzes-something-grave-happened-and-imperial-rule-of-law-is-sustaining-it/>.

⁴¹ Hicks, *The Brutish Museums*, 114.

⁴² Hicks, *The Brutish Museums*, 164.

⁴³ UNESCO, “1954 Hague Convention.”

⁴⁴ Adewunmi, “Possessing Possession,” 231.

⁴⁵ Veres, “The Fight,” 97-98.

The 1995 UNIDROIT Convention built upon the 1970 UNESCO Convention, aiming to make its restitution and prevention efforts more effective. The convention “expand[ed] the rights upon which return of such objects can be sought, and... widen[ed] the scope of objects subject to its provisions.”⁴⁶ Although expansive in some ways, the UNIDROIT Convention also contained limitations; where the UNESCO Convention had no statute of limitations, the UNIDROIT Convention requires claims be made either within three years of the state’s last knowledge of the whereabouts of the item, or within fifty years of its theft.⁴⁷ The UNIDROIT Convention is not as widely accepted as the UNESCO Convention, with a mere-thirty-three parties as of 2014.⁴⁸ Through the convention, parties may “request the court of another State party to the Convention to order the return of a cultural object illegally exported from the territory of the requesting nation,” providing a more fleshed-out path for restitution to parties.⁴⁹ Like the UNESCO Convention, the UNIDROIT Convention does not apply retroactively.⁵⁰

An established body of international law is dedicated to protecting cultural heritage; however, these crucial treaties do not apply to the protection of the Benin Bronzes and thus they fail to encourage and enforce the restitution of these cultural objects. The largest reason for this is merely timing. As indicated throughout the discussion of these foundational treaties, none of them apply retroactively. Most frustratingly is the Hague Convention of 1899, which was established a mere two years after the raid on the Kingdom of Benin. While customary international law obligating the protection of cultural property during armed conflict existed prior to 1897 (at the time of the raid in Benin), such international legal customs were not considered applicable to colonized communities: Indigenous groups were considered part of larger states, in this case their colonizing states, and thus were not given their own independent legal rights.⁵¹ Because the Napoleonic restitutions of the Congress of Vienna were not extended to Egypt and to other non-European cultural property, there was no legal precedent for extending these rights to colonies. Shyllon writes that “this exclusion of non-European peoples from the application and protection of (European) International Law, and the universalisation of European international law into International Law, made the brutal sackings of... Benin City normal.”⁵² Customary international law may remain an interesting avenue for legal arguments for the restitution of the Bronzes, but it is also unclear how much those legal customs during the 19th century could be applied to instances such as the theft of the Benin Bronzes or the Napoleonic raids of Egypt.

Should enough countries, like France, repatriate items taken prior to 1899 out of a sense of obligation to the broader custom of protecting cultural property, then perhaps this could establish a customary international norm that could be used to legally argue for the repatriation of the Bronzes and similar objects. Such a trend of repatriation is emerging quickly and in real time with the very public issue of the Benin Bronzes, as more and more countries and institutions move to return them – Scotland, Germany, and Ireland have recently announced repatriations of Benin items in spring 2021 alone.⁵³ These developments, on their own, are exciting: they show how one repatriation can snowball into many, and indicate that recent public information efforts like Dan Hicks’s 2020 book likely have been wakeup calls for the international community. If enough states begin to repatriate, this could put pressure on, or instill a

⁴⁶ Veres, “The Fight,” 100.

⁴⁷ Veres, “The Fight,” 101.

⁴⁸ Veres, “The Fight,” 100.

⁴⁹ Veres, “The Fight,” 101.

⁵⁰ Veres, “The Fight,” 102.

⁵¹ Kiwara-Wilson, “Restituting Colonial Plunder,” 391.

⁵² Shyllon, “Benin Bronzes.”

⁵³ Nora McGreevy, “Museums Around the World Make Renewed Push to Repatriate Benin Bronzes,” *Smithsonian Magazine*, April 19, 2021, <https://www.smithsonianmag.com/smart-news/major-push-museums-around-world-make-plans-repatriate-benin-bronzes-nigeria-180977519/>.

sense of competitive “do-right-ism” in, other states, leading to further returns. Furthermore, these restitution efforts could themselves create international norms. There appear to be few examples of international cultural property repatriations of objects taken prior to 1899 – the recent twenty-seven objects returned by France, and now the growing number of Benin Bronze returns, number among these few examples.⁵⁴ While the repatriation of cultural property taken prior to the first conventions on cultural heritage protection does not yet seem to be a customary norm, the emerging and fast-growing trend of Benin Bronze repatriations, as well as more broad returns of colonial African objects like those of France, could help lay the foundations for this customary international law, which could prove influential in future legal battles for Benin Bronzes and similar objects

On a domestic scale, the recent French bill, which passed unanimously in the French Senate in November of 2020, offers an example of what national laws for restitution of the Benin Bronzes and comparable cultural materials could look like, especially within the context that current international law does not apply to these artifacts.⁵⁵ Strikingly similar to the Benin Bronzes, the twenty-six objects set by the bill to be returned to Benin (the twenty-seventh will be returned to Senegal) were taken under violent colonial contexts in a French raid on the palace of Abomey, only five years prior to the theft of the Benin Bronzes.⁵⁶ The restitution of these objects would have been impossible without such a bill, as it is illegal to remove objects from French museum collections, due to a “principle in French law that objects in national collections are inalienable, making specific legislation... or other legal action necessary to allow a return.”⁵⁷ A French Senate committee report noted that this return was “strictly exceptional, ad hoc, and [of] limited character,” while calling the Sarr-Savoy report “excessive.” Although the committee’s statement is certainly disappointing, the unanimous agreement of the Senate on the bill, which the senate fast-tracked through an “accelerated procedure,” coupled with Macron’s endorsement of the restitution of African and other non-European objects, provides hope that similar bills could be passed in the future.⁵⁸

IV. Critique

When so much of what is sitting in museums like the British Museum was taken prior to the 20th century, the international legal treaties described are inapplicable. The case of the Benin Bronzes points to an enormous hole in the international legal regime for cultural heritage management. These treaties don’t cover artifacts taken prior to their signing, and thus the restitution of items such as the Benin Bronzes and the Elgin Marbles – objects which are universally revered for their cultural value – to their original cultures (or nations of origin) cannot be encouraged and enforced through this otherwise comprehensive set of international laws. Because of this, it is left up to the individual institutions and countries to determine whether and what they will repatriate, making it an ethical or practical, rather than a legal, choice.

From a purely practical standpoint, leaving the restitution of the Benin Bronzes to happen or not on an ad hoc, case-by-case basis within each individual state or institution is ineffective and slow. On perhaps the more progressive and effective end of the spectrum, France, as noted, has certainly been ahead of the curve in the restitution of African objects, and the attitudes of the French government as a

⁵⁴ Elina Luize Vitola, “Repatriation of Cultural Property to Its State of Origin as International Customary Law,” *Artlaw*, December 1, 2018,

<https://artlaw.club/en/artlaw/repatriation-of-cultural-property-to-its-state-of-origin-as-international-customary-law>.

⁵⁵ Hannah McGivern, “French Senate Votes Unanimously for Restitution to Benin and Senegal in ‘Act of Friendship and Trust,’” *The Art Newspaper*, November 5, 2020,

<http://www.theartnewspaper.com/news/french-senate-backs-bill-to-return-colonial-era-objects-to-benin-and-senegal>.

⁵⁶ McGivern, “French Senate.”

⁵⁷ Symeonoglou, “French Bill.”

⁵⁸ McGivern, “French Senate.”

whole indicate a strong openness and desire to repatriate items such as the Benin Bronzes. However, it took two years after the Sarr-Savoy report and Macron's promises of restitution for this first bill to be passed, even with an accelerated procedure. Although this is perhaps not beyond reason given the typical timeframe of passing legislation, the French process of restitution, if one can call it that based on one bill, has thus far been slow-going, with now twenty-seven out of 90,000 items legally able to be repatriated.⁵⁹ At the opposite end of the spectrum, the state of repatriation in the United Kingdom is far worse, with little hope of a legal avenue for restitution. The British Museum, home to the world's second-largest collection of Benin plaques, has, as discussed, notoriously resisted permanent repatriation of cultural objects, and is prevented by British law from "breaking up its collections."⁶⁰ When restitution is left up to individual states, it is slow going at best, and non-existent at worst.

The restitution of the Benin Bronzes, and similar items of colonial theft, would be a symbolic gesture. The Benin Bronzes were taken in a violent colonial raid, which dismantled a powerful African state and brought great destruction to the kingdom. Returning the Benin Bronzes, items that have come to represent this cultural and historical trauma, is an important step in creating a sense of justice for this violence of the past. Regardless of whether the raid was considered legally or morally just in the late 19th century – although arguably, the creation of the Hague Convention of 1899 refutes this – the violent and oppressive actions of the colonialist state were undeniably damaging, horrific, and regrettable. Leaving the decision to repatriate the Bronzes – a move that signals a commitment to justice for this violence of the past – up to the whims and morals of each individual country or non-governmental museum prevents this colonial injustice from being rectified.

If the existing decentralized and non-retroactive legal systems for return are ineffective, in an ideal world the solution to the problem of colonial restitution would be more broad, retroactive international treaties. Ignoring the many complications involved in restitution, an international convention that would encourage all state parties to return the Benin Bronzes would be far more effective than the current state-by-state (sometimes collection-by-collection when not bound by national law) de-facto process currently in place, which is piecemeal, slow, and decided by the will of each state (or non-state actor). Such an international treaty would be much faster than current processes, and would hold states accountable for the return of the Bronzes, while importantly creating a centralized infrastructure to aid in their return. Collective action, through a multilateral treaty, is important: the Benin Bronzes are a hot-ticket item for museums, and nations may be hesitant to return their items if they know other states would not be repatriating, and would thus continue to benefit (financially, socially, and educationally) from retaining them. Furthermore, collective action through treaties would encourage more states to join the fold. If a critical mass of formerly-colonial states signed such a treaty out of a sense of competitive do-right-ism, the remaining states could feel pushed to sign-on out of embarrassment, or be pressured into it by party states. Although no one single treaty could account for all the items taken via colonial theft globally, international conventions on more concrete and specific cases of restitution – such as the Benin Bronzes – offer a route to restitution that is faster and more comprehensive, to match a recent and growing movement for repatriation and anticolonialism.

Multilateral treaties are complicated: as consent-based agreements, states are unlikely to sign on unless it is in their best interest, and it can be difficult to hold them accountable even if they do. Countries such as the United Kingdom hold the power in this situation, both in terms of wealth and property ownership of the Benin Bronzes, and in terms of international political clout. It is unlikely, then, that a large majority of Western states would willingly sign away their rights to the Bronzes and follow through with the return. A critical mass of these states needs to see that it is in their best interest to return the

⁵⁹ Farah, "France Vowed."

⁶⁰ Farah, "France Vowed."

Benin Bronzes and similar artifacts, and national and international public information and pressure efforts can be a way to force this change.

Citizen-led pressure, and a broader shift in public attitudes towards museum control of colonial artifacts, could help push state governments to take positive action towards their restitution. Such a culture change, among citizens of these colonial states, is already underway, and something we can see in real-time, as a growing tide of Westerners criticize the theft and retention of items such as the Benin Bronzes. This shift comes from public awareness, which can be packaged in many different forms. On the more scholarly side, *The Brutish Museums* has brought greater attention to the issue of the Benin Bronzes, and although the book has only been out since mid-2020, there is already another book on the same topic, published just in March of 2021.⁶¹ Documentary filmmaking, too, can help change public opinion – a documentary on art stolen from Africa, including the Benin Bronzes, was released in late 2020.⁶² Social media can be a crucial tool in disseminating information, which too can turn public perception of the issue. Even entertainment can change public opinion: for example, an excellent standup set by British comedian James Acaster went viral online when he hilariously pointed out “the absurdity of the British Empire” and the British Museum’s refusal to return stolen items.⁶³ As much as saying standup comedy can fix complex international conflicts sounds ridiculous, one shouldn’t discount the ability that media, entertainment, and social media have to inform people and inspire public disdain and even pressure. If museumgoers are more educated, and more critical, of how objects like the Benin Bronzes were acquired, they may press museums for restitution or forgo visiting them altogether. As noted in *The Guardian*, there has “been a seismic shift in what museum-goers are demanding of the institutions they love” relating to the violent origins and acquisition of collections, and this shift could pressure museums to advocate for repatriation.⁶⁴ Furthermore, as the major Western states that hold Benin Bronzes have citizen participation in government and provide citizens with political voice, a culture shift that favors restitution could incentivize governments to sign on to such treaties.

More specifically, perhaps, changing perspectives within museums could play a significant role in the larger conversations on restitution. This change, too, is already in play: for example, Dan Hicks is not only a fierce advocate for restitution, but a curator at the Pitt Rivers Museum, an institution similar to the British Museum in the way it acquired and displayed objects. There appears to have been a larger institutional shift at the Pitt Rivers, as the museum, under director Laura Van Broekhoven, has worked to center discussions of redress and decolonization in her work, meeting with “originating communities” and stating that the museum is open to the return of items.⁶⁵ If museums like the Pitt Rivers, particularly public museums that can only repatriate items under congressional or parliamentary approval, saw such an internal shift in attitudes towards restitution, these institutions could have significant power. A coalition of museums, national or international, could engage in lobbying, encouraging their governments to sign on to such a treaty as has been discussed previously.

⁶¹ Barnaby Phillips, *Loot* (London: Oneworld Publications, 2021).

⁶² “Documentary ‘The Stolen Soul - Looted Art from Africa’” *DW*, April 9, 2020, <https://www.dw.com/en/documentary-the-stolen-soul-looted-art-from-africa/a-54818546>.

⁶³ “James Acaster On The Absurdity Of The British Empire,” Still Watching Netflix, November 12, 2019, Video, 3:34. <https://www.youtube.com/watch?v=x73PkUvArJY>.

⁶⁴ Dan Hicks, “If the Queen Has Nothing to Hide, She Should Tell Us What Artefacts She Owns,” *The Guardian*, March 31, 2021, <http://www.theguardian.com/commentisfree/2021/mar/31/queen-artefacts-royal-family-looted-law-cultural-heritage>.

⁶⁵ Yohan Koshy, “Hey, That’s Our Stuff: Maasai Tribespeople Tackle Oxford’s Pitt Rivers Museum,” *The Guardian*, December 4, 2018, <http://www.theguardian.com/culture/2018/dec/04/pitt-rivers-museum-oxford-maasai-colonial-artefacts>; “Critical Changes,” Pitt Rivers Museum, accessed May 2, 2021, <https://www.prm.ox.ac.uk/critical-changes>.

It may be in the best interest of these museums to do so. If there is increasing public disdain for colonial items sitting in museums, this could lead to a decrease in museum attendance, either actively as a boycott or passively as disinterest. This could harm the museums' bottom lines, community partnerships, and relationships with donors. Museums can be important tourist attractions, and particularly for public institutions, a decrease in attendance at major museums could cause governing bodies to take notice. While keeping items such as the Benin Bronzes could soon become a liability, restitution could also become an asset. The repatriation of such colonial items could become an educational and publicity opportunity, with diplomatic meetings, community visits, and greater national and international attention. Restitution also doesn't necessarily need to be an all-or-nothing affair. Perhaps, if the items being repatriated were going to another institution in their originating country, Western museums could work out an arrangement to temporarily receive the items every decade or so for short term display, allowing them to still occasionally present the objects, but in limited time frames that could draw more attendance and attention to the museums. There are creative solutions to restitution that can be beneficial not only to those receiving the repatriated items, but also to the museums, institutions, and countries that own them currently. It is important, in this process, for all parties involved to have buy-in. If they do, museums and other institutions are more likely to advocate for restitution treaties, and they can have significant influence in this conversation.

Even with these considerations for pressure campaigns and institutional interests, this treaty-based proposal is idealistic and perhaps not practical. Restitution is messy, complicated, and slow-going. Debates over who owns culture, institutional and state priorities, and the needs of the many different states (and non-state and sub-state actors) involved will regularly get in the way. So too will the historical details. Particularly for countries seeking restitution of items stolen before their state existed, with both the Benin Bronzes and the Elgin Marbles serving as examples, there will always be a debate over who can actually lay claim to the items themselves. While many of the Benin Bronzes are in publicly owned collections, there are an unknown number of items in private collections, which presents an entirely different legal framework for restitution. The issue of retroactivity, while perhaps appealing in theory, could create more problems than it solves – it would be difficult to ask states to consent to lose items of significant financial, social, and educational value for actions that were not technically illegal at the time that they were done. As frustrating as the mere two-year difference between the theft of the Benin Bronzes and the Hague Convention of 1899 is, there is an argument (notwithstanding any case for the prior existence of customary international law for restitution) that a line has to be drawn somewhere. From the museum angle, repatriation is far more complicated than it may seem to the outside observer. Gaining legal or institutional approval, including the formal process of deaccessioning, finding ways to safely house and transport items, researching which person, culture, institution, or state should receive an object destined for restitution, managing all state and substate parties at play, and ensuring that restitution is ethical are all challenges museums face in working to repatriate items.⁶⁶ Repatriation requires the juggling of a large number of complicated factors, and it is important to ensure that, when working towards the restitution of an object, no new injustice is created in the name of righting an old one.

Considering, then, the many complex challenges in play with repatriation, it may be easier and more effective for the time being to handle repatriation on a state-by-state, case-by-case basis, where these issues are easier to navigate with more nuance and care. The French example is by no means perfect, and its slow going nature is irritating, but perhaps this is better than the alternatives, in which more problems could be created than solved. Thinking about solutions for the problem of the Benin Bronzes requires a balance of realism and idealism. While it is exciting to dream of an idealistic solution through a sweeping, broad, and retroactive international treaty, this may simply not be practical. Because

⁶⁶ Bob Beatty, "The Deaccessioning Debate in Museums," *Hyperallergic*, August 2, 2018, <https://hyperallergic.com/453416/the-deaccessioning-debate-in-museums/>.

of this, then, France's recent restitution through national legislation may serve as a model for more feasible – if imperfect – solutions to the theft of the Benin Bronzes.

V. Conclusion

The Benin Bronzes, taken only a little over a century ago in a violent colonial raid, offer a hotspot for larger conversations about reckoning with the aftermath of colonialism. This single set of historical, cultural, and artistic objects raise a vast array of complicated issues, each of which deserves its own ten-page paper. It is difficult, then, to divorce the restitution of the Bronzes from the many deeper problems that plague former colonial powers, colonies, and the museums and tangible heritage institutions that engage with both. Looking through the narrowest scope at the more surface-level issue at hand, the Benin Bronzes need to be returned, due to their cultural significance and the historical injustice surrounding their theft. Because the primary international treaties – the Hague Conventions of 1899 and 1954, the UNESCO Convention of 1970, and the UNIDROIT Convention of 1995 – do not retroactively protect the Benin Bronzes, the return of these items should be encouraged either through an international convention or a series of national laws like that recently adopted in France. Examining the broader picture, the Benin Bronzes point to a serious failure in international law to account for the violent past of colonialism and its vestiges that continue to haunt postcolonial states today. This second, more broad-reaching and pervasive issue is something that needs to be reckoned with at the international level. The Benin Bronzes are merely a symptom.

Although the Bronzes should have been returned long ago, it is growing increasingly difficult to ignore the cries for restitution amid the current and widespread antiracist and decolonization movements. With the international eruption of Black Lives Matter protests in the summer of 2020 and the larger discussions of dismantling systemic oppression that surrounded them, it is now time to reinvigorate international efforts to repatriate the Benin Bronzes and other trophies of colonization. It should be acknowledged that these efforts have been led by African scholars and leaders for decades, and thus the current push for repatriation is not a new movement.⁶⁷ However, up to this point, Western nations and institutions have greatly resisted calls for repatriation. In the face of mounting global calls for justice, it is timely to examine the issue of the Benin Bronzes, in an attempt at a greater and more effective international partnership for restitution. It feels increasingly inappropriate to keep the Benin Bronzes and other colonially stolen items locked in the museums of the same former colonist states that took part, either directly or indirectly, in their theft. Returning the Benin Bronzes, perhaps the most famed of such colonial restitution claims, would be a gesture of goodwill towards righting the wrongs of the past, rather than commemorating them.

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⁶⁷ Shyllon, "Benin Bronzes;" Suyin Haynes, "How Artists and Curators Think We Can Repatriate Colonial Artifacts." *Time*, October 20, 2020, <https://time.com/5901806/african-artifacts-museums/>.