

## Introduction

From the International Criminal Court (ICC) to European museums, debates about the ownership, protection and destruction of cultural heritage are increasingly making reference to notions of global justice in conjunction with object/site biographies. Beyond a legal framing of justice, an appeal is made to moral justice and to reparations for past wrongs in the present (Sørensen & Viejo-Rose, 2015). While a robust cosmopolitan defence (Cuno, 2009; Jenkins, 2018) has sought to relocate the argument both in the past and beyond the museum's walls, the same cosmopolitan logic invoked by the ICC brings it back to the present and questions Western museums' ethical stance on retention of colonial collections.

This Element will explore what is meant by the term 'justice' when applied to cultural heritage through the lens of two West African case studies. First, the case of the Benin Bronzes will be explored in relation to demands for return from Western museums (of objects, ownership and interpretation); second, the relation between international law and violent destructions of global heritage will be examined through the trial of the Malian Islamic extremist, member of Ansar Edine, Ahmad Al-Faqi Al-Mahdi at the ICC.

The Element will argue that a new 'heritage logic' is emerging which challenges a focus on the protection of cultural heritage for future generations premised on a post-war UNESCO model of the protection of global patrimony. A turn towards notions of justice, mirrored by political debates about intergenerational responsibility in economics (Piketty, 2015) and the environment (Gore, 2006) together with the rise of populism and nationalism in the West has cast heritage practitioners into a new and complex role – that of arbitrators of global justice.

*Heritage Justice* explores how far past wrongs can be remedied through compensatory mechanisms involving material culture and questions whether past atrocities are in fact the targets of these compensatory claims. It will argue that the reckoning/compensation process is happening at an angle to the negotiation of the thing in itself. It is both real and a metaphor, at once material and transcendental.

It would be misleading to limit calls for return of objects or financial compensation for destruction of protected sites to the realm of discrete events, they are part of a vast flow of identity claims, moored and unmoored to specific objects and sites over time and place. The specific claims for return, financial compensation, or in relation to statues of colonial officials, destruction of material forms, can be theorised as interruptions in a global conversation about identity. These interruptions are about the way past atrocities are being felt in the present through global structural inequalities and discrimination.

There are two main reasons why museums and international heritage organisations are the current focus of these debates: first, they are institutions that make claims to global justice and thus provide their own internalised standard by which they are prepared to be judged; second, although the claims in themselves are vast, they can be contained and distilled into the reckoning over an object or site. This combination of worthy institution and manageable form means that cultural heritage has become a unique mechanism by which past atrocities can be reckoned with in the present.

Three broad modes of compensatory mechanisms are identified: recognition, economic reparation, and return. Arguing against Jenkins (2018) that museums should not be the site for difficult conversations about the past, *Heritage Justice* proposes that it is exactly the space around objects and sites created by museums and global institutions that allows for conversations about future dignity. The challenge for cultural practitioners is to broaden ideas of material identity beyond source communities, private property and economic value to encompass dynamic global shifts in mobility and connectivity.

### The Conditions of Justice

In January 2002, I was looking through the window of a French bakery at their display of *Galettes des Rois* (epiphany cakes). On that particular year, the expensive bakery *Le Nôtre* had chosen a special theme for their ‘*fèves*’ (the little porcelain beans that you find inside the cake – find the bean, become the King/Queen for the day) – the theme was ‘African Masks’ and seven different miniature approximations had been designed for the occasion (including one with visible scarification). It seemed to me a particularly unsettling form of cultural appropriation – African masks in Christian epiphany cakes, being eaten by well-heeled French consumers.

At the time, I was doing a masters dissertation looking at the politics of African material culture in Western museums. I had come to the conclusion that the economic value of the object in the museum was in many ways proportional to the harm felt by the community from whom the object had been taken (through the anthropological concept of authenticity via the art market). This same value was being invoked by Western museums as the reason why the objects could not be returned to Africa.

While in 2002 the African Mask *fèves* provoked no discernible public reaction, in 2019 discussions around cultural appropriation have intensified. The violation of other peoples’ culture now seems more readily identified by the media – for example when festivalgoers apologise for wearing Native American headdresses, or fashion designers apologise for their use of sacred symbols

during Paris Fashion Week.<sup>1</sup> In these cases, a negative emotional reaction on behalf of people invested in symbols and objects causes a retreat on behalf of those who have appropriated them.

A further condition needs to be present for the notion of justice to be invoked – the claim has to be considered legitimate by a critical mass of participants or potential consumers/citizens for the moral obligation to desist to have effect. Under these conditions, cultural appropriation is recognised as an illegitimate use or erasure of someone else’s identity, whether or not it is for explicit political or economic reasons. The use has to be visible and through this visibility comes accountability.

If cultural appropriation/hybridity has been a constant throughout history, this Element seeks to identify how and when this flow is interrupted and under what conditions notions of justice are evoked and certain forms of appropriation rendered morally unconscionable. Although repatriation claims have been present for as long as museums have held objects considered by others to belong to them, the recent acceleration in number and profile of claims has caught many museum professionals off guard. The presence of colonial collections in Western museums has shifted uncomfortably into the justice sphere and paradoxically, the more visible and receptive museums are being in response to claims for access, the louder the cry for justice through return becomes.

### A State’s Aladdin’s Cave?

‘Justice As Return’ will take up this theme and explore the conditions under which repatriation claims begin to matter to a critical mass of people on a global stage. The case of the Benin Bronzes, looted by the British in 1897, has mattered a great deal ever since to the Oba of Benin and his people. In 2002, during a debate in the UK House of Commons, Tim Loughton MP spoke of the Benin Bronzes in relation to a tabled debate around the fate of the Parthenon Friezes/Elgin Marbles:

Decontextualisation would be a disaster and would open a Pandora’s box, whatever the hon. Member for Knowsley, South says. Mesopotamian finds dug up because of the tenacity of British archaeologists in the 1900s and previously would be returned to Iraq and Iran, perhaps never to be seen again. The Benin bronzes would go to Nigeria, despite the fact that the British museum helped to build the collection of bronzes in Nigeria itself and has done an awful lot to promote the heritage and history of west Africa. When Nelson Mandela visited the British museum just 13 months ago on the opening of three new African galleries, he praised the British museum as:

<sup>1</sup> Cf. Zuhair Murad *Indian Summer* Spring 2018 Couture Collection.

‘this truly international institution for enriching and cross-fertilising the world’s institutions’.<sup>2</sup>

Usefully for the purpose of this Element, Tim Loughton MP, continued:

What are the real motives? It is all political. Academically, there is no case to return the Elgin marbles and other works of art to Athens. They are in the ownership of the British Museum but they belong to the history of world civilisation. To treat them as some political trophy that can be traded for short-term political advantage is the worst reason for ripping them out of the heart of one of the world’s great museums. The British museum should not be treated as *some state Aladdin’s cave* to buy power and influence at random. (my emphasis)

Since that debate, museums across the world have changed their position and in 2018 the Benin Dialogue Group<sup>3</sup> (comprising of representatives from museums with the most important Benin collections, representatives of the Oba of Benin and the Nigerian Government) have agreed to build a museum in Benin City to house a permanent ‘loaned’ collection of bronzes. ‘Justice As Return’ will chart the journey from the arrogant political indifference of 2002 to today’s desperate attempts by museums to maintain a moral link with collections that many now regard as never having belonged to them at all.

### Justice and Destruction

The call for destruction of statues, such as the ‘Rhodes Must Fall’ movement that began in 2015, whilst also making claims to social justice through materiality, is different from repatriation claims because the debate is over the representation of history through the glorification of individuals, not through the appropriation of someone else’s heritage. Both movements for repatriation and destruction consider historical events and their consequences to be central to ongoing inequalities and societal divides, but only the repatriation claims posit a physical link between the object in the museum and the descendants of the object makers/users. The logic is that while the statue of Cecil Rhodes may fill me with rage as I walk past it, the object in the museum causes me grief in its absence; it is exiled and needs to be returned for healing to take place. Both the absence of objects and presence of statues cause physical distress that can be remedied through relocation or removal.

<sup>2</sup> *Hansard*, 5 Feb 2002: Column 778.

<sup>3</sup> The Benin Dialogue Group established a Steering Committee composed of representatives from European museums (Museum am Rothenbaum, Kulturen und Künste der Welt (MARKK); Ethnologisches Museum, Berlin; British Museum London; NWVW; The purpose is to distinguish between the three types of participants: the European museums, the Nigerian govt and the royal court of Benin NWVW is Dutch National Museum of World Cultures), the National Commission for Museums and Monuments, Nigeria, Edo State Government and the Royal Court of Benin.

While the mechanisms by which the presence and absence of objects in these two cases provoke distress are different, the historical periods both justice movements reference share the same roots of racism, brutal oppression and shame. Calls for repatriation or for Rhodes to fall are not limited to historical crimes but are the recognition of the ongoing discrimination and harm felt by many today. The argument goes that as both the apartheid regime in South Africa and colonialism are now recognised by the international community as crimes against humanity, how can heritage practitioners today justify the preservation of the material embodiment of these crimes in their museums and public spaces?

One answer may be in the resilience of the idea of the mythical apolitical museum space: a liminal utopia where only universal aesthetics and scientific learning count. The second may be a misplaced faith in the political power of the present, where ‘the past is a foreign country, they do things differently there’ (Lowenthal, 1985), when all along the insight has been that the present is saturated with the consequences of past injustices. The third may be the current unsettling nature of performative destructions of global cultural heritage by Islamic extremists and the way in which a disregard for the sanctity of human lives and attacks on the material manifestations of people’s dignity have been calculatedly woven together to cause maximum harm. These present crimes against humanity are brought into intellectual proximity with past crimes and distinctions between the two are harder to uphold.

### Macron’s Pledge

Emmanuel Macron became the President of France in May 2017 with his new party ‘La République en Marche’ promising sweeping social and economic reforms. His relationship with sub-Saharan Africa emerged in the light of past failed attempts by French presidents to forge new relationships with former French colonies. These difficult relationships are probably best illustrated by a speech given by Nicolas Sarkozy (President of France from May 2007–May 2012) in Dakar, Senegal in 2007. In the speech, Sarkozy stated:

I want to say to you, youth of Africa that the tragedy of Africa is not in the so-called inferiority of its art, its thought, its culture. Because, in what concerns art, thought and culture it is the West that learnt from Africa. Modern art owes almost all to Africa.

And then the infamous phrase:

*The tragedy of Africa is that the African has not fully entered into history.* (my emphasis) The African peasant, who for thousands of years have lived

according to the seasons, whose life ideal was to be in harmony with nature, only knew the eternal renewal of time, rhythmised by the endless repetition of the same gestures and the same words . . . This man (the traditional African) never launched himself towards the future. The idea never came to him to get out of this repetition and to invent his own destiny.

Sarkozy then goes on to list the many problems faced by ‘Africa’ such as nostalgia for a golden age that never was, a desire for a mythical past, a resignation to misfortune, not recognising that globalisation is a good thing and a general disengagement from the world.<sup>4</sup>

Even by the standards of the day, the speech was astonishingly racist and insulting and caused an immediate global media backlash. Yet the fact Sarkozy, the newly elected French president, felt able to say these things, to address a whole continent as one (this insult is listed by Felwine Sarr in his work *‘Afrotopia’* (2016) as one of the many recurring racist tropes used by Western leaders) and to generalise in such lazy ways the ‘failings’ of a continent while only paying lip service to the brutal dehumanisation of slavery and colonialism, is testimony to the ongoing asymmetry of the relationship between France and its former colonies.

In contrast, and in order to create a rupture with Sarkozy’s approach, Macron’s speech at the University of Ouagadougou (Burkina Faso) in November 2018 starts far more humbly:

I was told that this auditorium was Marxist and pan-African. I therefore said to myself: ‘This may be the place where I have to go to speak!’ Because I did not come here to tell you that we were going to make a great speech to start a new chapter in France and Africa’s relationship. Nor did I come to tell you what France’s policy for Africa should be, as some people may claim. Because there no longer is a French policy for Africa!<sup>5</sup>

He goes on to try and demonstrate that he is a new president with a different political postcolonial outlook:

I would never pretend to express the complexity and diversity of a continent made up of 54 countries. First because it would be terribly arrogant to attempt to explain that there is absolute unity and complete uniformity; 54 countries, each with its own history, with even more ethnicities and languages, with relationships that are not the same with regard to France and a past very often full of very different traumas.

<sup>4</sup> [www.dibussi.com/2007/09/in-his-own-word.html](http://www.dibussi.com/2007/09/in-his-own-word.html) (accessed 29 July 2019) and full French text [www.lemonde.fr/afrique/article/2007/11/09/le-discours-de-dakar\\_976786\\_3212.html](http://www.lemonde.fr/afrique/article/2007/11/09/le-discours-de-dakar_976786_3212.html).

<sup>5</sup> [www.elysee.fr/emmanuel-macron/2017/11/28/emmanuel-macrons-speech-at-the-university-of-ouagadougou.en](http://www.elysee.fr/emmanuel-macron/2017/11/28/emmanuel-macrons-speech-at-the-university-of-ouagadougou.en).

Macron then goes on to explain that he is part of a new generation of Europeans, who live within the shadow of colonialism but were not directly implicated in it. He therefore wants to meet his audience as an equal, as part of a young generation of Europeans and Africans that need to work together to face global challenges. In a similar vein to his post *Gilets Jaunes* policy in France, he launches a vast ‘listening exercise’ where he commits to hear what is being said by young people across Africa.

Next, the link with the migration crisis is made and he pledges to work with African countries to try and stabilise the movement of people from Africa to Europe by planning a joint evacuation plan of migrants trapped in Libya:

We cannot let hundreds of thousands of Africans who have no chance of obtaining asylum, some of whom may spend years in Libya, face all the dangers of the Mediterranean and run into this tragedy.

Once migration is acknowledged as a problem for both France and Africa, Macron sets out a number of measures to create the ‘450 million jobs that Africa will need by 2050’. These are infrastructure projects, training, digital campuses, loans for small and medium size companies, the support of women into the workplace and the movement of more young people from France to Africa and vice versa.

At the end of his speech, he addresses the lack of trust that many people in the audience in Ouagadougou must inevitably feel towards yet another French leader promising to transform their lives. Macron terms it as a ‘loss of shared imagination’ and proposes three solutions:

The first remedy is culture. In this area, I cannot accept that a large share of several African countries’ cultural heritage be kept in France. There are historical explanations for it, but there is no valid, lasting and unconditional justification. African heritage cannot solely exist in private collections and European museums. African heritage must be showcased in Paris but also in Dakar, Lagos and Cotonou; this will be one of my priorities. Within five years I want the conditions to exist for temporary or permanent returns of African heritage to Africa.

This part of the speech signalled a step change in cultural policy in France and led to the commissioning of a report on the subject by two academics, Felwine Sarr and Bénédicte Savoy published in 2018 as ‘The Restitution of African Cultural Heritage: Towards a New Relational Ethics’, known colloquially as the ‘Macron Report’ or the ‘Sarr/Savoy Report’. The report was limited in its remit to objects from sub-Saharan Africa held in French museums but has had a great impact on discussions about restitution from European museums to Africa more broadly (discussed in ‘Justice As Return’).

Interestingly, Macron's other two solutions for a 'loss of shared imagination' are sport and the French language. In relation to sport, he offers African athletes the opportunity to train in France in anticipation of the 2024 Paris Summer Olympics. In relation to the French language, Macron urges young Africans to embrace French and make it their own through the ongoing project of the '*francophonie*'. He would like French to become the language of Africa, despite English being the current 'fashionable' choice and many African intellectuals calling for a return to the mother tongue.

During his presidential campaign in 2017, Emmanuel Macron was already rethinking France's relationship with its past by describing France's action in Algeria and its wider colonial project as a 'crime against humanity'. This sober reckoning provoked fierce criticism from right-wing politicians in France but was probably an astute positioning for Macron, who, at only thirty-nine years old when he was elected, was well placed to discern a generational shift in thinking about social justice.

Negotiations around heritage and justice can therefore be seen to be framed within a specific political and economic moment whilst being overshadowed by past (mostly failed) attempts at creating equal and respectful relationships between Europe and its former colonies. As Diagne (2011) reminds us in his *African Art as Philosophy: Senghor, Bergson and the Idea of Negritude*, African philosophy and art have historically been co-opted by European intellectuals to stand for something other: for example the existential impossibility of being known as yourself through the other's gaze (Sartre) or the fundamental impulse of art as knowledge (Picasso). What the return of African objects from European museums should allow for is a rupture with a constant return to the European self through thinking about 'the other'. However, what current events seem to be illustrating is that this is in fact not the case, the return of objects, like their acquisition in the first place, is bound up with trade, economic impulses, European cultural redemption and the ongoing asymmetry in global power and influence.



## Justice As Return

Those versions of whiteness that produced men like Rhodes must be recalled and de-commissioned if we have to put history to rest, free ourselves from our own entrapment in white mythologies and open a future for all here and now. Mbembe<sup>6</sup>

### The Landscape of Justice

Despite being aimed at museums and focusing on particular objects, repatriation claims rely on a grammar of justice that reference many broader debates and historical events. What may at first have been seen as a chaotic assemblage of grievances and events, both contemporary and historic, seems in time to have coalesced around a powerful emotional and political truth: that instead of leading to greater understanding and equality between cultures, museums with colonial era collections are systematically reproducing colonial era power relations in the present.

The task of the curator with colonial era collections has therefore become one of understanding the link that exists between historical and contemporary events. These include the Black Lives Matter movement, the Grenfell Tower disaster, and the Windrush scandal in the UK. Authors such as Jenkins (2018) and Cuno (2009) reject this challenge and take refuge in their view of the museum as an encyclopaedic and cosmopolitan space, operating outside of history and politics. This theoretical flight from responsibility has a long intellectual pedigree (cf. Arendt on responsibility). The problem with their position is that contemporary political events demonstrate that the ‘version of whiteness’ still alive and well today continues to lead to systematic racism, the same systematic racism that led colonial officials, explorers and military men to dispossess people from their cultural heritage during the colonial encounter.

This logic (of the museum’s continual complicity in marginalisation and exclusion) has seen a growing number of parallel debates brought in to the support the repatriation cause. For example, the British Petroleum (BP) funding of the British Museum has been brought together conceptually by activists with calls for the return of Hoa Hakananai’a, a sculpted basalt head removed from Rapa Nui in 1868. Here, the British Museum stands accused of putting financial gain before environmental responsibility in the same way as it disregards the lives of a community of people in the Pacific who would like to be reunited with one of their ancestors in exile. It is colonial era arrogance, alive and well in 2019. Once that first conceptual link is made, between powerful museum institution and powerless person(s), more links inevitably follow, most

<sup>6</sup> <https://africaisacountry.atavist.com/decolonizing-knowledge-and-the-question-of-the-archive>.

recently the *Gilets Jaunes* movement in France included repatriation of African objects from French museums in their new political manifesto<sup>7</sup>.

### The Logic of Restitution

In her important work on international law, museums and the return of cultural objects, Vrdolkaj (2006) identifies three main reasons for return. The first is a restoration of a ‘sacred’ link between people and objects, the second is a way of remedying wrongful acts (including genocide) and the third is fulfilling people’s right to self-determination. In certain cases, the retained ownership of collections by museums is a way of retaining animosity between states or between the state and indigenous groups in what turns out to be an ongoing condition of harm and conflict (2006: 300).

Every time a museum announces to the media that it will part with objects in its collection, it is contributing towards a gradual but discernible shift in attitudes about the validity of repatriation claims. Throughout 2018 and 2019 there has been a steady flow of announcements: amongst many others, the Quai Branly museum’s promise to return twenty-six thrones and statues taken in 1892 during a colonial war against the then Kingdom of Dahomey and Oslo’s Kon-Tiki museum’s return of object collected by Thor Heyerdahl to Chile. The claims tend to follow a familiar pattern:<sup>8</sup>

1. An object or assemblage of objects are identified by an external party (a state, descendants of the users or creators of the objects or a specific group of people for whom the object has unique cultural resonance) as being contested.
2. The party/parties requesting the return make a public and emotional case.
3. The museum defends the presence of the objects in their collection (perhaps linking it to some Western intellectual tradition or historical figure) yet acknowledges the potential validity of other claims.
4. The museum undertakes a period of research on the object(s) in order to frame their response.
5. Having ‘scientifically’ considered the claim, the museum returns the object(s) in a ceremony that commands positive media coverage.

Over recent decades, museums have found this approach to repatriation increasingly hard to defend. The seemingly cold ‘scientific’ approach of the museum is at odds with the more immediate and emotionally compelling claims of those requesting the return of their heritage. At play here is the universal story of

<sup>7</sup> [www.carmah.berlin/reflections/restitution-report\\_first-reactions/](http://www.carmah.berlin/reflections/restitution-report_first-reactions/).

<sup>8</sup> This process does not hold for the many repatriation cases that take place behind the scenes – these would usually concern human remains that belong to a different ethical and legal category.