

GOODWILL, MORALITY AND LEGISLATION IN RESTITUTION & PROVENANCE POLITICS; A REFLECTION ON CUSTOMARY LAWS AND PROPERTY OWNERSHIP IN AFRICA

Bună-credință, moralitate și legislație în politicile de restituire și proveniență; o reflecție asupra legislației cutumiare și dreptul de proprietate în Africa

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ABSTRACT

Calls for restitution and provenance research over colonial objects have embraced museums globally. The two theoretical undertakings complement one another. Governments, heritage institutions and individuals are reviewing the provenance of their colonial collections and returning them to descendant communities. Widely publicised return undertakings and ceremonies attest to this. Scholars and curators have revolutionised their thinking, approaches and writings with an intent to decolonize narratives associated with the colonial holdings. Conversations through seminars, conferences, workshops and political statements complement the efforts. However, the returns are usually presented as voluntary gestures, driven by morality, redress, equality, correction of colonial wrongs and calls for human rights. This article argues that there are also legal obligations as evidenced by developments in Europe and America today. The article methodologically interrogates three intertwined subjects: 1. the current state of affairs with Africa's colonial heritage; 2. the customary laws on collective ownership of heritage by communities as a contributory catalyst to the migration of heritage; and 3. an ignored factor in the quest for repatriations and the development of national legal structures by states that hold colonial objects. The argument is that these should be balanced; the returns are not only based on morality and goodwill by hosting states, but are also enforced by legal obligations. The paper further argues that all stakeholders should be taken on board in provenance and restitutions, particularly the descendant communities, their wishes and customs. These present as part of 'best museum practise' and the decolonization narrative.

Key-words: Restitution, Provenance, Heritage, Colonial, Communities, Collective, Museums.



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Introduction

In the past years, calls for restitution and provenance research on colonial cultural heritage have flipped the charts.¹ The calls stem from the source communities themselves as well as voluntary commitments by hosting countries.² This explains why several governments, heritage institutions, and individuals have committed to reviewing the provenance of colonial collections and returning them to the communities from which they were taken or extracted. Extensively broadcast returns and commitments to do so by European, American museums and universities attest to the seriousness of these intentions.³ Countries want to be seen as morally doing the right thing and being part of the current global wave of reappraisals. For example, this is how the Belgian Newspaper *De Morgen* analyses German's Humboldt Forum Museum:

*"The opening of the new East wing of the Berlin Humboldt Forum Museum is accompanied by the return to Nigeria of 514 art objects. Germany wants to be the guide country, and the Humboldt Forum is the German equivalent of the Louvre or the British Museum—but in an enlightened version."*⁴

As part of the methodology to address the above concerns, the article firstly reflects on traditional approaches to collective ownership of cultural objects in the descendant communities. This is juxtaposed with comments on recent developments in Western Europe, one of the regions where the objects are found today and where there are deliberate efforts to develop legislation to deal with issues of provenance research and restitution. Reference is also made to other global examples from America, Canada, Australia, Japan, Greece etc. The article closes by arguing for the recognition of the bond between restitution, provenance research and communities of origin.

The provenance research is meant for narratives that put the cultural being and use of the objects into context, are authentic and more representative of descendant communities.⁵ Provenance research, usually controlled by museums, is done by commissioned experts and museum curators in collaboration with descendant communities. The latter know the objects and how they were used, hence the reference to them giving the objects context and providing authentic and contextual information about the objects. This explains why most source countries have now actively engaged in inventorying and researching their own

1 Open Restitution Africa Video, 'A History of Demand', Episode 1 (2024), <https://youtu.be/pq9lvqgcw9I?si=o3jifoFEu7MwFx21x>

2 Clark et al. (2018), P. 13, 131.

3 Zetterstrom-Sharp et al. (2019), Pp. 1-22.

4 *De Morgen* (2022)

5 Kapuni-Reynolds (2018), Pp. 1-140.

heritage.⁶ The aim is to know what was taken, where it is and to lay claim for repatriation. Practically, provenance research often depends on existing records such as diaries, wills, archival records, auction sales receipts and catalogues, dealers' records and museum documentation.⁷ This is complemented by tracking down objects in exhibitions, in museums etc. Larissa Forster,⁸ the first Head of the German Lost Art Foundation's Department for Cultural Goods from Colonial Contexts, argues that "through post-colonial provenance research, the colonial past becomes more visible". Facts about race relations, the different ways in which the objects were collected, ranging from buying, stealing, gifts, simply taking to violence are made clearer.

Furthermore,⁹ provenance research requires transparency, funding and global standardisation. It also helps in the development of culturally sensitive museum policies that take into consideration or explore domestic and traditional customary laws on ownership of cultural objects—both of states and the communities from where such objects were taken and countries holding the objects¹⁰. The emergence of mutually beneficial research partnerships, intellectual property rights, digital data, destroying and demeaning stereotyped narratives on colonial collections are packaged within provenance research, restitution and collaborations. Provenance research attempts to correct that which was done in the colonial context and takes into consideration all the involved players, particularly the descendant communities, their wishes and customs. This puts the objects into their traditional context and/or reintroduces them for re-use in rituals and to guide cases of repatriation.¹¹ According to Forster¹², provenance research also allows objects that migrated a century ago to be re-activated, returned and contextualised into contemporary settings and practices. She argues that the 1990 Native American Graves Protection and Repatriation Act¹³ has given the Native Americans and museums the right to co-curate their heritage and allowed the former to borrow some of the spiritual and ceremonial objects for practical use. This point is supported by Carsten Viggo Nielsen¹⁴ in his discussion of the Lekota people of North America, the communal ownership, ethical curation and the performance of rituals in museums for contextual and authentic representation of heritage.

6 Schorch (2020), Pp. 34-59.

7 Binkowski (2023), Pp. 1-14.

8 Forster (2017)

9 Chelsea et al. (2020)

10 Communal ownership hinged on the collective responsibility of sharing and reciprocal obligations.

11 Thebele (2021), Pp.181.

12 Forster (2017)

13 The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 required federal agencies and institutions to return Native American cultural items to descendants & culturally affiliated American Indian Tribes.

14 Nielsen (2019), Pp. 88-89.

According to Winani Thebele,¹⁵ Botswana has a similar case of a ceremonial drum belonging to one of the ethnic groups (Bakgatla), which is kept by the local community museum, and is loaned by the community for their annual initiation ceremony. The other twin drum was repatriated from the South African Museum in Cape Town, and is held by the Botswana National Museum in custody of the community. These are realistically some of the communal possessions which were a part of the traditional African museum setting. This indicates that Africans had their own special way of preserving their heritage, which in some instances encompassed taboos, respect and reverence for places and objects. Traditional curators took the form of spiritual mediums, traditional healers and leaders etc. Hence the colonial creations are a representation of the modern museum that took things from the indigenous communities into buildings and storerooms. The de-colonial agenda, therefore, calls for a synergy between today's museums and the communities who are the custodians of this traditional setting. Njabulo Chipangura and Jesmael Mataga have in the same way used the example of the Mutare Museum in Zimbabwe and its engagement with the local communities to prove the functionality of the de-colonial agenda in African museum settings.¹⁶

In 2009, Lyndel Prott¹⁷ pointed out that “there is a renewed interest in the discussion about the illegal trade in cultural property, the colonial objects in museums and their restitution by the international community, lawmakers and the media”. Prott's point, like that made by Burchell, talks about the correlation between respect for cultural diversity, tolerance of differences, the validation of one's own cultural objects, the obligations to return as based on traditional communal property ownership, morality and goodwill.¹⁸

On the other hand, Nicholas Thomas¹⁹ is of the view that the preservation and contextualization of indigenous cultures (including those under colonial contexts) is meant for the preservation of earlier life settings rather than the creation of new ones. However, considering the false insinuation that when objects are inside the museum space they are well preserved, the justification by Nicholas Thomas becomes a bit defective because it does not account for the realistic and incarnate characteristics of the material culture that is held in museums.²⁰

Consequently, this article makes a critical analysis of African indigenous ways of property ownership, its disbursement and realisations and seeks to establish how the morality and the goodwill stance associated with the return could have been prompted by these traditional ways. It also seeks to find out if the development of current laws and regulations on

15 Thebele (2022), Pp. 185-187.

16 Chipangura & Mataga (2021), Pp. 146, 354.

17 Prott (2009), Pp.1-2.

18 Burchell (1997), p. 237.

19 Thomas (1999), Pp.5-20.

20 Greenblatt, Stephen (1991), Pp. 42.

restitution could have been prompted and if the African traditional ways of handling cultural property were also taken into consideration.²¹

The State of Research

Scholars and curators have revolutionised their thinking, approaches and have taken to writing with an intention to decolonize the recordings and documentation associated with the objects. They put the record, history and story of object migrations straight, urge and encourage governments to return the heritage.²² Testimony are the footnoted publications and the many other publications that have been coming up with the same free and unwavering approach.²³ Painfully for Africa, this is led at the forefront by curators and scholars from the hosting countries. The observation by Healey is that only one in twenty-four restitution authors are Africans. Meanwhile, the restitution of African heritage and ancestral remains is so vital that Africans should be at the forefront of the narratives and restitution of their heritage. Tracking their presence in the global narrative by the Reclaiming Restitution Report has also indicated poor representation of Africans across academia, online media and social networks.²⁴ My argument is that the initiatives for provenance research and restitution should also have a noticeable representation or be led by African countries, museums and curators.

Meanwhile, the current upsurge in the publication industry addresses different conceptual themes on the subject of colonial holdings and its returns in a sober and thought-provoking way. This adds to the different global conversations held on the same subject through seminars, conferences, workshops and political statements.²⁵ One such forum is the International Conference of the Inclusive Museum in Lisbon in 2021, where the paper “*Buried Truths: Deconstructing Canadian Museum Collections through Repatriation of Indigenous Human Remains and Sacred Objects*” by Liz Feld was presented.²⁶ Indeed, “a new phase and age to the history of colonial collections has set in and can no longer be ignored”.²⁷ Museums, countries and curators who still remain indifferent to this revolution and call to decolonize the museum space, decolonize the history and relations between the global North and the global South are under the spotlight.²⁸ As indicated earlier, the returns, publications, provenance research and collaborations, are not only

21 Wingfield et al. (2015), P. 15.

22 Clark et al. (2018), Pp. 10-254

23 Healey (2018), Pp.1-9

24 Open Restitution Africa (2021), Pp. (i-iii).

25 Nilsson (2013), P.88.

26 Feld (2022), Pp.49-62.

27 Hicks (2020), Pp. 235-242.

28 Hicks (2020), Pp. 235-242.

motivated by a reflection on the African traditional communal ways of property ownership, the moral obligations or legal observations to correct colonial wrongs and the need for redress, but by many other factors.²⁹

The African Perspective and Colonial Collections

Communal ownership of this cultural heritage in Africa hinged on the collective responsibility of sharing. In the traditional African museum from which some of the objects were taken, the responsibility and ownership was communal. This museum was generally reflected through shrines, ancestral places of worship, sacred groves, royal regalia, shrines and hillocks etc. Kwame Amoah Labi has also talked about the traditional African museum amongst West African communities as being "the custodian of regalia for adornment of royals, used for spirituality and for governance".³⁰ Even the dispensation of any private property was based on societal obligations and expectations. Moreover, this traditional communal property ownership and related obligations are aligned to anthropological frameworks of property ownership, such as reciprocity, exchange, gift giving, sharing etc. This viewpoint was espoused by scholars such as Alain Testart and Marcel Mauss, who also believed that "the traditional way of handling property was in fact a uniting factor for traditional communities".³¹ It was through the belief and practice of such frameworks that objects subtly migrated from colonial communities over centuries. Where the objects were given away voluntarily, it was with a reciprocal approach and the expectation for continued friendship and brotherhood with those who received the objects. Unfortunately, this was never to be.³² The loss of cultural property through these anthropological conceptions applies particularly in areas where there was no violence as opposed to that of the Benin lootings and the Ethiopian Magdala war booting etc.

These non-violent object migrations took the longest period of time and were also instigated by colonial officials, missionaries, researchers or scholars, the generous gifting by African chiefs and the art market productions as done by local communities i.e., the Bamum of Cameroon³³ and the many other African communities such as the San, who still continue giving innocently and generously, while getting very little in return.

The pragmatic study of these looted and illegally migrated objects, the legal obligation to return them to their rightful owners is premised on the fact that the local African traditional conceptions of exchange,

29 Smith K. (2023), All-703

30 Laely et al. (2018), Pp. 165-66.

31 Mauss (1967), Pp. 67-96.

32 Hyde (1983), Pp. 3-40

33 Fine (2019), Pp. 153-165.

gift giving, reciprocity and sharing were inherent traditional African communal ways of property ownership. These were never meant for the whole migration of African heritage to other parts of the world and stripping the owners of their cultural heritage. The observation is that these traditional communal ways of property ownership imply an element of obligation, binding and equal rights which, if breached, could be punishable by traditional communal law.³⁴ In fact, a sizable number of artefacts migrated as a result of gift giving and exchange by African communities, particularly the royals. For example, there are a number of artefacts belonging to the Bangwato and Bakwena royals of Botswana on display at the Mafikeng Museum in South Africa (swords, royal regalia, Kgosi Sechele's gun - used to fight the Boers at the Battle of Dimawe etc.)³⁵ all said to have been gifted to colonial officials by the chiefs.³⁶ Philip Jones argues that among early communities during the process of object exchange the value did not rest on the object but the principle of reciprocity.³⁷ Förster also argues that close scrutiny should be made as to whether these were not coerced gifts. My argument is that some of the gifts were dispensed from a state of ignorance.³⁸ This explains why today, due to the state of de-coloniality, and what I would call 'self-awareness and maturity', communities and states are demanding their objects back.

Meanwhile, taking or trading in an unequal exchange and taking without any reciprocal reflection violates this traditional communal setting of ownership. A quick reflection on the collecting alluded to, shows that these were instigated through the early scientific and curatorial expeditions. Individuals, companies, states and late criminal syndicates have contributed to this migration of heritage.³⁹ Needless to say, they collected for different reasons and in different ways. The Sarr and Savoy report has in fact echoed a sentiment to the effect that there are more African objects outside than back home.⁴⁰ The early explorers, travellers, hunters, traders, and scientists also collected as part of their encounter with a new world. They wanted to share their findings and to analyse for knowledge. Nonetheless, these objects became display material and curiosities for the world community. Issues of inequality, alterity and mimesis over these objects also came into play. This is reflected by the demeaning narratives, misrepresentations around the displayed objects found in European and American museums today.⁴¹ Ciraj Rassool talks about the ethics of exchange of objects in the midst of inequalities during the colonial period and that this led to a disconnection between the objects and communities. Hence, the contemporary efforts to repair

34 Mauss (1967), Pp. 67-96

35 Ramsay (1991, 2021), Pp. 193-194.

36 Thebele (2021), Pp. 221-230.

37 Jones (2019), Pp. 123-124.

38 Foster (2017) in Sarr/Savoy report (2018)

39 Kenji (2010), Pp. 1-10.

40 Sarr & Savoy, (2018), Pp. 1-7.

41 Salmond (2015), Pp. 36-60.

and redress this history (echoed through the de-coloniality concept).⁴² The culture of reciprocity, bonding and friendship was no longer a part of the African property and heritage once it migrated from the owner communities.⁴³ Similarly, the Bamum of Cameroon got entangled in the African Art Market and produced en-masse to sell to Art dealers. Jonathan Fine has even concluded that the voluntary agency of the Bamum community should also be noted in the loss of their heritage.⁴⁴ The Bamum acted out of ignorance and produced African art for sale to the Global North and little did they know that they are migrating their heritage and enriching Western Museums. Besides giving away their cultural property through the above discussed traditional ways of communal property ownership, colonial communities in Africa were also made to shun their culture as barbaric. They then disposed of objects as heathen in favour of Christianity and this contributed in breaking the traditional communal property ownership fibre.⁴⁵

Essentially, this is a problem that is today addressed by the movement for the decolonization of museums and the revision of information.⁴⁶ In recent years, a notable movement towards decolonizing museums has emerged across the US, Europe, and Australia. However, the very meaning of decolonizing is still being debated.⁴⁷ The Washington Post defines it as “a process that institutions undergo to expand the perspectives they portray beyond those of the dominant cultural group, particularly white colonisers.”⁴⁸ Critics of the movement such as Olufemi Taiwo see it as a fad because it leaves out the agency of the Africans, who in most cases are the owners of the objects.⁴⁹ He argues that while the decolonization business is preoccupied with cataloguing wrongs, it is causing grave harm to scholarship on and in Africa because the decolonization of culture in ethnographic museums is unrealistic. According to Taiwo, the decolonization thinkers conflate modernity with colonialism and impose its values on African or modern scholars. Eve Tuck and colleagues also talk about how unsettling the decolonization is as a movement, its reality and how it cannot be used and viewed in a figurative way.⁵⁰ Cilla Ariese and colleagues have put more emphasis on decolonization in ethnographic

42 Laely et al. (2018), P. XXI.

43 Savoy et al. (2018), Pp. 9-10

44 Savoy et al, (2018), Pp. 153-156.

45 Haddow (2019), Pp. 2-20.

46 Desmarais (2015), Pp. Vii-Xii.

47 Shoenberger (2023)

48 Washington Post Newspaper, Decolonizing museums is a critical process that seeks to recognize the integral role of empires in museums. It is a long-term process that seeks to make museums reflect the diversity and voices of people within their collections and around them. The movement involves promoting diversity in decolonized museums, dismantling white supremacy in decolonized museums, and developing strategic initiatives towards museum decolonization. (2019)

49 Taiwo (2022), Pp. Xvii.

50 Tuck, Yang & Wayne (2012), Pp. 1-40.

museums with their often diverse audiences and collections. Their publication acts as a guide on how to decolonize this museum space.⁵¹ Meanwhile in her work, *The Past is Now: Confronting the Museums*, Rachel Minott⁵² also interrogates the de-colonial concept, its application in museums and the inherent challenges. The de-colonial movement, therefore, has proven to be a very complex and multifaceted undertaking for different museums, curators and governments.

It is in recognition of the call to decolonize that Black Americans are today demanding an apology from Africans and their traditional leaders due to their agency in the slave trade (where the more powerful kingdoms sold the weaker ones into slavery).⁵³ Chief Nana Otumfuo Osei Tutu II of Ghana rendered an apology to the same effect while on visit to Trinidad-Tobago in 2023.⁵⁴

I argue that it is these disparities in the ownership of this migrated heritage, the different ways in which it was taken, the misrepresentation and demeaning ways of displaying the objects which completely disregarded the traditional communal ownership. This was ownership of friendship, kinsmen, where the objects were given away generously to cement relations and friendship with the white visitors. This is what stimulates the posture of decolonization, redress, reparations, morality and provenance in the restitution of heritage today.

There are many different examples attesting to the issue of redress in Africa. To name just a few: the Benin lootings and demand for restitution, the Kenyan Mau Mau saga,⁵⁵ the Tanzanian Maji Maji and the demand for reparations and related restitutions of both human remains and cultural property related to these two groupings. The Nama and Herero of Namibia are also demanding reparations and restitution in the same manner because of the genocide against them by the German government (in fact I was also lucky enough to witness the return of some 26 skulls to Windhoek, Namibia by German institutions in 2018). The groupings argue that they are underdeveloped today because of the onslaught against them by the German soldiers. African scholars also argue that it is the disregard for the African traditional ways of communal ownership to property, reciprocal obligations and sharing and the loss of their cultural property that impoverished the communities, a problem which persists even today.⁵⁶

Consequently, Namibian curators and scholars have collaborated with German museums on the same provenance exercise.⁵⁷ The Nigerians are working with global museums while the Kenyans are doing a survey

51 Ariese & Wróblewska (2022), Pp.11-12, 126.

52 Minott (2019), Pp. 559 – 574.

53 Hurston Z. N (2018), P. 208.

54 Britannica (2023)

55 Forster (2016)

56 Deliss (2021), P. 345.

57 Zetterstrom-Sharp (2019), Pp. 1-22.

of the many places holding their objects.⁵⁸ Reference is also made to a declaration by Buhari, the former president of Nigeria on 23rd of May 2023, barring all European and American museums hosting the Benin bronzes from returning them to the National Commission of Museums & Monuments in Nigeria but to the Oba of Benin and his people because they are the rightful owners of this heritage. These descendant communities have become what Chi Thien Pham has termed “authors of their own cultures”.⁵⁹ These are but a few examples of the solidarity and local mobilisation towards restitutions and decolonization by African countries. The Nigerians particularly emphasise the role and need to work with the Oba and the community from where the Benin bronzes came. There is evidence of such local power structures in Nigeria as indicated by the Buhari statement:

“The return of these artefacts to the Oba of Benin marks the beginning of another aspect in the highly valued relationship between the Federal Government of Nigeria and our traditional institutions, who are indeed the true custodians of our history, customs and traditions.”⁶⁰

This speaks to a working relationship between the Federal Government as represented by the National Commission for Museums and Monuments and the traditional institutions. The Commission negotiates the release of antiquities from foreign museums and institutions on behalf of Nigeria and the descendant communities. Given this growing movement among museums, universities and states for provenance research, return of collections to their rightful owners, there is now a declared *International Provenance Day* that is celebrated on the 2nd of April every year.⁶¹

The *Berlin Postkolonial* stated that it welcomed the restitution of the Benin bronzes as success for the descendants of colonised people, who were able to overcome the current owner’s decades-long resistance to restitution. To put it in their own words: “as the cultural treasures captured in Benin city represent only the tip of the colonial iceberg, we call for a nationwide regulation that grants the descendants of the colonised the right of ownership to their cultural treasures and ancestors”.⁶²

My argument is that the above examples on Nigeria are an indication that in the absence of law by states to guide provenance research and repatriations, the mobilisation of sentiments become based on community, morality and goodwill. This conclusion is prompted by the fact that, even where there is no legal structure, the repatriations have

58 Silvester (2018), Pp. 111-113

59 Golding et al (2019). Pp. 120 – 123.

60 Miller (2022), Pp. 1-10.

61 Second Wednesday of April: International Provenance Research Day falls on the second Wednesday of April each year. The word „provenance” derives from the French *provenir de*, which means to come from or to originate. Provenance research refers to the ownership history of an artwork or object.

62 Berlin Post-Colonial (2022)

still been conducted successfully as seen through the restitution case studies discussed below.

For a long time,⁶³ cosmopolitan museums in Europe and in America intensified access to such objects by local audiences and the global community to the exclusion of descendant communities. These museums are referred to as cosmopolitan or universal due to their assemblage of collections from all over the colonised world. Some refer to them as encyclopaedic due to their sizes and the ability to offer their visitors an abundance of information on a variety of subjects on both local and global histories and cultures.⁶⁴ According to Ciraj Rassool, these museums ironically instigated the adoption of the notion of universality while intensifying the exclusion for what they referred to as the 'other', which are the communities of origin.⁶⁵ This is as seen through the continued denial to repatriate cultural property belonging to Africans by the British Museum.⁶⁶

This situation also applies to other areas of the world where communities have lost their cultural possessions, such as the Australian Aboriginal people. The Japanese, just like the Bamum, got involved in the trade and exchange of their goods with the Western world.⁶⁷ They deliberately and voluntarily produced more local goods for the Western market dealers and this explains the presence of part of the Japanese heritage in European and American museums today. However, the above point underscores the fact that trade is not the same as gift giving because trade entails some form of payment or something that is received as an immediate replacement for what has been traded. Objects migrated through trade cannot be equated to those migrated through gift giving and through violence. Traded objects do not imply reciprocity, bonding or expectation for friendship as seen through the dispensation of communally owned African cultural heritage. There are no moral obligations involved in trading. This entanglement, therefore, needs provenance research and the support of legal structures to allow for informed restitutions.⁶⁸

The integral provenance research on colonial objects today is done by the curators from host museums in collaboration with curators and experts from countries of origin. They work with indigenous communities so as to get the correct narratives on the objects and to identify the rightful owners of the objects. The provenance research is done systematically and the colonial objects are investigated and properly documented.⁶⁹ Publications, articles, video documentaries, exhibitions and restitution are part of the provenance research package.

63 Chiara (2022), P. xii.

64 Smith (2014), App-703

65 Laely et al, (2018), Pp. 3-5.

66 Lunden, (2016), Pp.1-22.

67 Savoy et al, (2018), Pp.123-126.

68 Thomas (2018), Pp. 254-259

69 Binkowski (2013), Pp. 1-14.

Developments in Western Europe

The examination of colonial objects and their return is a quest to draw attention to the option or the chosen global alternative to rectifying the past, to close colonial wounds and bring healing as an answer to humanity and its obligations of equality, tolerance and appreciation of one another. The declaration by the French president, Emmanuel Macron, in 2017, that France would return colonial objects of African heritage, followed by the publication of the Savoy and Sarr report in 2018, has challenged and compelled national governments and museums in Western Europe to rethink repatriation.⁷⁰ I argue that the quest for repatriation in Europe has compelled countries to juxtapose provenance research against the development of related legal structures.

This article interrogates the different efforts by European states towards achieving this. Provenance research in this sense entails issues of identity, ownership of the objects, human and indigenous rights, the redressing of colonial cultural wrongs and the development of cultural policy for governance and implementation of the resultant restitutions. The Dutch government, for example, has recently argued that “if objects from today’s illicit trafficking still belong to the country of origin and are eligible for return, then those stolen a hundred years ago in disregard of African traditional communal property settings, should also be returned”.⁷¹ This is a statement that supports the introduction of a new legal structure coined to support restitutions in the Netherlands. Recently, the Humboldt Forum, the University of Aberdeen, and many other institutions have also opted for the return of colonial objects in order to correct this colonial history, traditional communal settings and related injustices.⁷²

Similarly, restitution would mean taking into cognizance the violation of the traditional African ways of communal property ownership, morally hinging on issues of redress and correcting the imbalance caused by the displacement. In the contemporary way, restitution would mean the promotion of national identities and the re-connection with the long-lost heritage in the form of objects and related traditional practices. A reconnection with the long-lost past is meant to chart a new beginning into the future.⁷³ However, the global community has determined that restitution based on these observations alone is not enough and could not be compelling enough, hence the current reliance and introduction of national and international legal structures guiding the restitution cases such as the 1970, 1954 UNESCO Conventions, the 1995 UNIDROIT Convention, the UN Declaration on the Rights of Indigenous Peoples of 2007 (values heritage as a human right).⁷⁴ It is important to highlight

70 Sarr & Savoy (2018), Pp. 23-24.

71 Thebele, *The Art Bulletin* (2022), Pp. 185-187.

72 Smith (2019), Pp.134-6.

73 Botswana Daily News (2021)

74 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a comprehensive international instrument on the rights of Indigenous peoples and was

that legal structures are present to aid arguments on international cases of restitution. This also legitimises the role of provenance research in wanting to pin the objects in Western Museums to the right communities in the places of origin.⁷⁵

Restitution scholars, countries and communities have also referred to the Nagoya Protocol of 2015 as a form of leverage in exploring the issue of communities of origin, because the protocol advocates for access to resources by indigenous communities. It also ensures that there is a fair and equitable sharing of benefits. This correlates with the traditional communal ways of handling property, where the basic principle is that all are equal and there should be a fair distribution of resources.⁷⁶ This serves as a befitting legal structure for African countries and the many indigenous communities in Africa and other parts of the world in their many different claims for redress.⁷⁷ I argue that this still brings up questions such as how much do communities of origin benefit from restitution. Practically, how far do laws and regulations on restitution take into consideration the wellbeing of these communities and the after restitution wellbeing of the objects?⁷⁸ A Podcast Series by the Humboldt Forum has similarly made a critical analysis of the role of national and international law in relation to the current restitution cases as well as the Nazi cases of forced sales, lootings and return.⁷⁹

Due to these emerging issues and entanglements, curators at major museums in Europe and America, are increasingly grappling with the prickly topic of restitution. Meanwhile, the objects and their return to the rightful owners have become a major undertaking for museums. Provenance curators are leading the effort to verify the history of objects' ownership and oversee or facilitate the restitution.⁸⁰ Their main tasks include finding out if an object was obtained legally or illegally - typically, collected peacefully, looted during warfare, plundered during conquests or colonisation or purchased through forced sales such as the Jewish / Nazi Heritage and the forced or coerced gifts as discussed by Förster.⁸¹

I argue that this is the gist of provenance research; the returns are motivated by moral concerns as well as by legal obligations. The processes complement one another; traditional cultural ways of

adopted by the General Assembly in 2007.

<https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

75 McKeown (2008). P. 134. also Deutsches Historisches (2019), Pp.134, 160–161.

76 The Nagoya Protocol came into force in October 2015 and has been implemented into UK law through European Regulation No. 511/2014 and the Statutory Instrument. The Nagoya Protocol (Compliance) Regulations 2015.

77 Morgera (2014), Pp. 1-47.

78 Etienne (2021), Pp. 15-30.

79 Dieminger (2021)

80 Zetterstrom-Sharp et al. (2019), Pp. 1-22.

81 Foster (2017)

communal property ownership should also act as a point of reference in such investigations because they played a major role in the dispensation of cultural property from the colonial communities to the Global North.

Subsequently, for European museums, provenance stands as a way of correcting the narrative on the objects found in foreign museums.⁸² This comes about because the migrated object must be translated into a description such that it is understandable and representative of owner communities before being presented to museum audiences. This talks to the theory of *object biographies*, a move away from the earlier narratives that were racist, incorrect and misleading and where the objects were for aesthetics and curiosity. According to a publication by Muller and Langhill, this theory talks about objects being brought to life again through the right and individual narratives which transcends the usual and traditional disciplines of display and exhibiting. The wrong narratives abstracted objects from their cultural or historical contexts and were incorrect in their interpretation. This also relates to the mimetic process⁸³. In this case, Ashis argues that:

“Africans went to look at objects of visual interest in museums abroad that housed their collections but failed to understand the objects from their cultural perspective. In the process, looking at these African objects gave rise to a desire for explanation by the curators, an African desire to correct and point out gaps.”⁸⁴

The argument is that objects play a representational role on behalf of the colonised once they have been put up on display in a Western Museum. They represent or impersonate the original owners depending on how their meaning is narrated.⁸⁵ It is, therefore, important that before considering restitution, these gaps are filled and objects are given their true place and identity through provenance research. This in turn authenticates their true ownership in their places of origin. In summary, this hinges on co-production, co-sharing and co-narration, which is what provenance research should be all about - underwritten by collaborations with diaspora or descendant communities.⁸⁶ This brings out the true history and cultural context,⁸⁷ and is a pivotal step in the provenance research process. Chie Thien Pham argues that this filling up of gaps is important because the communities of origin have a legitimate moral right, a cultural stake and a form of ownership in museum collections.⁸⁸ I argue that this point really speaks to the reason why countries and museums feel morally bound to return cultural heritage to its owners, particularly where the latter are now agitating for the same reason, such

82 Muller & Langhill (2022), Pp. 1-23.

83 Greenblatt (1991), P. 42. also Curtis (2006), Pp. 117-127.

84 Ashis (2009), Pp. xx, 121.

85 Golding et al. (2019), P. 88.

86 Laely (2020), Pp. 17-37.

87 Savoy et al. (2018), Pp. 209, 222

88 Pham (2019), Pp. 130-136.

as the Nigerians and their Benin bronzes, the Greeks and the Parthenon marbles. While in most cases these objects can no longer be put to their original traditional cultural use, the right context can only be given by communities of provenance.⁸⁹

Namibian scholars⁹⁰ have argued that the return of the Kwanyama Power Stones (sacred stones belonging to the Ovambo community royals) brought with it mixed reactions from the community in Namibia. The power stones were part of an old traditional culture and were now being brought back to a Christianized community and to young people who had never been a part of this traditional culture. On the other hand, the Power Stones and the traditional culture they represented were seen as something to revive and strengthen the traditional authority which had been crippled by the takeover by political structures and the Central Government.⁹¹ Hence, the returns also have left a lot to be desired. There have also been instances where they remain inconclusive because the local forces or structures i.e., the government, the descendant community and museums, are not coming to a conclusion as to where the objects should go: the community where they belong or to the museum as part of the national repository?

My argument is that this, therefore, embodies a shift from the traditional communal ownership of the cultural property to national and contemporary ownership and that it still alienates the cultural property from the descendant communities and from communal property ownership. Reference is made back to traditional African museums, where Africans were managing their own cultural heritage.⁹² This heritage, particularly the sacred, ceremonial and royal possessions, was revered and collectively treasured and safeguarded as a national asset and possession and was passed on from generation to generation. People were prepared to sacrifice their lives and to fight for this heritage. A good example is the Asante golden stool in Ghana and how it was defended from being extracted from its custodians.⁹³

The UN also advocates for sharing and universality of heritage as compensation for past lootings. It indicates that “it is the duty of the international community to contribute to the fight against the illicit trade of cultural goods and encourages member states to come up with relevant national and international legal instruments to combat the illegal trade”.⁹⁴ It further advocates for capacity building and awareness raising for law enforcement agencies so that they help uphold the rule of law. I argue that this point explains why there is a need to interrogate all the different options that could aid restitutions and allow for smooth relations

89 Haddow (2014), Pp. 2-20.

90 Silvester & Shiweda (2020), Pp. 30-39.

91 Silvester et al. (2020), Pp. 30-39

92 Laely et al (2018), Pp. 165-178.

93 Labi (2018), Pp. 165-178

94 UN Year Book (2006), Pp. 1287

between the involved parties. I further argue that the UN stance takes into consideration both the morality, goodwill, humanitarian obligations as well as the legality option and compels states to always consider both options so that their actions are all rounded. This presents as part of universal best practice and would go into guiding the development of laws on restitution. As of now there are no clear cut universal guidelines to guide these.

In the Netherlands the museum has responded by publishing *Principles of Return*. Through these, the state proposes that “the decolonization and de-contextualization of the museum should include collaborations with local museums and experts while acting with full transparency and in good faith”.⁹⁵ The action and understanding must start with museums and their curators, who should be ready to face the difficult and contentious histories associated with the objects.⁹⁶ The German government has also begun conversations on reparations with some of its ex-colonies such as in Namibia, Tanzania, Samoa etc.⁹⁷ German museums are publishing their accessioned registers, providing access to provenance research as a symbol of transparency. They have developed national guidelines and policies to guide the handling of colonial objects, including the production of a digital database, the publication of colonial holdings, and an intensive dialogue and partnership with countries of origin. This particularly refers to their ex-colonial states. Monika Grütters, the German minister of State for Culture and the Media, wrote upon the release of the *German Museum Guidelines for Restitution* that, for museums there is a “historic responsibility to relive the colonial past and to maintain dialogue with the partners in a spirit of partnership and dignity”.⁹⁸

Meanwhile, a reflection on other areas, designates the United States and Canada as having visibly forged ahead in the development of regulations on repatriation, in transparency, and the involvement of local indigenous peoples (First Nations), in some cases practising what Förster terms ‘traditional core-conservation’ of objects with these descendant communities.⁹⁹ The University of Iowa Art Museum in America is also working on returning objects to Benin in the same fashion. Comments that were heard from the university officials were such as: “our goal is to de-accession the objects and return them to their rightful owners” & “we cannot ethically display or publish these objects because they rightfully belong to the Oba of Benin”.¹⁰⁰

There are different case studies that speak to the different restitution cases as seen in the past few years. The source: *Displaying Loot: The Benin Objects and the British Museum* talks about the looted Benin objects found

95 Netherlands Government (2019)

96 Nash & Feiman (2003), Pp. 189-198.

97 Melber (2022), Pp. 1-8.

98 Etienne (2021), Pp. 15-30.

99 Clark et al. (2018), Pp. 13, 131.

100 Miller (2022), Pp. 1-10.

at the British Museum and the conservative arguments it advances in order to resist the restitution of the bronzes and other world treasures.¹⁰¹ According to Staffan Lunden, “claims by the British Museum and its counterparts in relation to the colonial objects are based on insubstantial or no evidence”.¹⁰² This justifies the need to refer back to the traditional communal ways on property ownership and to emphasise on co-narration and provenance research in order to correct the misleading narratives by European museums that hold colonial objects. The provenance helps put the record straight and into context as understood by the owners of the objects.¹⁰³ In Lunden’s view, this serves to give true ownership and identity away from the subjectivity, impartiality and biases of the British Museum and other museums.¹⁰⁴ It is the awareness of colonial crimes, trending restitution cases such as the Parthenon Marbles, Benin Bronzes, that have fostered change towards the initiative to return cultural property back to countries of origin by countries such as Germany, France, the Netherlands, Austria etc. Countries are likewise coming up with specialised study programs on provenance research and restitutions as part of the old stream of investigating the origin of objects. Even jobs (no matter how few for now) are being created in this field, a recent development over the past years.¹⁰⁵

A noteworthy development around issues of restitution and the related sentiments is a special exhibition themed ‘I MISS YOU’, which is about missing, giving back and remembering, done by the Rautenstrauch Joest Museum in Cologne, Germany. This supports the good will, morality, societal obligations and the African spirit of *Ubuntu*¹⁰⁶ which also prevailed when the objects were being taken from the communities of origin. The Pitt Rivers Museum¹⁰⁷ has also made a breakthrough by publishing a record of their world archaeological holdings, which they believe is reference material for archaeologists, particularly those whose collections are a part of this record.¹⁰⁸ Another view to the loosening of grips by cosmopolitan museums or encyclopaedic museums¹⁰⁹ is the pressure to develop a new and revolutionized global and future museum: a museum that seeks to acknowledge historical wrongs, engages in dialogue and practice to address negative legacies such as slavery,

101 Lunden (2016), Pp.1-22

102 Ibid, Lundén (2016), Pp. 1-22

103 Forster (2017)

104 Op-cit, Lunden (2016), Pp. 1-22.

105 Van -Beurden (2022)

106 Zetterstrom-Sharp (2019), Pp. 1-22.

107 Hicks et al. (2013)

108 Hicks et al. (2013)

109 Curtis (2006), Pp. 117-127. Encyclopaedic or Universal museums are large, famous and usually national. They offer visitors an abundance of information on a variety of objects and subjects that tell both local and global cultures (<https://www.en.m.wikipedia.org>).

racism, lynching, genocide etc. as part of best practice.¹¹⁰ Some of the museums are changing names and adopting new ones that talk to the colonial legacy and world cultures.¹¹¹ This shift embraces the posture of goodwill and morality as motivation for contemporary returns and their recorded success devoid of the use of legal structures.

Concluding Remarks

In conclusion, it is important to refer to Fiona Batt's observation:

*“The imperialistic narrative accompanied the act of colonialism in Africa, empowered the taking of African heritage to public and private collections in Europe and America where many remain”.*¹¹²

In the same vein, African communal ways of property ownership, obligations such as sharing, gift giving, exchange and reciprocity incidentally contributed towards the transfer of cultural property from Africa to Europe.¹¹³ Subsequently, the call by Batt and Dan Hicks, is for museums to repatriate African heritage unreservedly. Batt cautions that “until there is a steady stream of African heritage returning home to Africa, the now discredited narrative of the discriminatory hierarchy of peoples will continue to impact in situ African heritage”.¹¹⁴

Museums, research institutions and universities around the world have begun to actively seek input and direction from Indigenous descendants in establishing collections care and research policies. My conclusion is that, practically, true collaboration is difficult and sometimes awkward and also stands a chance of not being equal enough for both parties.¹¹⁵ Hence, caution should be made against continued unequal relations and the classism that prevailed during the colonial period when the objects were being migrated from Africa to European Museums.¹¹⁶ Economic and sometimes political hierarchies will still prevail, hence, the collaborations and partnerships should in essence be viewed and implemented with caution.

Central to restitutions and provenance agenda is the tactic to unravel tangled histories, forge identities and re-connect sensitive heritage such as human remains, ceremonial and royal collections.¹¹⁷ This is also to clarify the acquisition and ownership relationships so as to establish a

110 Nitulescu (2019), Pp. 1, 4-8.

111 The Tropen Museum in the Netherlands has changed names to Indian Museum, the World Museum in Liverpool, National Museum of World Culture in Sweden etc.(Google Scholar) and many units and sections in these museums are for ‘World Cultures’.

112 Batt (2021). Pp. 338-339.

113 Thebele (2021), Pp. 181.

114 Op-cit, Batt (2021), Pp. 338-339

115 Stiftung Deutsches Historisches Museum (2016)

116 Deutsches Historisches Museum (2019)

117 Stahn (2023). Pp. 1-12.

legitimization of the collections. It clarifies the different layers of power structures involved in the ownership or claims.¹¹⁸ Provenance gives identity to objects and to descendant communities: they are not just objects, but cultural symbols that convey history and wisdom. The communities of origin have the intrinsic knowledge of their functions, particularly those that were made for royals and for ceremonial purposes.¹¹⁹ The concluding note is that African objects have some embedded power; they are treated by communities as living beings that they use, touch, smell, taste and talk to. The “objects” may appear motionless within museums, galleries, exhibition halls, but they have distinct profiles and convey significant values connected to their traditional, ritual and cultural functions situated within their communities of origin.¹²⁰ While successful restitution cases are observed every day, all the necessary measures, precautions, consultations and stakeholders should be a part of the process in order to make fruitful, impactful and prospective undertakings.

This presents a way of building sustainable relationships between museums and source communities. Restitutions are, therefore, not only performed for the sake of political correctness by museums, but rather they significantly contribute towards cultural revitalization within source communities. This is as opposed to a legal obligation to return back to countries of origin.¹²¹ In my opinion, the legal obligations are not really concerned with the life and welfare of the objects post restitution. It should also be noted that, while provenance research is done partly to prove legal ownership of the objects by owner communities, it is also to pin down the objects to the right owner communities because more often than not there have been disputes over the ownership of the objects by different local authorities.

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118 Laely (2020), Pp. 17-37.

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