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Reflections on the Customary Laws of Benin Kingdom and Its Living Cultural Objects in the Discourse of Ownership and Restitution

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Abstract: The British punitive expedition of 1897 led to the theft and vandalization of the cultural heritage of the Benin Kingdom. The plunder included more than 3,000 cultural objects made of bronzes, ivories, beads, and other objects, which were produced since the 1st century AD to commemorate historical moments, political transitions, and ritual purposes. This theft dishonoured the spiritual and ritual significance of these living cultural objects, and has turned them into museum artefacts. As international debates on restitution and the return of Benin Bronzes intensify, two pertinent questions which arise are: Who will be the custodians of the returned artefacts?; and How will they be conserved? In this article, we address these two questions through the lens of Benin customary laws and practices. We argue that within this local jurisprudence, the Emwin Arre – the living cultural heritage described above – belong to the Oba of Benin and should be returned to the Royal Palace, where they will be preserved, protected, and shared with the present and future generations.

Keywords: Benin Bronzes, customary laws, Nigeria, restitutions, ownership, colonialism

Introduction

In reflecting upon the ownership of cultural heritage objects, we argue in this article for the customary rights approach to restitution. As policies surrounding the restitution debate take centre stage, traditional leaders and their communities need to be part of the discourse. In this regard, this article focuses on two issues, i.e. 1) the historical and cultural perspective of cultural objects as living heritage; and 2) the customary laws of the Benin people. We introduce a conceptualization of the historical narrative concerning how the cultural objects came into existence and the role of the guilds as protectors of these skillsets. The evolutionary journey of native law into customary law within the Nigerian legal framework is discussed. In this context, we refer specifically to the Benin Kingdom as an entity which later evolved during colonization and then became part of present-day Nigeria. It also examines how the influences of traditional cultural objects transcend the ontologies on tangible heritage and the encasement of cultural objects in Western museums. The quest for restitution of the Emwin Arre¹ and the question of ownership is further explored, while the article concludes with an analysis of the current interpretations of customary law within a restitution framework and the usurpers within it.

¹ Emwin Arre, a Benin term for the Benin Collection: bronzes, ivories, beads, and other artefacts.

A Design Consciousness Is Birthed

The cultural objects of the Benin Kingdom in Edo State, located in Southwestern Nigeria, are numerous, historically significant, and cover a wide range of design schemata. The cultural objects that are known today depict individuals and household objects; for example, heads of Obas, Queens, and Chiefs, as well as face masks, chairs, bowls, etc. The design consciousness and style of expression convey the creative ingenuity of the Benin guilds.² The Emwin Arre's sophistication and symbolism, which date back many centuries, demonstrate the monarchy's capacity to use art as a dynamic tool of the State. The Oba of Benin, as the political and spiritual leader of the kingdom,³ became more ceremonial as a result of the cultural objects. The court art concentrated on the Oba's claim to divine origins and the Emwin Arre was preserved in the palace for use during rituals and festivities. A glimpse into the majestic architecture of the ancient palace is provided by two significant cultural objects; namely a brass plaque with a bas relief sculpture of the veranda roof of the palace courtyard, and a bronze box modelled after one of the royal structures.⁴ This roof, which previously covered the Oba's ancestral shrine, was surrounded by leopards and supporting columns. A wide open-air courtyard in the middle was surrounded by a veranda with built-in seating that was supported by pillars. About 500 people could fit in the open courtyard, which was around 30 by 60 m.⁵ More than 850 bronze relief plaques were installed on the pillars that surrounded the open court. The hall had a tall canopy decorated with a cast-bronze snake, and the plaques adorning the pillars below showed images of courtiers and soldiers. The plaques gave an impression that the pillars were made of solid bronze as they were hung on all sides of the columns. The palace of the Oba and his chiefs were the reason for the Emwin Arre production. The Emwin Arre were positioned on structural earth altars that were devoted to previous Obas. Emwin Arre's signature sculptures often take on shapes that pay homage to Benin's royal forefathers. After an Oba passed away, his successor would have an altar built in a vast rectangular building and then hire carvers and casters from guilds to create artwork in memory of him.⁶ This would allow the new Oba to interact with the deceased Oba, thereby invoking a living cultural object as a medium.

² Benin Traditional Council, *A Hand Book on Some Benin Customs and Usages, Issued on the Authority of the Omo N Oba Erediauwu, Oba of Benin*, 1994, p. 15.

³ The Oba is the King and his official title is Omo N'Oba N'Edo Uku Akpolokpolor. The Oba is the sole Custodian of Ancient Benin culture and tradition, and the paramount Ruler of Edo people worldwide.

⁴ K.W. Gunsch, *The Imagery of Power on Benin Bronze Plaques*, "Smarthistory", 28 January 2020, <https://smarthistory.org/imagery-power-benin-bronze-plaques/> [accessed: 23.11.2022].

⁵ Ibidem.

⁶ Ibidem.

Guilds as Protectors of Emwin Arre Creations

Indigenous legal systems had regulated social relations before the arrival of colonial rule in Africa. These institutions were for the most part customary in origin and type. With the introduction of colonialism, a fundamental and far-reaching impact was wrought on the Indigenous social and legal arrangements, the results of which have downplayed the Indigenous legal system, dictated by the people's culture and belief system – a system that reveres the Oba as the most supreme. The Palace court art was organized to principally serve as a spiritual, socio-political, and economic heritage for the Palace, and by extension its people.⁷ The guild system was initiated in the 1st century during the reign of Ogiso Kings.⁸ Ogiso Ere of Ogiso Igodo, the first in the Ogiso dynasty, in an effort to create economic reforms embarked on the development of multiple guilds. The guilds were artisan organizations which would initiate a series of royal creations for various festivals and cultural events in the Benin Kingdom.⁹ The guilds included the bronze casters' guild (IgunEromwon); woodworkers' guild (Owina); dancers' guild (Ogbelaka); ivory and wood carvers' guild (Igbesanmwan); weavers' guild (OwinaN'do); pot makers' guild (Emakhe); and the leather workers' guild (Isohian).¹⁰ The bronze casters' guild became the most popular art guild in Benin.¹¹ The Benin bronze casting site is located along Igun Street in Benin City. Igun Street is home to the majority of the renowned bronze casting families in Benin.¹²

The guilds served as Benin's forms of protection. For example, bronzesmiths had to be part of the IgunEromwon clan to be able to hone their craftsmanship. The craftsmanship skills were passed down through the lineages of the bronzesmith kins. The administration and protection of the guild was sustained by the conferment of chieftaincy titles to the heads of the guilds. Inneh¹³ was custodian and head of the art of bronze casting in the Benin Kingdom. The unifying force of the guild had been the Obas of Benin (before 1897)¹⁴ who were the grand patrons

⁷ P. Dark, *The Art of Africa (III). West African Bronzes*, "Africa South" 1959, Vol. 3(2), pp. 109-116.

⁸ B. Plankensteiner (ed.), *Benin. Kings and Rituals: Court Arts from Nigeria*, Snoeck, Ghent 2007, pp. 63-161.

⁹ Ibidem.

¹⁰ See E.V. Odiahi, *The Origin and Development of the Guild of Bronze Casters of Benin Kingdom up to 1914*, "International Journal of Arts and Humanities" 2017, Vol. 6(1), pp. 176-187.

¹¹ J. Nevadomsky, *Studies of Benin Art and Material Culture, 1897-1997*, "African Arts" 1997, Vol. 30(3), pp. 18-27.

¹² C. Gore, *Casting Identities in Contemporary Benin City*, "African Arts" 1997, Vol. 30(3), p. 93.

¹³ During the reign of Oba Oguola, he gave Igueghae the title of Inneh.

¹⁴ A portion of the Benin army executed British commander Consul Philips and his troops on 4 January 1897 for trying to enter Benin against the Kingdom's will. The British government retaliated by sending roughly 1,200 troops to demolish Benin and punish its Oba. The Emwin Arre collections were consequently moved to Britain. The kingdom of Benin was destroyed by the Benin massacre and expedition of 1897, which also resulted in the looting of priceless antiques and works of art (which included the famous Queen Idia bronze head).

of the guilds, and regulated their activities and the ancestral shrine of Igueghae.¹⁵ The ability to convert sand to money has been reflected in the songs of praise chanted by the guilds before they casted in bronze:

“Oba gha to kpere. Ivb’Igun n’Eronmwon, yaruya!
No Yeken Khian igho, yaruya”

Which means:

“Long live the Oba, the children of Igun eronmwon,
we are here, who generate money using sand,
we are here”.¹⁶

The Emwin Arre were viewed as art work to record events like the Ugioro festival, where the Oba celebrates the Igue festivals,¹⁷ and capture images of royal family members and decorate the Palace of the Oba of Benin and the Palace court entourage.¹⁸ The art of bronze casting continued to flourish until 1897. The impacts from the punitive expedition resulted in the collapse of the guild. In 1914, Oba Eweka II, the senior son of Ovoramwen, encouraged the guild of bronze casters to cast replicas of and replacements for the bronze creations that were taken from the royal ancestral shrine.¹⁹ The succession of properties under customary law in Africa is executed in two ways, depending on the communities: patrilineal and matrilineal. The patrilineal is the most common in Nigeria and is based on primogeniture, whereby the eldest son ascends to the throne of his deceased father, and also inherits his properties absolutely and governs the inheritance in the Benin Kingdom.²⁰ The native laws and customs of the Benin Kingdom practice this system of primogeniture.²¹ Within the Benin monarchy, the hereditary traditional title holders are known as chiefs, and the principal actor in the burial ceremony is the eldest surviving son of the deceased title holder. A well-established principle of the Benin native law and custom states that the deceased’s eldest son is entitled to inherit the house where the deceased lived and died. This custom amongst the Benin is referred to as “Igiogbe”.²²

¹⁵ See A. Omoruyi, *Benin Anthology*, Benin Cultural Publications, Benin City 1981, p. 50.

¹⁶ D. Inneh, *The Guilds Working for the Palace*, in: B. Plankensteiner (ed.), op. cit., pp. 105-110.

¹⁷ B. Plankensteiner (ed.), op. cit., p. 63.

¹⁸ R.E. Bradbury, *Benin Studies*, Oxford University Press, London 1973, p. 78.

¹⁹ P. Ben-Amos, *The Art of Benin*, Smithsonian Institution Press, Washington, DC 1995, p. 26.

²⁰ See D.S. Oluya, *Bini Customary Law of Inheritance: Shift in “Igiogbe” as a Case Study*, MA thesis, Dalarna University Falun, Sweden 2012, <http://du.diva-portal.org/smash/get/diva2:601048/FULLTEXT01> [accessed: 23.11.2022].

²¹ See also U.I. Osemwowa, *The Customary Law of the Binis*, Myke Commercial Press, Benin City 2000, p. 36.

²² See the supplement to the *Handbook on Some Benin Customs and Usages: Property Sharing*, Issued by the Benin Traditional Council, on the authority of the Omo N’ Oba Erediauwa, *Oba of Benin*, vol. 2, Soben Printers Limited, Benin City 1996, p. 2.

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In accordance with Igiogbe, Benin customary law, the family seat automatically goes to the eldest child on the death of the father.²³ The return of the Emwin Arre, it can thus be argued that since the IgunEromwon received their royal charter by Oba Oguola in AD 1280, and used the cultural creations for the beautification of the palace, this enabled them to create a database of memories for the Benin Kingdom. This in turn makes the current Oba the eldest son of the house and the rightful owner to the artefacts according to Igiogbe. The Igiogbe is an integral part of the Benin indigene because of the traditional values that are attached to it. The Igiogbe constitutes a building that contains the ancestral shrine, wherein the head of the family and other family members worship the spirits of the departed ancestors. It also serves as the traditional family seat.²⁴ This means that the British expedition against the Benin Palace – where the Oba was first exiled from and later died – the Palace is thus, the Igiogbe in this instance. The Oba's descendants are entitled to use the Benin principle of primogeniture customary law of Igiogbe to receive the returned Emwin Arre, because the royal ancestral shrine is still in the Palace of the Oba. Benin native law and the customs of "Igiogbe" are an application of inheritance law.²⁵ The attempts to dispel the ownership of the Benin Bronzes means that native law and customs are not being taken into consideration at all. At the time of the British expedition that led to the looting of the Bronzes, Nigeria had not yet become an independent State, nor had the Benin Empire been assimilated into British West African territory. Hence, the traditional law and customs of the Benin people should take precedence.

The importance of the Benin bronze castings to the Benin people rests in the fact that, historically, they convey sacred, cultural, and spiritual essences within the restricted rituals, practices, and performances linked to the Oba of Benin's palace and its Monarchy.²⁶

²³ According to Igiogbe, "it shall be lawful for every person to devise, bequeath or dispose of, by his will executed in a manner hereinafter required, all real and all personal estate which he shall be entitled to, either in law or in equity, at the time of his death and which if not so devised, bequeathed and disposed of would devolve upon the heir at law of him or if he became entitled by descent, of his ancestor, or upon his executor or administrator". See Wills Law (Chapter 172, Laws of Bendel State of Nigeria 1976 applicable to Edo State). See Supreme Court (Nigeria), *Thompson Oke & Anor v. Robinson Oke & Anor*, 3 SC 1 (1974) and also Court of Appeal (Nigeria), *Emmanuel Osaheni Egharevba v. Mrs Comfort Oruonghae*, 11 NWLR (Pt. 724) 318 (2001).

²⁴ Traditional religion where ancestral worship is a key feature.

²⁵ *Egharevba v. Oruonghae* (2001).

²⁶ R.L. Okediji, *Traditional Knowledge and the Public Domain*, June 2018, p. 38, <https://www.cigionline.org/sites/default/files/documents/Paper%20no.176web.pdf> [accessed: 23.11.2022].

The Evolution of Benin Customary Laws

In the Palace court, the Oba, together with his Chiefs and the Iyase,²⁷ enforced the laws and sat in judgment in the jurisprudence of the Benin customary law.²⁸ These Indigenous or customary laws were usually unwritten and there are several such laws in different parts of Nigeria. Benin, as part of Nigeria, is the focus of this article.²⁹ Customary law makes up the cultural customs accepted by the indigenes as what binds them in kinship.³⁰ These kinship rules have a long history of law enforcement within communities, as recognized by the Nigerian Evidence Act.³¹ The kinship rules are unwritten laws embedded and recognized within the community as governing their transactions and codes of behaviour in a particular manner, and recognized in the broader legal framework of the Nigerian legal system.³²

The Nigerian courts uphold customary laws as a primeval rule of law, binding a specific community with rules that can change over time due to the rapid development of social and economic conditions, established in the *Alfa & Omega v. Arepo* case.³³ In 1988, the Supreme Court of Nigeria adopted customary law in the case of *Kimdey & Ors v. Military Governor of Gongola State & Ors*.³⁴ These examples show that customary law is an accepted and enshrined legal framework for safeguarding the customs and culture of communities across Nigeria. Although there has been a long usage of kinship laws within local legal jurisdictions, and in more recent times even nationally, the implication of this on international law such as artefact repatriation has not yet been tested by the Nigerian courts. One major characteristic of customary law concerns its acceptance by the community as a binding rule of kinship. For the Benin kinship, this was a body of customs and traditions that regulated various aspects of their lives and transactions and bound every Benin indigene as “natural justice, equity and good conscience”.³⁵

Following the British occupation and colonization of Benin, some of the customary laws and practices that were deemed “barbaric” and “primitive” were ab-

²⁷ The Iyase of Benin Kingdom is the Traditional Prime Minister of Benin Kingdom; Benin Traditional Council, op. cit., p. 15.

²⁸ Customary Courts as we know them today had their origin in what was called “Native Courts”. Native Courts developed into Customary Courts; see Customary Courts Law (Chapter 31, Laws of Western Nigeria 1957); also Customary Courts Law (No. 21, Laws of Eastern Nigeria 1956).

²⁹ A.O. Obilade, *The Nigerian Legal System*, Spectrum Books, Ibadan 1979, p. 83.

³⁰ Ibidem.

³¹ Section 2(1) of the Evidence Act (Chapter 112, Laws of the Federation of Nigeria 1990).

³² A.T. Oyewo, O.B. Olaoba, *A Survey of African Law and Custom with Particular Reference to the Yoruba Speaking Peoples of South-Western Nigeria*, Jator, Ibadan 1999, p. 94.

³³ Supreme Court (Nigeria), *Alfa & Omega v. Arepo*, ALL NLR 95 (1963).

³⁴ Supreme Court (Nigeria), *Kimdey & Ors v. Military Governor of Gongola State & Ors*, 2 NWLR (Part 77) 445 (1988).

³⁵ M.E. Kiye, *The Repugnancy and Incompatibility Tests and Customary Law in Anglophone Cameroon*, “African Studies Quarterly” 2015, Vol. 15(2), p. 87.

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rogated.³⁶ This led to a gradual neglect and systematic interruption of kinship in customary laws. “Native Courts” were created, subject to the approval of a colonial administrator, and were granted varying powers and jurisdiction over communities by codes.³⁷ By 1957, the Native Courts evolved into customary courts as a result of late colonial constitutional changes. Customary law covers various issues, such as land and matrimonial matters; debt and demands; guardianship and custody of children; inheritance upon intestacy; and other related matters that affect the day-to-day lives of the community. By 1979 customary courts of appeal were established in Nigeria.³⁸ It should be highlighted that because the concept of “rule of law” is fundamentally a Western construct, certain countries may not agree that it serves as a reliable indicator of how well their legal system is performing. This position draws support from the case of *Nwaigwe v. Okere*,³⁹ where Walter Onnoghen, a then-Justice of the Supreme Court, stated that “English law also includes English common law which does not enjoy a higher legal status than our customary law”,⁴⁰ and another then-Justice of the Supreme Court Niki Tobi defined customary law as follows:

Customary law generally means relating to custom or usage of a given community. Customary law emerges from the tradition, custom, usage and practice of people in a given community which, by common adoption and acquiescence on their part and by long and unvarying habit, has acquired, to some extent, an element of compulsion and force of law which it has acquired over the years by constant, consistent and community usage. It attracts sanctions of different kinds and is enforceable. Putting it in a more simplistic form, the customs, rules, traditions, ethos and cultures which concern the relationship of members of a community are generally regarded as the customary law of the people.⁴¹

However, issues relating to cultural artefacts are not addressed in the customary court system. As a result, the application and jurisdiction of the restitution of objects to original owners, means that customary law faces lots of challenges.

The nation-state that emerged at the end of British colonial rule did not represent the wishes and aspirations of the people, as colonialism undermined local institutions and imposed a “foreign” government. While the local rulers such as the

³⁶ N. Tobi, *Sources of Nigerian Law*, MIJ Professional Publishers, Lagos 1996, p. 111.

³⁷ It is noted here that aside of the Statutes of General Application, English case law which had built up as judicial precedent had direct application in Nigeria before independence and became persuasive authority in Nigerian courts after independence till date.

³⁸ See also replicated in various laws in the receiving countries and at various levels. See Section 33 of the Magistrate Courts Ordinance (Chapter 122, Laws of Nigeria 1948); Section 17 of the Supreme Court Ordinance (Chapter 211, Laws of Nigeria 1948); and Section 26(1) of the High Court Law of Lagos State (Chapter 52, Laws of Lagos State of Nigeria 1973).

³⁹ Supreme Court (Nigeria), *Nwaigwe v. Okere*, 34 NSCOR 1325 (2008).

⁴⁰ Laws of the Federation of Nigeria 2004.

⁴¹ *Nwaigwe v. Okere* (2008).

Oba of Benin continued to maintain some authority over their people, they now had to derive their staff of office from the Nigerian government, and their power over issues of jurisprudence has been greatly limited.⁴²

The Benin people have always revered the Oba of Benin as the propagator of their native law and custom. The proclamations made by the current Oba of Benin – His Royal Majesty Omo N’Oba N’Edo Uku Akpolokpolor, Oba Ewuare II⁴³ – regarding native law and customs are regarded as binding. A well-organized traditional chain of command imposes severe traditional punishments on any sort of disobedience. As the spiritual head, he presides over political, traditional, and socio-economic matters that become Palace court laws, and is the custodian and representative of Benin culture. The recognition of customary laws and protocols governing the restitution of the Benin Bronzes will need to include the perspectives of Benin communities within this dialogue. The protection of Emwin Arre as a cultural intellectual heritage is crucial in the determination of cultural policies for the Benin people. Exhibitions in the West of sacred cultural objects and expressions obtained by colonial looting raises policy, ethical, legal, and traditional customary issues. A customary practice may not be explicit but effectively governs and guides many aspects of the African way of life and communities.

The Emwin Arre’s Journey as a Collection

The Western perceptions of African art in the 19th century were negative, denying that African arts had the sophistication that was attributed to European arts. Though the economic value of what constitutes art shifted at the turn of the 20th century, collections from Africa were still seen as anthropological artefacts that provided knowledge about other people who were different from Western People. They were labelled as “native crafts” and not art, and used as a means to generate and communicate perceived knowledge.⁴⁴ However, over time the perception of artefacts from Africa began to change, as did the way they were displayed. The Emwin Arre were transformed from living cultural objects of anthropology to objects that not only defined the Benin people, but Africa as a whole. In the words of Meyer Schapiro, “what was once considered monstrous now became pure form and pure expression”.⁴⁵ From this perspective, the Emwin Arre are now regarded as objects of value, attracting attention in their own right. However, to understand the Benin

⁴² Constitution of the Federal Republic of Nigeria 1999 (as amended) (Chapter 23, Laws of the Federation of Nigeria 2004).

⁴³ Born 20 October 1953 and received his title on 20 October 2016. He is the 40th Benin Kingdom Oba – A title given to the Benin Empire’s Head of State around the 1180 and 1300. He received his title following the death of his father, Omo N’Oba N’Edo Uku Akpolokpolor Erediauwa 11, Oba of Benin Kingdom.

⁴⁴ P. Wood, *Display, Restitution and World Art History: The Case of the “Benin Bronzes”*, “Visual Culture in Britain” 2012, Vol. 13(1), pp. 115-137.

⁴⁵ M. Schapiro, *Nature of Abstract Art*, American Marxist Association, New York 1937, pp. 185-186.

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collection is to understand their implication and value from the perspective of the people, and not from the taxonomy of the Western ideology of modern art or museum classification entrenched in anthropological concepts.⁴⁶

The Emwin Arre were a collection from the ancestral shrines in the Palace; sacred communal and spiritual objects from individual shrines; and ancestral shrines from the dwellings of the community at large. The theft of the Emwin Arre cannot be considered as spoils of war, as this minimizes the effect of the crime committed against the Benins, who refused to be duped by a treaty.⁴⁷ Rather, they were purposely collected to be sold to defray the cost of the punitive expedition. British officers disregarded the Benin customs during the reign of Oba Ovonramwen by invading the celebration of the annual royal rites. The retaliatory punitive expedition led to the loss of lives and livelihood of the Benin people, as the kingdom was razed by fire. The theft of the Emwin Arre has exposed the once-revered living cultural objects to various acts of individuals who have desecrated the collections. Emwin Arre have been handled by commercial art dealers and Western auction houses, Western museums, private collections, and small institutions.⁴⁸

The British were responsible for the removal of the Benin artefacts and their dispersal and distribution to the rest of the world. A British officer, Capt. Herbert Sutherland Walker, described the heinous act in his diary as he recounted how a British associate was “wandering round with a chisel and hammer, knocking odd brass figures and collecting all sorts of rubbish as loot”.⁴⁹ It is worth noting that what he classified as “rubbish” were valuable items that were auctioned to collectors. Walker recorded that “all the stuff of any value found in the King’s Palace and surrounding houses, have been collected”.⁵⁰ With all objects of virtue gone, the people’s culture was relegated to the background. They were stripped of their confidence, creativity, intellectual property, human rights, and the spiritual connection to their ancestors. The act to retribute cultural objects should be backed with legal policies that are inclusive of the original owners and their customary law as a guide. The intricate debates should touch on the most intimate aspects of ownership, as well as the wider questions of laws governing living cultural heritage.

⁴⁶ O.Z. Sogbesan, *The Potential of Digital Representation: The Changing Meaning of the Ife “Bronzes” from Pre-Colonial Ife to the Post-Colonial Digital British Museum*, PhD diss., City University London, 2015.

⁴⁷ The Oba of Benin signed a treaty with Britain in 1892. The Oba did not fully comprehend the implications of the treaty, which ceded some of his sovereignty to the British crown. See also R. Home, *City of Blood Revisited: A New Look at the Benin Expedition of 1897*, R. Collings, London 1982.

⁴⁸ B. Phillips, *Loot: Britain and the Benin Bronzes*, Oneworld Publications, London 2021.

⁴⁹ A. Marshall, *This Art Was Looted 123 Years Ago. Will It Ever Be Returned?*, “The New York Times”, 26 January 2020.

⁵⁰ D. Hicks, *The Brutish Museums. The Benin Bronzes, Colonial Violence and Cultural Restitution*, Pluto Press, London 2020, p. 32.

The Encasement of Emwin Arre in Museums

Restitutions open up a deep reflection of historical, spiritual, and cultural significance. The circumstances that surrounded the losses of cultural objects and the past colonial trauma of oppression inform Africans that the formation and development of institutional Western museums in Africa are not the natural ways of Africans. Addressing such matters calls for a fundamental transformation of the perceptions of African heritage within the practice of museology. African custodians have to be seen as the keepers of their heritage, using their own traditional methods. The concept of a museum in its current form does not represent how the Africans have showcased their living cultural objects. It is tacit knowledge that living cultural objects are showcased at various levels, which portrays various kinship histories and identities. The exhibition of living cultural objects is intertwined with intangible heritage at three levels within the African contexts: the home, communal spaces, and the Palace (residential, spiritual, and institutional buildings).⁵¹

The Emwin Arre were not created to be kept in glass cases in Western museums, nor as a Western taxonomy for knowledge-gathering. The decolonization of living African cultural objects begins with the restoration of their ancient interpretation guidelines, meanings, and values as royal sacred objects.⁵² African living cultural objects were created to be kept within family homes and their ancestral shrines and communal kinship compounds; and with the majority of the living cultural objects designed for the Palace, to be placed at ceremonial shrines and displayed during festivals and cultural events. Within the family, residential spaces constitute personal shrines for revered deities. The Emwin Arre belonging to each household are displayed, worshipped, and honoured. In this way, they represent the identity, family history, culture, and spiritual deities of the family. As sacred objects in ancestral shrines (spiritual spaces), the Emwin Arre become identity markers for devotees. As for the communal spaces, these are where the ancestral shrines for family kins are situated. The communal living cultural objects symbolize kinship guidelines and links to the primordial ancestors of the community as a whole, consisting of the various deities that mitigate the daily lives of the communal activities.

In Benin, the Oba is regarded as the highest custodian of culture and serves as its principal gatekeeper; hence the best of the society's creativity is stored within the Palace, like in the case of the Benin plaques such as the Queen Idia ivory mask.⁵³ The palace is an institutional building and forms the third level of "seeing" in Africa, where unique collections that serve as both a communal identity marker

⁵¹ O.Z. Sogbesan, *Museum in the Era of Decolonisation: The Nigerian Perspective*, "Museologica Brunensia" 2022, Vol. 11(1), pp. 10-22.

⁵² A. Appadurai, *The Social Life of Things: Commodities in Cultural Perspective*, Cambridge University Press, Cambridge 1988.

⁵³ A.I. Okpoko, *Fundamentals of Museum Practice*, Afro-Orbis Publishing Company, Nsukka 2006. See also B. Phillips, op. cit.

and history are stored, showcased, and protected. The interpretation ascribed to Emwin Arre by the global North indicates a lack of intangible heritage understanding and a false concept of perpetuity. The Western practice, i.e. that “objects” are put through a process of preservation of the tangible, which creates a lacuna in the objects’ living intangible heritage. For example, the Igbo Ikenga is made to serve, deteriorate, and expire when the human linked to the object dies. The lifecycle of heritage objects is equally as important as the spiritual attributes that dwell within them, which means that the essence within the object can also be released and left to expire, just as humans also live and die. Western perception does not, however, bestow such heritage with the same values. The “proper” preservation conditions in Western-style museums often impede the spiritual validity of these valuable living cultural objects. As the question of repatriation continues to be debated, one element in particular that has been raised is the issue of continual conservation of these living cultural objects when they return “home”. There seems to be a failure in the museum world – both in Africa and in Europe – to create concepts that are inclusive and adaptable to local norms, practices, and beliefs, especially those of the source communities.

The Quest for the Restitution of Emwin Arre

The 19th century restitution movement eventually culminated in the codification of the restitution principles in the Brussels Conference of 1874;⁵⁴ the Hague Convention of 1899;⁵⁵ and the Hague Convention of 1907.⁵⁶ However, these Conventions only systematized the existing state of international law, and did not create any new commitments to restitution.⁵⁷ After the British punitive expedition into Benin and the Monarch was deposed, native laws and customs had to adhere to special arrangements to ensure that disputes involving traditional Benin communities and non-Benin individuals were referred to the colonial Governor; whereas before colonial rule and administration, the Oba and his elected high chiefs managed dispute resolution amongst the people. The verdict of the Oba was final on all matters, and his people were in agreement as it was based on their native law and

⁵⁴ Project of an International Declaration Concerning the Laws and Customs of War, adopted by the Conference of Brussels, 27 August 1874, as reprinted in “American Journal of International Law” 1907, Vol. 1(S2), pp. 96-107.

⁵⁵ Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 29 July 1899, <https://ihl-databases.icrc.org/ihl/INTRO/150> [accessed: 07.12.2022], Art. 56.

⁵⁶ Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907, <https://ihl-databases.icrc.org/ihl/INTRO/195> [accessed: 07.12.2022], Art. 56.

⁵⁷ S. Kiwara-Wilson, *Restituting Colonial Plunder: The Case for the Benin Bronzes and Ivories*, “DePaul Journal of Art, Technology & Intellectual Property Law” 2013, Vol. 23(2), p. 390.

customs. The British claim to the Benin Bronzes and ivories rests on the 19th-century international law on the spoils of war, as applied to non-European people.⁵⁸ However, the current clamour for their return – and President Emmanuel Macron’s statement in 2017 at Ouagadougou; coupled with the follow-up effect of the Black Lives Matter movements and opposition to public monuments celebrating colonial figures’ involvement in the enslavement or dehumanization of African people – has prompted fresh demands for the restitution of artefacts.⁵⁹ The basis for their restitution has become the new concept for the protection and preservation of the integrity of national cultural heritage.⁶⁰

In Felwin Sarr and Bénédicte Savoy’s 2018 report, restitution simply meant the return of cultural objects, without conditions or stipulations.⁶¹ The report was commissioned by the President of France, Emmanuel Macron, who assessed the historical and present state of African objects in French coffers. The assessment was to determine how the collections were acquired – either through illicit or disputed means – and propose possible processes for their eventual restitution. The report recommended a restitution process based on legal frameworks, which meant to re-institute the cultural items back to the legal owner for the legal use and other prerogatives that the items may confer.⁶² The possible lack of accessibility and dominance over the returned collections is what stalls the West from actively working on a multilateral binding agreement on restitution. How then can restitution be complete or permanent? A simple definition of the term seems to elude the West, as they find ways of obliterating the full implications and meaning of “restitution”. As a result, temporary solutions that encourage some form of accessibility and jurisdiction by the West and their institutions tend to be favoured as a condition for restitution. President Macron’s proposal to allow for the circulation of African art with the possibility of a permanent return to its original owners cannot be described as a path to a proper restitution process.⁶³ Circulation in this sense includes the creation of an online portal that contains general information about cultural heritage from Africa. His proposal acknowledges the origin of the collections, but still insists that the original owners can only “view” their ancestral objects and contribute to a proposed online database. The proposal also includes scheduled tours around the world with *periodic* visits to their original homeland. This includes interpretations of aesthetic and scientific qualities assigned as “valuable” according to the rules of Western science and

⁵⁸ R. Home, *op. cit.*, p. 89; S. Kiwara-Wilson, *op. cit.*

⁵⁹ B.M. Leyh, *Imperatives of the Present: Black Lives Matter and the Politics of Memory and Memorialization*, “Netherlands Quarterly of Human Rights” 2020, Vol. 38(4), pp. 239-245.

⁶⁰ W.W. Kowalski, *Art Treasures and War*, Institute of Art and Law, London 1998, p. 23.

⁶¹ F. Sarr, B. Savoy, *op. cit.* Cultural Objects to be returned to their original owners without conditions.

⁶² See *ibidem*, p. 29.

⁶³ *Ibidem*, p. 27.

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art, and excludes the aesthetic, spiritual, scientific values assigned to the objects by the original owners.⁶⁴ This option for the “circulation” of collections, instead of outright return to the original owners, further avoids the questions surrounding “veritable restitution”.⁶⁵ Having been in possession of the Emwin Arre, it is now imperative that foreign institutions return them to the Benin. This simple act implies respect for the Benin people and their Palace court’s engagement in the restitution dialogue. The Emwin Arre is of intrinsic importance to Benin’s socio-economic and spiritual development and continues to re-vibrate new cultural histories as an identity marker. The cultural objects have been imposed with new interpretations after being alienated from their original owners. This means that the original owners have the right to get rid of these new interpretations. The removal of the cultural objects not only caused tacit affliction to the original owners, but the “artefacts” were stripped of their commanding positions in the various shrines and households. This has altered, deracinated, disrespected, and undermined these living objects. The cultural and spiritual significance has been reduced to just works of art for public consumption.

Germany is currently working towards developing an agreement on how to best retribute the Emwin Arre in their possession. Germany’s efforts however have raised many questions.⁶⁶ 1) What law governs the return of these collections? 2) To whom will they be returned? 3) Will they be returned permanently or temporarily? These agreements need to be accessible for open dialogue. Germany’s expressed “willingness” to return has led to a series of consultations and dialogues with Nigeria. Germany has agreed on a workable return plan.⁶⁷ Such dialogues however continue to involve only the Nigerian government officials, whose limited policies are guided by bilateral relations agreements and similar precedences of other countries. Nigeria needs to enact processes for the restitution of Emwin Arre in alignment with Benin customary law. The Nigerian National Commission for Museums and Monuments Act of 1990 (“the NCMM Act”)⁶⁸ looked like a positive step towards addressing regulations governing Nigerian’s living cultural objects, both nationally and internationally, but unfortunately this has become inadequate for restitution processes in the current international arena. Nigeria has not system-

⁶⁴ S. Labadi, T. Brown, L. Veldpaus, *Report on the OurWorldHeritage #2021debate. Diversities and Genders*, October 2022, <https://static1.squarespace.com/static/6285301200e13121d0b62f93/t/635f75194b4eb724d457abe2/1667200293128/%232021debate-report-03-Diversities-and-Genders.pdf> [accessed: 23.11.2022].

⁶⁵ F. Sarr, B. Savoy, op. cit. Veritable restitution means to respect the original owners and their ways of preserving their cultural objects, using their traditional methods.

⁶⁶ See Federal Foreign Office, *Statement on the Handling of the Benin Bronzes in German Museums and Institutions*, 30 April 2021, <https://www.auswaertiges-amt.de/en/newsroom/news/benin-bronze/2456788> [accessed: 23.11.2022].

⁶⁷ Ibidem.

⁶⁸ (Chapter N19, Laws of the Federation of Nigeria 2004).

atically followed a process for returning the cultural objects that were illegally exported. Nigeria's whole legal framework governing cultural items has to be revised. The Antiquities Ordinance No. 17 of 1953, which was later abolished and renamed the Antiquities Regulations of 1957,⁶⁹ defines "antiquities" as any object of archaeological interest⁷⁰ or any piece of land that such object is thought to be located on; any artifact of early European settlement or colonization; and any statue or any other piece of craftsmanship made before 1918 that is of historical, artistic, or scientific interest that has ever been used in the performance of, or for the purposes of, any traditional African ceremony. The NCMM Act's definition of "antiquity" is broader, because it gives examples of the different kinds of craft items and artistic creations that may be covered under the Act. A systematic restitution policy guideline is therefore needed not just for Germany, but for future collections from various institutions across the globe. Since the dialogues on the restitution of African objects which started in 2018, German authorities have worked diligently on a way forward.⁷¹ German government and museums seem to exhibit a readiness to rethink all that restitution stands for – politically, psychologically, and legally. They are at the forefront of the conversation through the establishment of the Benin Dialogue Group.⁷²

State vs Communities (Palace, Legacy Trust, Edo State)

Nigerian officials and the Benin Palace court in 2007 participated in an exhibition in Vienna.⁷³ It is interesting to note that the travelling exhibition did not visit London, where the British Museum has one of the world's largest collections of Benin art.⁷⁴ From Europe, the exhibition travelled across the Atlantic to the Art Institute in Chicago, but did not travel to Nigeria. After the exhibition, the Museum of Ethnology in Vienna invited the National Commission for Museums and Monuments (NCMM) to an open dialogue.⁷⁵ By 2010, the Benin Dialogue Group (BDG) officially developed a workshop titled "New Cultures of Collaboration, Sharing Collections and Quests

⁶⁹ D.S. Gubam, T.S. Nomishan, C. Dakogol, *The Decree No. 77 of 1979 and Nigeria's Cultural Heritage: An Appraisal*, "Wukari International Studies" 2021, Vol. 5(1), p. 2.

⁷⁰ Any fossilized human or animal remains, any ancient habitation site, trace, or ruin, any cave or other biophysical shelter, any stone object or implement thought to have been used by a man, any ancient building, and any antique tool or object that is of archaeological interest are all considered to be objects of archaeological interest.

⁷¹ See F. Sarr, B. Savoy, *op. cit.*

⁷² F. Shyllon, *The Rise of Negotiation (ADR) in Restitution, Return and Repatriation of Cultural Property: Moral Pressure and Power Pressure*, "Art Antiquity & Law" 2017, Vol. 22(2), p. 130.

⁷³ Exhibition "Benin Kings and Rituals: Court Arts from Nigeria" in Vienna at the Museum für Völkerkunde, the Musée du quai Branly in Paris, and the Ethnologisches Museum in Berlin. See also P. Wood, *op. cit.*

⁷⁴ P. Wood, *op. cit.*

⁷⁵ F. Shyllon, *op. cit.*, p. 130.

for Restitution: The Benin Case”.⁷⁶ The BDG focused on “loans” and “sharing”, both of which reinforce the colonial attitude denying Africans their cultural heritage and legacy. The “Universal Museums”⁷⁷ of France and the United States, which also held stolen Benin artefacts, were not part of the group dialogue.⁷⁸

The British siege of Benin City and subsequent fall of the Benin Kingdom in 1897 saw the plundering and looting of precious artwork, royal, and spiritual artefacts, which are now held across Western countries in museums and private art collections. In the Palace, the British found a stock of sacred art, consisting mostly of bronze, brass, and ivory objects.⁷⁹ Most of the carvings were taken from the ancestral altars, which still had remnants of numerous appeasements conducted on the objects.⁸⁰ The Palace’s ancestral shrines also had a vast amount of ancient Obas’ heads, cast after each Oba’s death; a bronze head, and carved ivory tusks depicting each Oba’s achievements as displayed on the ancestral altars.⁸¹ These depictions of bronze cast heads and ivory ornaments were stolen without documenting the positions of the Obas’ heads as they were placed on the altars and what they were memorialized for.⁸² These bronzes were found in the main Palace and in the royal ancestral shrine room.⁸³ The material objects were assembled in a courtyard where they were designated as “official and unofficial loot”, and then shipped to Britain.⁸⁴ The “unofficial loot” was divided among the British soldiers according to rank,⁸⁵ as they stole from the Palace what was later declared to be “spoils of war”.⁸⁶

When issues of restitution are brought to the fore,⁸⁷ they are discussed on the basis of moral grounds. The quest for a restitution policy based on moral and ethical grounds has been deemed ineffective and thus a justification for the delays in the return of the Emwin Arre. Further delays have continued to ravage the process, as the questions surrounding who the cultural objects should be returned to ensnare the whole process. However, it behoves the Oba of Benin to ensure that

⁷⁶ See Federal Foreign Office, *op. cit.*

⁷⁷ N. MacGregor, *To Shape The Citizens of “That Great City, the World”*, in: J. Cuno (ed.), *Whose Culture? The Promise of Museums and the Debate over Antiquities*, Princeton University Press, Princeton, NJ 2009, p.43.

⁷⁸ Z. Gundu, *Looted Nigerian Heritage – An Interrogatory Discourse Around Repatriation*, “Contemporary Journal of African Studies” 2020, Vol. 7(1), p. 58.

⁷⁹ B. Plankensteiner (ed.), *op. cit.*, pp. 23-32.

⁸⁰ *Ibidem.*

⁸¹ *Ibidem.*

⁸² *Ibidem.*

⁸³ R. Home, *op. cit.*, pp. 88-100.

⁸⁴ *Ibidem.*

⁸⁵ *Ibidem.*

⁸⁶ *Ibidem.*

⁸⁷ See F. Shyllon, *op. cit.*

there is no conceivable alternative but for the Emwin Arre to be returned to Benin. The Oba of Benin has this right through his customary court to seek the return of the Emwin Arre using the principles of primogeniture.⁸⁸

In 2018, the Governor of Edo State gave his support for a Benin Museum to be developed, led by an independent trust – the Legacy Restoration Trust (LRT) – and to develop a cooperation model between the Edo Museum of West African Art (EMOWAA) and the NCMM. This ambitious project was intended to create a modern-day museum embodying international practice in the conservation and display of significant cultural and spiritual objects. The extensive collection was to feature the Benin Bronzes – including those taken in 1897 from the Palace of the Oba of the Benin Empire, which is still situated in the present Edo State. With historical and contemporary artefacts from West African culture and EMOWAA's permanent archaeological collection, the museum will have space for contemporary African and African-inspired art, public programs, research and educational facilities, as well as for the training of contemporary artists and artisans. The current Digital Benin Art was also expected to be managed by the museum. All of these plans – made without the input of the Benin Community and the Palace court – resulted in the Palace stating that the Oba has been duped in the custodianship negotiations.

Conclusions

This article has examined Benin's customary law as the basis for the return of the Emwin Arre to the Oba's palace. We have argued that according to the customary laws of Benin, the Igiogbe provides a legal framework for the ownership and the restitution of these collections. This rule of customary law has been in place for many centuries, and the Benin people uphold its application as sacred. It is interesting to note that during the colonial era, the British colonial administration recognized parts of this principle and continued to apply it within the principle of indirect rule, which eroded parts of the Palace court's jurisdiction and transferred it to a foreign entity. The post-colonial administrations did not ensure the protection of native law and customs after achieving independence. This colonial interruption – with various entities asserting jurisdiction and issuing jurisprudence – has continued to plague the Palace court. With the use of land rights and the Igiogbe, it is possible to determine the application of customary law, which supports the Oba's position as the custodian of Benin culture. Local structures and resources have a direct impact on how the distinctive individual, communal, and interpersonal

⁸⁸ The Principles of Primogeniture at monarchical succession commenced with the first Oba, the Ogiiso Igodomigodo. The revival of the Primogeniture law was made by a royal decree by Ogiiso Oviagbo (1050-1070). The decree has never been rescinded. See also O.S.B. Omoregie, *Great Benin*, Neraso Publishers, Benin City 1997, pp. 7-28.

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experiences interact. They are intended to privilege everyday engagement between local structures, like communities, and the individual, with communal identity and attitude formation.⁸⁹

In the matter of a restitution process, the return of the Emwin Arre will require a clarification that only the Oba, as the custodian, can apply. This will ensure that the histories, identities, and memories of the Benin people are preserved and protected through the Palace and the Palace court. The decision over the fate of these collections does not lie in the hands of international museums and collectors, who have illegally obtained and imprisoned these objects, but in the hands of the Oba and his people, who have an ancestral mandate to preserve, protect, and transmit Benin culture to future generations. Attempts to deny the Oba's ancestral responsibility as enshrined in the local customary law is an infringement on his divine mandate and a perpetuation of the Euro-American colonial project.

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⁸⁹ T. Laotan-Brown, *African Cities Cultural Heritage, Urban Fragmentation, and Territorial Spatial Development*, in: L. Oliveira, A.C. Amaro, A. Melro (eds.), *Handbook of Research on Cultural Heritage and Its Impact on Territory Innovation and Development*, IGI Global, Hershey 2020, pp. 154-166.

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