Helen Conybeare Williams in Step Journal: A Complex Picture

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Many Western European museums and private collections conserve significant collections of artefacts looted from subject countries during the colonial period. However, recent high-profile calls for the return of items of cultural heritage to their countries of origin[1], and for changes to the laws around cultural heritage, may shape the future of these collections.

Restitution and repatriation

A 2018 French government report entitled 'The Restitution of African Cultural Heritage – Toward a New Relational Ethics' (the Report)[2], has taken up the cause of dispossessed African countries seeking to reclaim looted cultural heritage. According to the Report, an incredible 90 per cent of sub-Saharan Africa's cultural heritage is housed in collections outside the African continent. It goes on to recommend making fundamental changes to France's cultural heritage code and its general code of the property of public personnel to allow the permanent return of such artefacts, many of which are housed within France's national collections.

Critics of the Report have observed that it presents a stark view of history, which taints all colonial-era objects with the brush of plunder and pillage, despite some artefacts having been acquired through barter, trade or gifts[3]. Others point out that the Report does not address the fate of private and public art collections faced with such repatriation claims.

However, the Report has undoubtedly shone a bright light on the complex ethical, as well as legal, issues surrounding cultural heritage artefacts and their proper ownership, and these pertain to other European nations, including the UK.

Challenges to repatriation

The historical context underpinning many repatriation claims is that looting of cultural property during armed conflicts has been illegal under international conventions since the end of the 19th century[4]. However, where claims are not covered by such conventions, for example if the item in question was acquired before they came into effect, a successful claim for the return of an historically looted object is often difficult.

Similarly, the ability to legally deaccession[5] pieces within UK collections may not be possible. This might be because of their being restricted by the statutes governing certain national museums, or the terms of any trust or charitable purposes for which such institutions or collections have been established.

Trustees, too, have a fiduciary duty to manage and administer the collection in accordance with the original settlement set out in the trust deeds, and with regard to any conditions imposed by a

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benefactor on any gifts or endowments. A significant consideration for benefactors selecting a museum for an endowment may be the legal guarantee that a collection remains as a whole.

Many private family art collections are held within a trust structure and their trust deeds often include special provisions as to whether or not the artefacts of the trust can be sold. If there are no specific provisions to guide trustees, the question may go to the overall purpose of the trust, which the trustees will need to take into account in exercising their discretion related to the objects held by it.

Provenance

Unclear provenance can also be particularly difficult for a collection, as good legal title to an object in its possession may be cast in doubt, and there may be associated reputational risks if assertions that the object was acquired as a result of historical looting cannot be rebutted.

Many museums now publish strict ethical standards with regard to acquisitions and provenance research, and it will be good practice for any private collection to also identify and investigate provenance of any objects likely to be the subject of restitution claims.

Conclusion

For many of the UK's national museums and collections responding to repatriation claims, the only feasible legal solution might be to offer longer-term loans of the object to the country of origin, which may be done alongside cultural and educational exchanges, and this is the common scenario for addressing such claims.

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[1] A recent example being the Benin Bronzes, housed in the British Museum and other collections

[2] http://restitutionreport2018.com/sarr_savoy_en.pdf

[3] Among these is the Director of France's Musée du quai Branly which conserves an ethnographic collection of almost 370,000 works

[4] Such as the 1907 Hague Convention with respect to the Law and Customs of War on Land, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

[5] To officially remove an item from a museum or collection for its return to its country of origin. The term "restitution" is often also used in this context denoting the return of an item to its legitimate owner.

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