FINDERS KEEPERS:
Unpacking the Concept of Contested Heritage

A research project by Isabelle Tischler for Culture&
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Isabelle Tischler is a student of politics and international relations at the University of Cardiff who has completed an internship with Culture&. After witnessing the discourse surrounding contested heritage, Isabelle decided to research contested objects and examine some collections which have come under scrutiny. As Isabelle is currently reading politics and international relations, she plans to transfer the skills and knowledge she has gained into the field of media, the arts and politics.
FINDERS KEEPERS: UNPACKING THE CONCEPT OF CONTESTED HERITAGE

Research project by Isabelle Tischler for Culture&

Benin Bronzes at the Horniman Museum, Image Courtesy of Errol Francis.
UK collections contain many items that may be considered contested, that is, stolen, or taken by force during war or colonial times. These include objects of religious, spiritual and historical significance, and human remains.

Attempts were made post World War Two to legislate for contested heritage items. However, UK law is ambiguous on how such objects should be managed and there is evidence that the government and collections trustees have been passive or silent on this issue.

There are some positive examples of museums with contested objects acknowledging historically damaging and harmful collecting practices, starting public conversations about the best way to rectify these, and in a few cases, repatriating items. This includes instigating collaboration with cultural leaders, for example the Maasai people and First Nations indigenous Australians.

More should be done to continue and build on these examples of good practice, to raise awareness of the issues and to educate future generations.
Introduction

Contested objects refer to objects about which there are questions related to their place or origin, how they were acquired and who are their rightful owners. Some of these items include artworks and artefacts that came into British ownership through unauthorised removal from where they rightfully belong; therefore, these objects are collectively referred to in this essay as having contested heritage. The main aim of this research project is to analyse how museums, galleries and charities that receive some public funding alongside donations and fundraising, are responding to current requests for the repatriation of contested heritage.

This project identifies objects in museums/collections where there is a question as to how they were acquired, under what circumstances and with what kind of permission or consent from their rightful owners. It is hoped that examination of the current protocols for collecting, holding, and exhibiting these objects will inform ongoing conversations and future requirements needed to look after and repatriate the objects of contested heritage.

Firstly, this research will study the meaning of rightful ownership and its application within the context of current claims and public discourse around objects with contested heritage.

Secondly, the project examines the current UK Parliamentary response to items with contested heritage, raising questions as to the legality, ethics and morality of the decisions made by current and previous UK governments and museums. After looking at the national context, international protocols are examined, investigating how other countries make decisions about contested heritage.

Thirdly, the project looks at ongoing conversations about contested heritage and how this issue is being addressed. Organisations including museums, galleries, and charities that receive state funding will be discussed, focusing on how they are choosing to move forward, any variations in practice, and if their actions are in alignment with rectifying the issue of contested heritage. The research underpinning this work has focussed on web-based material due to the recent coverage regarding calls to return objects e.g. via social, news and broadcast media.

Finally, the case study section of this paper presents seven different examples of objects with contested heritage to illustrate how the issue is being dealt with, acknowledging that this represents a small sample that is not necessarily applicable to other settings.
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Rightful ownership

Essentially English law does not accept the concept of ‘acquisitive prescription’, which is gaining ownership of something by passage of time. If the owner of an artwork meets the time constraints of owning an object they can claim it is ‘rightfully owned’, the difficulty here is the relationship between rightful ownership and contested ownership. This information raises issues about the legality of ownership of items within museums that were acquired through forceful removal (forceful removal implies use of force or violence), as it states that it is a breach of English law, even stating that acquisitive prescription, also known as usucaption (meaning possession of an object can be gained beyond the lapse of a certain period), isn’t an acceptable way of gaining ownership (Blank, 2011, 70-86).

Spoliation during the Nazi era

Following the Second World War, many countries implemented specific legislation regarding acquired objects. The spoliation advisory panel helps to resolve claims from people who have lost cultural property, for example artworks. In Britain this includes the ‘Holocaust (return of cultural objects) Act 2009’ to address the Nazi theft of artworks from the territories they occupied from 1933–1945. This is important because current arrangements for spoliation could be used to address contested heritage (Evans, 2011).

There is a difference between conventional English law on contested heritage and the provisions for Nazi Spoliation, the key difference being the time limit of six years compared to the lack of a time limit barred agreement with objects that were looted by the Nazi regime. Many of the items within museum ownership today could be described as acquired due to prior ownership, revoking them of the past responsibility to their original owner. This information provides a reasonable blueprint for prospective legislation on the rightful revocation and/or removal of objects with contested heritage.

The Spoliation Advisory Panel based in London was set up in February 2000, with the main aim to resolve claims made by those who had cultural property seized as a result of Nazi persecution. It was created as an alternative dispute resolution process for claims from persons dispossessed by the Nazis whose artworks are today held in UK national collections, museums or galleries ‘for the public benefit’.

Recommendations by the Spoliation Advisory Panel are not legally enforceable, instead arts organisations and governing bodies are expected to follow them. The Panel may recommend the return of an artwork to the claimant, a compensatory or ex-gratia payment, or other ‘fair and just solutions’ (such as the attachment of plaques next to exhibits explaining the history of the artwork in question and providing details about the dispossessed person and their fate during the Nazi era). In making its recommendations, the Spoliation Advisory Panel’s remit is not restricted to the technical legal entitlements of claimants but considers moral considerations as well. The Panel may also be called upon to make a recommendation about
a claim for an artwork in a private collection, where both claimant and current possessor jointly request it to do so, however, there is no evidence of this happening thus far (Paterson, 2006).

The Limitation Act 1980, outlines that a claim to a stolen artwork from the WW2 period must be made within six years from the date it is acquired by someone else. The Limitation Act relating broadly to all other acquired work goes further: if more than six years have passed, the claim is barred, and the victim’s ownership is extinguished. In practice, this means that if English law applies, and if the current possessor can show that more than six years have passed since the first acquisition, any legal claim brought against the possessor will fail.

Outside the UK, however, there are different legislations, this may mean people make claims in specific countries with the hopes they are more likely to win. This review suggests it is unclear where in Europe and the US the laws are strongest around contested heritage artwork, however, example cases and their outcomes are presented below including one regarding an artwork by Matisse. This explains why that case was brought before a US court (McLean, 1989).

Examples of spoliation claims:

- An early 18th-century Meissen stoneware figure of Pulcinella. There was a spoliation claim due to the piece being seized in 1937 several months after its owner Emma Budge had died in Hamburg. The piece was later brought to the UK where it was bought and sold through the London art trade. The claim was rejected due to a loophole within private ownership unknown to the public (Bailey, 2018).

- A federal appeals court in New York rejected a claim to a 1908 Matisse painting owned by the National Gallery in London by three grandchildren of the muse portrayed in the work. The piece was given to Oskar Moll who later died and left the painting to Greta Moll. Greta entrusted it to a former student who sold the piece and kept the proceeds. In 2015, an appeal was made to the Spoliation Advisory Panel, but the UK government said the panel lacked jurisdiction because the Nazi era ended in 1945, two years before the portrait was sold in Switzerland. The case may have been brought in New York due to the increased likelihood of winning the case, as opposed to in the UK. (Kenny, 2018).

- A UK spoliation advisory panel ruled in 2015 that Pierre-Auguste Renoir’s *The Coast of Cagnes* remains the property of the Bristol City Council. The Spoliation Advisory Panel has determined that the Renoir canvas was sold due to debt, rather than pressure from the authorities (Cascone, 2015).

- Following the Spoliation Panel’s recommendation in 2014, about *Beaching a Boat*, Brighton, an 1824 work by John Constable, the Tate confirmed that it would be returning the painting. The spoliation advisory panel recommended in 2014 that the Tate give up the oil painting, due to its looting taking place between the years of 1946 and 1948, information compiled suggested the painting had been looted following the German invasion of Hungary in 1944 (Doward, 2015).
These examples illustrate that the law could be improved, as the current protections have clear loopholes in which artworks that were wrongfully moved because of the Nazi regime have not been returned to their respective rightful owners. This is relevant as spoliation laws are some of the only written protocols in place for art or objects with contested heritage. One loophole seen above is that spoliation rejections are limited to 1945 and prior, such as the Matisse, which was sold in 1947. The time limit does not incorporate the impact of war-related trauma post-World War Two, or that some claimants may have had precarious living or financial situations, some as a direct result of Nazi persecution. This highlights inconsistencies for the six-year time limit found within British legislation. For example, the ruling against the return of Renoir’s *The Coast of Cagnes* due to the sale being caused by debt disregards key war-related factors.

Further, the circumstances related to the provenance of these artworks are highly complex.

An example of this is examined in the following section, related to legislation and protocols regarding statue removal, following the UK Black Lives Matter movement (2020). In many cases, requests for removal of statues were made due to their celebration of those who participated in violent colonialism.
Provenance

Case study: British Museum

In this section, the British Museum’s response to requests for art repatriation is considered. The British Museum is one of the most famous in the world; founded in 1753 and housing 8 million artefacts and objects. Its size and status mean that its stance on the repatriation of contested heritage will influence other cultural institutions in the UK and globally.

To date, it is unclear whether the British Museum has returned any objects in its collection other than 13 Ethiopian artefacts, which were repatriated in 2021 due to their contested heritage. The British Museum has received many requests to review its collection, most famously the Benin Bronzes, Egyptian human remains (mummies), the Parthenon sculptures as well as many others. The British Museum has mostly refused or contested claims that they should return disputed items, taking a ‘retain and explain’ stance. The present Chair of the British Museum Board, George Osborne, the former Chancellor of the Exchequer, stated they will not ‘shrink in the face of the culture wars’ and later insisted that the UK should not be ‘embarrassed or defensive in the face of forces trying to divide us’ (Stephens et al., 2021).

Taking the case of 13 stolen Ethiopian artefacts in the collection, which cost the Ethiopian authorities highly in legal fees. The items, which were eventually repatriated, included an intricately latticed processional cross, a richly coloured triptych depicting Jesus’ crucifixion, and an ornate red and brass imperial shield, and are part of the largest act of restitution in Ethiopia’s history. It was documented on the British Museum’s webpage that the Museum holds around 80 objects from Maqdala, some of these artefacts were taken following the Maqdala battle between the British and Ethiopian empires in 1868 on an expedition, which is detailed on the website. The British Museum negotiations cited worries about legislation (the British Museum Act, 1963) that prohibits them from disposing of their collections except in a small number of cases (Holmes, 2021). However, this story shows the British Museum is open to negotiations and capable of handing objects back (Mersie, 2021).

The refusal of the British Museum to return contested heritage has been the subject of much controversy. Some commentators have opined that returning contested objects would diminish the museum’s collection. Yet, the British Museum says on its website that the number of objects from its collection on display is estimated at about 80,000 items, meaning roughly just 1% of its collection. Therefore, return of contested objects would be unlikely to have a significant impact on their collection (British Museum, 2019).
Examples of contested heritage

1. Parthenon sculptures (also known as the Elgin marbles), British Museum, London

Between the years of 1801 to 1812, agents of Thomas Bruce, the 7th Earl of Elgin, removed about half of the surviving sculptures from the Parthenon, as well as sculptures from the Propylaea and Erechtheum, on the Acropolis in Athens and transported them to Britain. The Parthenon sculptures remain in the British Museum today. This example is one of the most long-running controversies around contested heritage because of the lack of evidence that Elgin had any right to remove the sculptures in the first place, and because his intention was to keep them for himself in his private collection, but later sold them to the British Government.

There have been long standing demands from Greece to return the sculptures. In 2021 the then UK Prime Minister Boris Johnson met the Greek Prime Minister, Kyriakos Mitsotakis, at Downing Street. PM Mitsotakis reiterated his offer to exchange a series of treasures that had never before left Greece as rotating exhibitions for the British Museum in exchange for the Parthenon sculptures. Johnson said he understood the strength of feeling of the Greek people on this issue, but reiterated the UK’s longstanding position that the matter was for the trustees of the British Museum to consider (Heffer, 2021). In turn the Trustees have asked the UK government to decide on the matter, resulting in no action being taken.

2. Benin Bronzes, various collections

The Benin Bronzes are a group of several thousand objects that were taken from the Kingdom of Benin, now in the Edo State of Nigeria, in 1897. Currently, they are held in a number of European and UK collections including the British Museum, Bristol Museums, Pitt Rivers Museum and the Humboldt Forum Berlin. The bronzes were looted after the invasion of Benin City by the British in 1897. Following a dispute with the British about trade with Benin, an ambush occurred, resulting in the deaths of a number of British soldiers. The incident was followed up with what became known as the Benin Punitive Expedition (1897), an operation in which the British Empire sent troops in to avenge their deaths by burning Benin City to the ground and looting its cultural artefacts (Hicks, 2020).

Some of the Bronzes were placed on loan to the British Museum by the Secretary of State for Foreign Affairs in England, and many more were sold to British and European institutions and private dealers. According to the British Museum’s website, those who took part in the Benin expedition also kept Bronzes and other objects for themselves.

As the objects were sold by the British to many museums in Europe and North America, there has been an international campaign around their restitution. It is believed a dispute between Nigerian leaders about where to house the Bronzes has slowed down the repatriation process.
In 2019, after a report by academics Felwine Sarr and Bénédicte Savoy (2018) recommended that France begin repatriating their Benin Bronzes, the French state pledged to return 26 from their national collection. As of April 2021, none of the Benin Bronzes had permanently left France.

In March 2021, the University of Aberdeen in Scotland said their possession of a Bronze (depicting the head of the Oba, or King of Benin) acquired at auction in 1957 was “extremely immoral” and vowed to return the object to Nigeria (Bakari, 2021). Following this, in October 2021 Jesus College Cambridge became the first UK institution to return a Benin Bronze, after inviting delegates from Nigeria to be part of a handover ceremony (Khomami, 2021). Lastly and most recently, in 2022 the Horniman Museum, London has agreed to return 6 objects to Nigeria under the same premise, that they are not where they rightfully belong (Kendall Adams, 2022). These restitutions highlight the inaction of the British Museum and the increasing pressure on them to return the Benin Bronzes from within their collection.


There has been an ongoing discussion around the Maasai objects held by the Pitt Rivers Museum at Oxford University, which once owned 188 artefacts relating to the Maasai. In 2017 the museum began ‘Living Cultures’, a partnership between a Maasai delegation from Tanzania and Kenya, and the Museum in Oxford. An NGO based in Oxford named ‘Insightshare’ assisted in the collaboration and used its resources to strengthen the partnership. In January of 2020, seven Maasai representatives travelled to Pitt Rivers to discuss the contested heritage objects and to assess their significance personally. According to a database held by the Pitt Rivers Museum, the 188 artefacts were donated in 1904 by Alfred Claud Hollis, a colonial administrator in (the then) British East Africa.

According to members present at the meeting, the Maasai representatives were shocked and dismayed that the objects from their community were being held in a UK museum setting. According to one of the delegation from an earlier visit to Oxford by the Maasai, Yannick N'doinyo, a junior elder from Loliondo, northern Tanzania: “This is something that cannot be sold or given,” (Koshy, 2018) this indicates that the objects were wrongfully taken or stolen from Africa.

Another delegate stated: “Because I know our culture is not dead. It’s a living culture.” The Maasai objects in the Pitt Rivers Museum are therefore not from a dead culture, nor are they obsolete. The delegation made clear that the objects have a purpose and a place in their present culture and represent great meaning to their rightful owners. Although many would describe museums as holding parts of history, the quotes above indicate that the objects are in the wrong place as they are held in a museum far away from their culture and purpose. In the months following the 2020 meeting, the Pitt Rivers Museum returned 28 stolen objects, all of them human remains from Africa and different points in time. Five objects were identified as culturally significant, and conversations are ongoing about returning these objects to the Maasai community (Koshy, 2018). In February of 2020, it was reported that
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the Maasai had been successful in securing the return of a number of objects held by the Pitt Rivers Museum (The Economist, 2020). This highlights the lengths to which the Maasai delegation went, as an indigenous community unsupported by their national governments, to reclaim objects looted from their ancestors (Olol-Dapash, 2010).

4. Indian Bronze Idol, the Ashmolean Museum, Oxford

The Indian Bronze idol of Saint Thirumangai Alvar originates from Tamil Nadu, India, where it was made in the 15th century. It was reportedly stolen and later found in a collection at the Ashmolean Museum in Oxford. In February of 2020, A spokesman for the Indian High Commission stated they had received a police report from Tamil Nadu that “unambiguously shows that the original idol has been stolen and replaced with a fake one and that the stolen idol is the same one that is presently with the Ashmolean”.

The Ashmolean has responded and is taking steps to repatriate the piece, stating: “we will work with the Indian High Commission to repatriate the object” (Yuill, 2020). This particular case highlights the difference in actions taken over the restitution of an object stolen by an individual in modern times, compared with the seizing of cultural property by actions of war, colonial domination or persons acting under the aegis of such regimes.

5. Asante gold weights, the Victoria & Albert (V&A) museum, London

The Asante Gold weights originated from Ghana, and were originally produced by the Akan people as a highly symbolic form of currency around 1400 to 1900. As the V&A itself says:

"On 4 February 1874, following Asante efforts to protect the gold- and former slave-trading port of Elmina, British forces under the command of Major-General Sir Garnet Wolseley, launched a 'punitive raid' on the Asante state capital, Kumasi. Faced with unfavourable terms and overwhelming odds, the Asante king (Asantehene), Kofi Karikari, fled. To suppress any resurgence of Asante authority, Wolseley ordered troops to plunder the royal regalia and destroy the town. The gold was not taken simply for its financial value. By removing the regalia from the Asante court, Britain had stripped the Asante rulers of their symbols of government and denied them their authority to govern (Patterson, 2019).

The 13 gold weights—held in the V&A’s collection were purchased in 1969 and 1971 from ethnographic and antique dealers in London (Patterson, 2019).

As far as can be ascertained, no efforts have been made by the V&A to repatriate the Asante Gold weights, despite ongoing conversations about the controversy around them and their contested heritage. All the museum says is there are ‘developing discussions in museums around decolonisation and the need for us to be open about the V&A’s history as both an expression and a driver of 19th-century imperialism’. (Patterson, 2019)
6. Three Aborigine human skulls, Wellcome Collection, London

These objects reveal a successful story of repatriation, not of cultural artefacts but human remains which raise further ethical issues not just about the conditions of their acquisition but additional matters of consent. In November 2005, the Australian Government requested the repatriation of three human skulls thought to be of Aboriginal origin which were acquired by the Wellcome Historical Medical Museum (now the Wellcome Collection) between 1933 and 1947. The Wellcome Trust investigated the historic and present day contested heritage of the objects and decided to repatriate them. Following this the Wellcome Collection published an article addressing the colonial roots of our collections, and our response, providing context and useful resources.

This response is appropriate as it opens up discussion and begins a positive path towards recognising the colonial provenance of a collection and making restitution. A key quote from the Wellcome website states ‘Between 1890 and 1936 Henry Wellcome built a collection that told a global story of health and medicine in which Black people, Indigenous peoples and people of colour were exoticised, marginalised and exploited.’ From the research conducted above, the Wellcome Collection’s response appears to be the most sincere and responsive, it provides a good practice example for other organisations when dealing with the issue of contested heritage (Wellcome Collection, 2021).
Conclusion

Museums across the UK vary in their positions on contested heritage as this report demonstrates. Due to the ambiguity within UK laws, this has meant museums can effectively do as much or as little regarding contested objects, with the government taking, at best, a passive position on the matter, or at worst obstructing change and incorporating issues around cultural restitution within the rhetoric of ‘culture wars’.

Some, however, such as the Wellcome Collection, have actively moved to critique their collecting practices and to return contested objects whilst the British Museum has so far resisted demands for looted heritage to be returned.

This piece of research represents a small-scale survey (completed in 2022) of the UK museums’ responses to contested heritage. Looking at a select few museums meant that the findings cannot be generalised across the UK but can be used as the basis for ongoing conversations and decisions being made about the artefacts around the country.

There is some cause for optimism. Firstly, the Pitt Rivers Museum and the connections they made with the Maasai people, is a positive example of how to hold inclusive discussions about contested heritage, even though many of the objects are yet to return to Africa. In contrast, the British Museum has responded very differently, resisting all demands for the Parthenon sculptures and the Benin Bronzes to be returned.

Similarly, the Ashmolean Museum is taking steps towards repatriation of the Indian bronze idol, whereas the V&A is yet to publicly commit to repatriation of any of their collection and is not, so far as we are aware, actively involved in discussions surrounding the Asante gold weights being returned to Ghana.

This report indicates that positive steps are being taken to repatriate objects and this may prompt other organisations to scrutinise their own collections and to discuss this matter in future. Although small scale, the success stories of repatriation presented here pose as an example to any other organisations that restitution is a feasible action to undertake and an ethical step in the right direction.

Culture& hopes more British heritage institutions will scrutinise objects in their collections and take steps to ensure they understand their provenance, and to make amends where appropriate. The number of items that have been returned from the UK to country of origin has been difficult to discern, though it is certain that there are many more that belong back with their rightful owners. It is recommended that educational programmes should be formulated to inform the audiences of how these objects have come to be in collections in the UK.
References


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