

Met Artifact Return Highlights Museums' Legal, Ethical Risks

By **Luke Tillman and Rebecca Robinson** (July 12, 2021)

The Metropolitan Museum of Art in New York City recently made headlines with the announcement of its decision^[1] to return three artifacts to Nigeria: a pair of 16th-century Benin court brass plaques of a warrior chief and junior court official, and a 14th-century Ife head.

This move followed similar announcements by Scotland's University of Aberdeen and Germany's Ethnologisches Museum in Berlin, and is indicative of a growing repatriation movement.

The Met's decision signals a movement toward conscientious conservatorship rooted in ethical concern. However, the complex U.S. regulations governing the trade of artwork and cultural property often make repatriation a legal matter as well.

Conscientious conservators should exercise enhanced due diligence on items they intend to acquire — and post-acquisition review on items already in their collection.

An Ethical Dilemma

History has often demonstrated that foreign laws may have been broken when an artifact first left its country of origin. But the details of how an item may have been stolen and smuggled have generally been obscured over time. Further, foreign patrimony laws lack the extrajudicial enforceability needed to compel repatriation of looted artifacts.

As a result, concerns arising around artifacts pursued by their country of origin often present ethical dilemmas for collectors, museums and other institutions in current possession of these artifacts — especially those that were once plundered, or deaccessioned from other museums under dubious circumstances.

In recent years, a number of institutions have grappled with countries' petitions to reclaim ancient artifacts of their cultural heritage.

For example, in 2017, French President Emmanuel Macron publicly committed to "the repatriation of African cultural heritage to Africa,"^[2] and commissioned a special report^[3] — despite the fact that French law did not at that time permit repatriation of the artifacts. U.S. institutions have also struggled to navigate repatriation requests.

A Legal Requirement

Countries seeking to protect their cultural heritage and recover stolen artifacts are not relying solely on the goodwill of collectors and institutions grappling with ethical concerns. They are also seeking legal protection in the countries with large art markets.

For example, in the U.S., the Cultural Property Implementation Act, or CPIA — which implements the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property — affords countries a



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great deal of protection.

Any of the 140 countries that are currently party to the UNESCO 1970 Convention may submit a request to the U.S. seeking protection of its cultural heritage under the CPIA. Since 2019, the U.S. has received nine requests seeking the continuation of existing import restrictions on cultural antiquities, and six requests from countries requesting new import restrictions.[4]

Where the U.S. grants protection to a country, it prohibits artifacts on a designated list provided by the country of origin from being imported into the U.S. without express authorization from the country of origin — except in exceptional circumstances.

The impact of the CPIA is far-reaching, and U.S. government investigations lead to many repatriations each year. Last year, Nigeria submitted a request to the U.S. seeking import restrictions covering certain Nigerian artifacts. Nigeria's prized artifacts have long been the target of the art market.

Many of its artifacts were looted during its colonial era, and now reside throughout Europe and the U.S. That a number of these artifacts have already been taken from Nigeria does not preclude application of the CPIA.

Under the CPIA, stolen artifacts are prohibited from importation into the U.S. Even where those artifacts evade detection at the time of importation, they may be subject to seizure at a later date if they are discovered by investigators. The CPIA considers an item stolen when:

- It was previously documented in the inventory of a museum, religious or secular public monument, or a similar institution of a party to the UNESCO 1970 Convention; and
- The institution was dispossessed of the artifact, after the CPIA's effective date, without proper sale or transfer.[5]

The Case of the Met's Benin Bronzes

The items that the Met has agreed to repatriate to Nigeria were once in the inventory of the Nigerian National Museum. The items were removed from the museum without authorization.

Since Jan. 12, 1983, this type of unauthorized removal has triggered CPIA protections against the trafficking of stolen artifacts. When an artifact is stolen from any of the 140 parties to the UNESCO 1970 Convention, it may be subject to seizure and forfeiture when discovered.

According to a Met press release, the artifacts it has agreed to repatriate to Nigeria were first removed from the Royal Palace in 1897 during the British military occupation of Benin. Subsequently, they entered the collection of the British Museum, London, from 1898 to 1950.

They were first repatriated to Nigeria around 1950-51, when the British Museum transferred the two plaques, and 24 others, to the Nigeria National Museum. However, as the Met said in its announcement, "although they were never deaccessioned by the National Museum, the two plaques entered the international art market at an unknown date and under unclear circumstances and were eventually acquired by a New York collector." [6]

It was not until 1991 that the collector gave the artifacts to the Met, where the works were researched, published in print and online, and exhibited internationally. The press release does not identify when the items were stolen from the Nigerian National Museum, or when they were imported into the U.S. — but it acknowledges that these two events occurred.

The Met does not appear to have any meaningful information about wrongdoing. However, the CPIA has no innocent owner defense — and so due diligence demands more from collectors and institutions.

Without knowing when the pieces entered the art market and under what circumstances, it is impossible to determine that the artifacts were lawfully imported into the U.S. If they violated the CPIA, they could be subject to U.S. government seizure and forfeiture actions.

Given that the artifacts were also exhibited internationally, it should be mentioned that artifacts are subject to CPIA scrutiny whenever they are imported into the U.S. This includes when they are simply returning from international exhibitions.

Enhanced Due Diligence and Post-Acquisition Review

Too often, due diligence is limited to a piece's authenticity, and title disputes between private parties. However, an item may be authentic and have a valid chain of title, yet still violate federal law. These violations place articles at undue risk of seizure and forfeiture.

Collectors and museums can significantly mitigate these risks prior to acquisition. It is prudent to conduct a fulsome due diligence analysis, which must consider the complex U.S. regulations governing the trade of artwork and cultural property.

It is also important to consider all legal issues implicated when evaluating ethical concerns around articles already in a collection. A post-acquisition review of existing collections can be used to support conscientious conservatorship, by revealing potential past violations of U.S. regulations.

Collectors, museums and other institutions should continue to confront ethical issues afflicting certain artifacts in their collections. They should also observe how enhanced due diligence can be used to prevent these issues, and legal concerns, prior to acquisition, while post-acquisition review can be used to help resolve past potential violations.

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[1] <https://www.metmuseum.org/press/news/2021/met-and-ncmm-announcement>.

[2] Speech made by the President of the French Republic, Emmanuel Macron at the Université Ouaga, published on Nov. 29, 2017, on the website of the Élysée; Sarr Savoy Report page 1.

[3] The Restitution of African Cultural Heritage Towards a New Relational Ethics (Sarr Savoy Report), Felwine Sarr and Benedicte Savoy.

[4] <https://www.federalregister.gov>.

[5] 19 U.S.C. 2607.

[6] <https://www.metmuseum.org/press/news/2021/met-and-ncmm-announcement>.