

Conference Programme

incl. abstracts

Imperial Artefacts:
History, Law and the Looting of Cultural Property



28 – 29 January 2021
at Leiden University

Organised by Dr Inge Van Hulle & Dr Diana M. Natermann



#imperialartefacts

@imperialartefact1

All keynotes and panels are held via MS Teams and it is generally recommended to use either Google Chrome or Chromium Edge as browsers.

DAY 1

- 09:15 – 09:30 [Welcome words](#): Inge Van Hulle & Diana M. Natermann
09:30 – 10:30 [Keynote](#): Prof. Dr. Jürgen Zimmerer – *Looting, restitution, reconciliation* (09:30 Germany)
10:30 – 10:45 *Coffee break*

1. [Diplomacy, Identity and Restitution – Panel Chair: Diana Natermann](#)

- 10:45 – 11:15 **Lucas Lixinski** (20.45 Sydney, Australia), 'Beyond UNESCO: Regional International Legal Approaches to Post-Colonial Restitution'
11:15 – 11:45 **Sahra Rausch** (11:15 Germany), 'An Affective De-Memorization? Debates over Colonial Amnesia regarding the Repatriation of Human Remains from Colonial Contexts in France and Germany'
11:45 – 12:15 **Lars Müller** (11:45 Germany), 'Delaying, Evading, Rejecting. Western Reactions to Sri Lankan Demands for Restitution around 1980'
12:15 – 13:00 *Lunch Break*

2. [Multi-disciplinary Perspectives on Colonial Violence and Restitution – Panel Chair: Raphael Schäfer](#)

- 13:00 – 13:30 **Rotem Giladi** (12:00 Israel), 'Reading Between Categories: Corpora, Culture, Property and the Laws of War'
13:30 – 14:00 **Jan Huesgen** (13:30 Germany), 'The Enemy on Display – Suits of Armour in Military Museums'
14:00 – 14:30 **Ivan Obadić, Robert Mrljic & Miran Marelja** (14:00 Croatia, Belgium), 'War, spoils and return of cultural property: framing of restitution law at the Congress of Vienna in 1815'
14:30 – 14:45 *Coffee Break*

3. [Law and Restitution: Past & Present – Panel Chair: Ana Delic](#)

- 14:45 – 15:15 **Afolasade A. Adewumi** (14:45 Nigeria), 'Does Utilitarianism Merge the Dichotomy Between the Nationalist and

- Internationalist Conception of Cultural Property in the Quest for Restitution?
- 15:15 – 15:45 **Arianna Visconti** (15:15 Italy), 'A Paradox in Law: Italy's Ambivalent Approach to Restitution Claims'
- 15:45 – 16:15 **Marie-Sophie de Clippele & Bert Demarsin** (15:45 Belgium), 'Rights, wrongs and remedies - Working towards colonial heritage repatriation legislation for Belgium'
- 16:15 – 16:30 *Coffee Break*

4. Heritage, Discourse and the Representation of Cultural Artefacts – Panel Chair: **Walter Nkwi Gam**

- 16:30 – 17:00 **Annalisa Bolin** (16:30 Sweden), 'Power and Possibility: The Return of Rwanda's Stolen Bones'
- 17:00 – 17:30 **Kokou Azamede** (16:00 Togo), Acquisition methods of colonial objects and the traditional perception of the museum in German Togo
- 17:30 – 18:00 **Janne Lahti** (18:30 Finland), 'Mesa Verde and Finland: Stolen Artefacts, Contested Discourses, and Nordic Colonial Legacies'
- 18:00 – 18:30 **Donna Yates** (18:00 The Netherlands) and **Brieanah Gouveia** (07:00 Hawaii), 'Provenance narratives of colonial exploitation as value enhancers on the Oceanic art market'
- 18:30 – 19:00 **Kaitlyn DeLong** (12:30 Washington DC), 'Confronting the Past: The Provenance of Indigenous Objects on Display'

DAY 2

- 09:15 – 10:15 Keynote: **Junior Prof. Dr. Matthias Goldmann**, (09:15 Germany) 'The Role of Law in the Restitution Debate'
- 10:15 – 10:30 *Coffee break*

1. Enduring Coloniality and Cultural Heritage – Panel Chair: **Alexandra Ortolja-Baird**

- 10:30 – 11:00 **Iain Sandford and Ada Siqueira** (20:30 Sydney, Australia), 'The Destruction of the Juukan Gorge Caves: A Study on the Role of International Law in Protecting Cultural Heritage in Times of Peace'

- 11:00 – 11:30 **Norman Aselmeyer** (11:00 Germany), Intangible Heritage: The Man-Eaters of Tsavo and their Global (After)Lives
- 11:30 – 12:00 **Marcelo Marques Miranda & Jully Acuña Suárez** (11:30 The Netherlands), ‘Repatriation as a means, not as an end’
- 12:00 – 13:00 *Lunch Break*

2. [International Legal History and Restitution Debates](#) – Panel Chair: Inge Van Hulle

- 13:00 – 13:30 **Tomás Irish** (12:00 UK), “‘The Danger of Arbitrary Decisions’”: The Paris Peace Conference and Cultural Reparations after the First World War’
- 13:30 – 14:00 **Sebastian Willert** (13:30 Germany), ‘A German Excavation for the Ottoman Imperial Museum? The Scramble for Objects between Berlin and Istanbul at Tell Halaf, 1911–1914’
- 14:00 – 14:30 **Florian Wagner** (14:00 Germany): ‘Colonialist Notions of Property: How European Lawyers Legitimized Dispossession (1880s-1950s)’
- 14:30 – 15:00 *Coffee Break*

3. [Restitution, Heritage, and Human Rights](#) – Panel Chair: Anne-Isabelle Richard

- 15:00 – 15:30 **Evelien Campfens** (15:00 The Netherlands), ‘Whose cultural objects? Introducing ‘heritage title’ in a human rights law approach’
- 15:30 – 16:00 **Jihane Chedouki** (15:30 Morocco): ‘From a moral function to a utilitarian function: the transformation of ancient objects and monuments in the Arab world in the 19-20th centuries’
- 16:00 – 16:30 **Gretchen Allen** (15:00 Ireland), ‘A Way for the Giant’s Cause: an examination of Irish indigenous rights in the case of Charles Byrne’
- 16:30 – 17:00 **Caroline Drieënhuizen & Fenneke Sysling** (16:30 The Netherlands), ‘Java Man: restitution claims at the natural history museum’
- 17:00 [Closing remarks: Inge Van Hulle & Diana M. Natermann](#)

1) Prof. Dr. Jürgen Zimmerer (Chair for Global History, Hamburg University)

Keynote: *Looting, restitution, reconciliation*

2) Lucas Lixinski (Associate Professor, Faculty of Law, UNSW Sydney)

Title: *Beyond UNESCO: Regional International Legal Approaches to Post-Colonial Restitution*

Abstract:

International efforts for the restitution of cultural objects usually center on UNESCO and its efforts, either through the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention) or the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP). These regimes, while valuable and aspiring to universal effect, are fraught with difficulties: the 1970 Convention does not retroact, thus excluding from its scope the vast bulk of colonial takings of cultural artefacts; the ICPRCP operates confidentially, therefore not creating practice that is useful for forming a customary international rule ordering the restitution; both the 1970 Convention and the ICPRCP focus on states alone to represent claims for the return of cultural artefacts against other states, precluding the agency of communities of origin. Beyond these universal efforts, several regional organizations, such as the Council of Europe, the Organization of American States, the Common Market of the Southern Cone (MERCOSUR), and the African Union, have also developed their own legal and political mechanisms for the return of cultural artefacts. These mechanisms are often unexplored because of international heritage lawyers' tendency to focus on UNESCO and its regimes, but they are places where the post-colonial narratives around cultural heritage are often much more present, particularly in the case of regional organizations made up of countries in the global south. Further, these mechanisms broaden participation beyond state representatives, allowing for heritage and its return to be articulated in terms of (collective) human rights, strengthening pro-restitution arguments. Despite these potential merits which require close examination, one inevitable shortcoming is that often the former colonial power sits outside the membership of the regional bloc. This obvious jurisdictional shortcoming, however, does not preclude these regional bodies from successfully pursuing restitution, either on their own or as allies to UNESCO and its bodies. This paper will explore these tensions between regionalism and universalism, and argue for the need to look at regional solutions more closely for promoting post-colonial heritage for the benefit of communities, rather than states, of origin.

3) Sahra Rausch (PhD Researcher, Justus-Liebig-Universität Gießen)

Title: *An Affective De-Memorization? Debates over Colonial Amnesia regarding the Repatriation of Human Remains from Colonial Contexts in France and Germany*

Abstract:

The sociologist Maurice Halbwachs stressed in his work that only those pasts will be relevant for societies that can also be experienced affectively. Conversely, this means that pasts without an emotional attribution are not 'rememberable'. To explain the observed de-memorialization of the colonial past in Germany and France, activists and

researchers of both countries diagnosed a colonial amnesia. In 2018, public attention was drawn anew to the countless human remains still stored in museums and universities when Bénédicte Savoy's and Felwine Sarr's published their report on the restitution of African cultural heritage. Whereas provenance research is much debated in Germany, France distinguishes itself with silence – especially towards Algeria which is probably the most conflict-laden former colony in memory political terms. Only in July 2020, France repatriated the skulls of 24 Algerians who were killed at the battle of Zaatcha in 1849. In 2011, the first repatriation of human remains took place in Germany when skulls from the Herero and Nama-genocide were brought back to Namibia. In this paper, I will analyze the processes of how these repatriations came into being and how media reporting reacted to them. Scrutinizing newspaper articles reveals how the Algerian skulls are treated separately from colonial 'racial' research and are thus emotionally placed 'outside' colonial history. In Germany, on the other hand, scandalizing colonial amnesia is a means to align colonialism with the remembrance of the Holocaust. I argue that the declaration of colonial amnesia regarding repatriation politics serves as a discursively produced emotional order by which the remembering and/or forgetting of colonial pasts are negotiated. Albeit colonial amnesia upholds an affective culture of forgetting, its very denomination also enables its transformation and puts in question the established emotional orders.

4) Dr. des. Lars Müller (Academic Project Coordinator PAESE, Landesmuseum Hannover)

Title: *Delaying, Evading, Rejecting. Western Reactions to Sri Lankan Demands for Restitution around 1980*

Abstract:

The establishment of the “Intergovernmental Committee for Promoting the Return of Cultural Property” by the UNESCO provided a framework for the negotiation of postcolonial restitution. In 1980, Sri Lanka was one of the first countries that demanded “significant cultural objects” via this Committee – objects from over 20 institutions in eight countries. Even if this demand did not result in any restitution, it provides an interesting case to compare how Western institutions dealt with these kinds of claims. Based on archival research from museums and ministries I focus on how three countries reacted to these demands: The United Kingdom as former colonial power in Sri Lanka; Germany as former colonial power but without colonies in Sri Lanka; and Switzerland, which has never been a colonial power but was nevertheless involved in the colonial project. Against the background of the different structures of the cultural institutions, I compare how these countries dealt with the demands and how the respective ministries and museums negotiated a position that they could present on the international level as well as in bilateral talks.

Subsequently, I analyse to what extent the countries coordinated their actions among themselves. Finally, I ask what voice the individual museums had in this debate. I will show that the Sri Lankan demand represents a crossroads in the national debates, as for the first-time massive demands were made on "the West". More strongly than with earlier demands, the possible effects of restitution were discussed. From a position between skepticism and fundamental rejection of any negotiations, the countries developed strategies to delay, evade, reject or even redirect the demands. Sri Lanka, due to domestic developments, did not pursue the demands with vigour in

the long run, but the Western museums/countries thus developed strategies that they used in later cases.

5) Dr. Rotem Giladi (Teaching Fellow in International Law, University of Edinburgh)

Title: *Reading Between Categories: Corpora, Culture, Property and the Laws of War*

Abstract:

Recently, historians of international law have begun systematically exploring the constitutive role colonial violence had played in the formation of the modern laws of war. Such works, however, tend to place a premium on difference, distinctions, and categorizations separating the 'others' of 'civilised warfare' from its licensed agents. Less attention is paid, still, to cultural vocabularies and discourses, legal devices and violent practices that, rather than affect the exclusion of 'savage' others, permitted their intermittent-yet-persistent inclusion in the sphere of regulated violence.

The 'logic of exclusion-inclusion' (Koskeniemi 2001), however, is precisely what illuminates the constant effacement and invocation of cultural difference, the permeability of civilizational categories, and the collapse and reinstatement of legal distinctions. That logic points to a structured understanding of the normative relationship between the two spheres of violence—one within Europe, one without it—and promises nuanced accounts of the constant migration of norms, vocabularies, and practices of warfare between the two spheres (Smiley LHR 2018). As I argued elsewhere (Giladi LJIL 2017), it also facilitates the identification of colonial war's lasting, if submerged, hold on contemporary international (humanitarian) law: it demonstrates how categories matter, as what they delimit and the slippage they allow both produce, inscribe, and legitimise meanings—and at the same time obscure it.

Accordingly, the paper offers critical readings of contemporary categories: 'cultural property/artefact' and 'mortal/human remains', 'looting' and 'restitution' through the prism furnished by a long view of human corpora—human skulls, in particular—and the cultural practice consisting of the removal, preservation, collection, private or museal display, medical or anthropological study, ritualisation, and signification of human heads of colonial (and European) 'others'. It questions how these categories and the spaces they claim or leave untouched are theorised, historicised, and deployed today. In particular, it explores the possibility that contemporary categorisations still work to efface the cultural significance and identity markers of human/mortal remains while at the same time, paradoxically, re-inscribes them with cultural significance that attests—again, if more subtly than before—to cultural differences.

6) Dr. Jan Hüsgen (Research Associate, German Lost Art Foundation, Department for Cultural Goods and Collections from Colonial Contexts)

Title: *The Enemy on Display – Suits of Armour in Military Museums*

Abstract:

The colonial history section of the Musée de L'Armée in Paris has a special exhibit on display, the rich ornamented armour of Saranké Mory, son of Samory Touré (c. 1830-1900). He, was the founder of the Wassalou Empire that covered parts of present-day Guinea, Sierra Leone, Mali and Burkina Faso. Samory was able to resist french colonial interests in the 1880-1890s. The suit of armour of his son was part of the war booty that was acquired by french troops at the defeat of Samory in 1898 and received by

the museum as a gift by General Dodds (1842-1922) the leader of the military campaign. With other captured armour it was exhibited in the ethnographic section of the museum. This paper wants to draw the focus to an often-neglected object category in the case of colonial provenance research and its presentation in the museum display. The plundering of the enemy's armour has a long-time tradition in military conflicts. In ancient times, the *spolia opima*, the capture of the enemies' armour in single combat, was regarded as the most prestigious booty of war. The tradition to plunder the suit of armour of the enemy has been continued to the 20th century. My paper will especially focus on the provenance and presentation of captured suits of armour in military museums in Germany, France and Britain. By doing so my presentation will not only recontextualize the presented museum objects, it will also argue in how far these types of objects were used to establish racial stereotypes in military museums.

7) Dr. Ivan Obadić (Faculty of Law, University of Zagreb), Dr. Robert Mrljic (Member of the Legal Service, European Commission, Brussels) & Dr. Miran Marelja (General History of Law and State, Faculty of Law, University of Zagreb)

Title: *War, spoils and return of cultural property: framing of restitution law at the Congress of Vienna in 1815*

Abstract:

The paper examines how the right of victor to obtain spoils of war was abandoned in the law of warfare (*ius in bello*) through legal and historical evolution of warfare regulation regarding the cultural property in the late 18th and early 19th centuries and how the first rules on the restitution of the cultural property were developed. Partially to avoid unnecessary destruction, customary rules of the medieval and early modern times begun to acknowledge the protection of churches, public buildings and undefended cities. In time, the widening of these rules not only invoked the issues of protection of private and cultural property from destruction, but even allowed for the first *cause célèbre* court restitution case (*Marquise de Somerueles*). The turning point did happen at the Congress of Vienna in 1815 and the two Paris treaties that followed, where the European states agreed to introduce substantial legal rules such as the right of restitution of taken pieces of art and other valuable items. This paper looks in particular in the contribution and motives of the most important actors at the Congress of Vienna in relation to the restitution question (such as Castlereagh and Wellington) and into framing of the restitution principles in the Second Treaty of Paris. It is argued that the Congress of Vienna not only introduced the first international legal framework in restitution issues, but that it also set up different categories of states varying in its rights in relation to the restitution claims: winner states, defeated states and destroyed/excluded states. Although the significance of that legal framework cannot be contested for the further development of restitution law, our analysis shows that the hierarchies and different categories established by this legal framework were not changed *grosso modo* until the emergence of the modern international law regulating restitution in the last century.

8) Dr. Afolasade A. Adewumi (Senior Lecturer, Faculty of Law, University of Ibadan)

Title: *Does Utilitarianism Merge the Dichotomy Between the Nationalist and Internationalist Conception of Cultural Property in the Quest for Restitution?*

Abstract:

The quest for the restitution of cultural property has not been an easy endeavour. Despite the availability of multiple legal regimes securing various channels for the restitution of cultural property, improvement has been quite sluggish. This paper argues that the debacle to the restitution process lies in the simultaneous operation of two diametrically opposed conceptions of cultural property- the nationalist and internationalist schools of thought. The 1954 Hague Convention sees Cultural property as the cultural heritage of all mankind whilst the 1970 Convention takes the view that it is the cultural heritage designated by each country. These two approaches have been used to characterise nations theoretically in the International area into Source nations with nationalistic interests and Market nations with internationalism concerns.

The conflict between both conceptions of cultural property becomes evident where the nationalists seek to employ legal and extra-legal means to protect their cultural heritage and facilitate their return and restitution; whereas, internationalists sabotage these efforts on the ground that cultural heritage is the common heritage of mankind thereby contradicting the notion of return.

This paper finds that although both schools of thought have divergent propositions, they nonetheless share a common theoretical underpinning- utilitarianism, which validates their respective ideologies. Since utilitarianism supports the maximisation of the overall happiness of a collective group, nationalists can predicate the protection of their cultural heritage on the need to secure this happiness just like the internationalists.

This paper therefore seeks to examine if the common theoretical foundation which both schools of thought share can serve as a reconciliatory tool that bridges the gap between them towards the promotion of the interest of the international community in protecting cultural heritage.

9) Dr. Arianna Visconti (Assistant Professor, Criminal Law in the Università Cattolica del Sacro Cuore (UCSC) of Milan)

Title: *A Paradox in Law: Italy's Ambivalent Approach to Restitution Claims*

Abstract:

Italy is usually considered – and certainly considers itself – a ‘source country’ par excellence and a victim of historical depredations, from the Napoleonic wars to WWII, which explains its early development of laws meant to protect cultural heritage (laws adopted even before Italy became a unified State), and why it has always promoted the development of international treaties to the same effect. Nonetheless, it is possible that this ‘victimization bias’ contributed to a form of selective blindness to, on the one hand, Italy’s historical role as (attempted) colonial power, and, on the other, its current position as (also) market country for illicitly trafficked cultural objects. A critical appraisal of the evolution of Italian cultural heritage law, especially when focused on issues of colonial and war restitutions and, more recently, of controls over the import of movable cultural property, will reveal a worrying tendency to lag

behind. One significant exception is investigative cooperation, where Italy's specialized police units regularly score well also in the recovery and restitution of cultural objects stolen or looted abroad, or illegally exported, and found within the Italian territory: but such a criminally-centered approach can only work with recent depredations, and relies too much on a branch of law – penal law – which is definitely not the best suited to address issues of return and restitution. Some recent episodes – such as the restitution of the Axum obelisk or of the Venus of Cyrene – may appear to herald a change in policy and practice, but they should be critically analyzed, keeping in mind the many features of political expediency which may influence each single episode, as well as the many legal obstacles still to be faced (starting with the rule of inalienability of objects in public collections). Even if the road ahead appears still long and winding, however, some faint, and mostly internationally induced, signals of change are actually appearing, starting from the issue of import controls, and the hope is that, thanks to a growing interest by public opinion, a more structured change of mentality will also come to affect questions of reparation of historical depredations.

10) Dr. Marie-Sophie de Clippele (Postdoctoral Researcher, Fonds National de la Recherche Scientifique of Belgium, Université Saint-Louis – Bruxelles & UC Louvain) & Prof. Dr. Bert Demarsin (Faculty of Law, KU Leuven)

Title: *Rights, wrongs and remedies - Working towards colonial heritage repatriation legislation for Belgium*

Abstract:

This paper aims to take stock of the current Belgian position on the repatriation of artefacts stolen or illegally exported under the colonial rule. First, the authors set the stage by briefly discussing Belgian colonial history, which led to an influx in Belgian (museum) collections of various types of cultural artefacts. Consequently, the paper addresses the current Belgian context of (legal) pitfalls and societal challenges that hinder the repatriation of colonial heritage to the country's former colonies. Here, the paper takes an obvious comparative slant as it tries to determine the Belgian position in the restitution debate in relation to its neighboring countries and other former colonial powers.

In order to further the case of repatriation of (looted) colonial heritage, the second part of the paper embarks on a constructive path as the authors present a draft bill as a scholarly initiative to (formally) streamline all repatriation efforts of colonial heritage from Belgian public collections. In doing so the authors will comment on the strategic and operational choices made during the drafting process regarding important aspects such as the (geographical, material and temporal) scope of the legislation, the interaction between the federation and the federated entities, the procedural flow, the heritage selection process, the political responsibility, the rights of third parties and museological and documentarist concerns (archives, digitization,...). As a matter of conclusion, the authors will look ahead and briefly reflect on the parliamentary process that lies ahead of the draft bill and its likeliness to be signed into law.

11) Dr. Annalisa Bolin (Postdoctoral Fellow, UNESCO Chair on Heritage Futures, Department of Cultural Sciences, Linnaeus University)

Title: *Power and Possibility: The Return of Rwanda's Stolen Bones*

Abstract:

In the early twentieth century, German explorers took a large number of skulls from what was then German East Africa, remitting them to Berlin's Ethnologisches Museum to form part of an anthropological collection. Just over a century later, the Stiftung Preußischer Kulturbesitz, which now holds what has become known as the "S-collection", initiated a program of provenance research. The aim of this research was not merely to identify the past of these human remains, but to work with local researchers and ultimately return them to their place of origin.

With the vast majority of the remains from German East Africa originating in what is now Rwanda, the SPK proposes to repatriate these skulls to the Rwandan government. This is the point where many examinations of repatriation end: with the return of cultural property or human remains. But this paper takes the intended repatriation as a starting point to investigate the possibilities it creates for the future. What transformations might this repatriation produce in the relationship between Rwanda and Germany—where the former is seeking a decolonized, increasingly powerful sovereign position in its international relations, while the latter engages (haltingly and partially, to be sure) in an interrogation of its own colonialism? What options are now open to the Rwandan government, leading a country with a long history of managing human remains in the interest of public memory, as it seeks to deal with this new set of skulls? With the increasing accessibility of DNA testing, alongside Rwanda's history of violent racialized ethnic division, what new challenges might this repatriation pose for Rwanda's domestic peace and politics? This paper draws on long-term fieldwork with the Rwandan heritage sector, as well as more recent research into German museums, to focus on underexamined post-repatriation politics and possibilities.

12) Dr. Kokou Azamede (Senior Lecturer in German Studies, University of Lomé)

Title: *Acquisition methods of colonial objects and the traditional perception of the museum in German Togo*

Abstract:

The missionary, commercial and political activities (supported by) European colonial powers in African territories before, during and even after colonisation also focused on the life and socio-cultural environment of the colonised societies. In addition to the economic, extractive and agricultural resources available in the colonised territories, European merchants, colonial administrators and missionaries discovered the cultural values of these societies at an early stage. Personal, mercantile, political and ideological interests led to the "acquisition" of indigenous cultural goods. The colonialist political context participated fully in this situation. Furthermore, it should be noted that the methods of conservation of cultural goods among local populations vary according to the social value, social status and spiritual dimensions they possess. Besides, the policy of repression and anthropological and medical research led the German colonial administration to commit murders of indigenous people and to take their remains to the metropolis. The present paper aims to show, mainly based on primary archival sources including activity reports, autobiographies and correspondence, the methods by which German colonial officials, missionaries and merchants came into possession of cultural property as well as human remains of the

German Togo people. Moreover, the paper will not fail to show the Togolese populations' gaps in their perception of the museum or their structures for the preservation of cultural objects whose acquisition circumstances were related to the interactive relations between German and local actors of colonization.

13) Dr. Janne Lahti (Academy of Finland Research Fellow, University of Helsinki)

Title: *Mesa Verde and Finland: Stolen Artefacts, Contested Discourses, and Nordic Colonial Legacies*

Abstract:

This paper will discuss the processes and legacies of colonial looting in transnational contexts through a Nordic lens. It will examine how Indigenous Anasazi objects travelled from the 1890s Mesa Verde, on the settler colonial borderlands of the US Southwest, ending up in today's Finland, a country without its own formal colonies or generally recognized colonial history. It will show how the ownership of these items remains contested today and how this ongoing discussion over returning the Mesa Verde items links to the burgeoning awareness and discussion that Finland, like other small countries in Europe, might actually have their own histories of colonialism. It will argue that the discussion of Finnish and Nordic colonial legacies needs to be connected to transnational framings, understandings, and entanglements, to the broader debates concerning museums and restitution of colonial loot in Europe and beyond.

In 1891, Gustaf Nordenskiöld, a Finnish-Swedish scientist, ventured to the abandoned Anasazi ruin in southwestern Colorado, Mesa Verde (today a National Park, see <https://www.nps.gov/meve/index.htm>). There he found voluminous Indigenous artefacts, ranging from burial items to household things, and took loads of them home to Sweden. Officials in the US arrested him, but he had not broken any law and was allowed to take the items with him. Soon the US Congress reacted, forbidding foreigners of looting historic sites. Yet, the largest Anasazi collection outside North America ended in the Finnish National Museum in Helsinki in the 1920s. And there it sits today, not on display but in storage. In 2019 the Hopi Indians issued a partially successful restitution claim via the US federal government, and some items are subject to be returned in 2020. Yet, the bulk will remain in Finland, with the Finnish media issuing statements that "these items were not stolen" and "no apology is needed from Finland."

14) Dr. Donna Yates (Associate Professor, Department of Criminal Law and Criminology, Maastricht University) & Brieanah Gouveia (Program Specialist and Collections Manager at the Hawaii State Judiciary's King Kamehameha V Judiciary History Center)

Title: *Provenance narratives of colonial exploitation as value enhancers on the Oceanic art market*

Abstract:

Since the start of the European conquest of the South Pacific in the 18th century, cultural heritage from the region has been removed and decontextualised, entering spaces of white European and American domination and control. Classified in international museums and on the market by racist terminology such as "Primitive Art" and "Tribal Art", many Oceanic heritage items on the market place are sold

alongside problematic provenance narratives. These provenance narratives exoticise Oceanic cultural material to appeal to the desires and prejudices of white buyers. Rather than serving as an accurate portrayal of the histories of these items, provenance in these marketplaces is specifically designed to play to the misconceptions and fantasies of white buyers, "white-washing" troubling histories of colonialism to increase the monetary value of the heritage for sale.

In this paper we will discuss the patterns present in this "white-washing" of conquest and colonial provenance among Oceanic heritage items offered for sale by Christie's and Sotheby's auction houses since the 1970s. Four distinct themes emerge from our analysis of the provenance narratives, and each of these themes reveal more about the white sellers and collectors than they do about either the Pasifika peoples that created the heritage items or the heritage items themselves. The result is a shared provenance mythology that permeates this market, which marginalises Indigenous knowledge about cultural heritage by perpetuating troubling ideas of consensual conquest, static pasts, European cultural superiority, and the disregard of contemporary Indigenous voices/authority.

15) Kaitlyn DeLong (Repatriation Research Specialist, National Museum of the American Indian, Smithsonian Institution)

Title: *Confronting the Past: The Provenance of Indigenous Objects on Display*

Abstract:

Walking through the halls of a museum, visitors expect to be educated—to learn the truth about the past and the contemporary world through historical and cultural objects. Yet, what museums select to display in their exhibits usually represents only half the truth. Often, museum professionals choose to omit or gloss over unethical behaviour or immoral historical events known as difficult heritage. While first associated with the atrocities committed by the Nazis, the difficult heritage most museums sweep aside today is colonialism and how colonial practices led to the acquisition of the museum's most precious objects. Increased media attention, as well as pressure from native communities, has forced museums to deal with this difficult heritage through repatriation and restitution claims. And while these efforts should be applauded and supported, the Western curatorial community must not forget about the objects that remain in their own collections. For even if artefacts collected during the colonial era are not repatriated or even requested for return, Western museums still have a responsibility to display these objects and their stories appropriately and honestly. However, as seen in the case studies of the National Museum of Natural History and National Museum of Scotland, museums with large collections of ethnographic material utilize provenance inconsistently to confront difficult heritage. Its use and presentation depend on the overall mission of the museum, the theme of a specific exhibit, and the narrative agendas of the curators. So, how do we adjust? How can we work within these normal parameters to demonstrate respect for the acquisition of our collections and the history we might rather ignore? To start, we must prioritize the consistent inclusion of provenance when displaying indigenous material, and recognize that honesty really is the best policy.

16) Junior Prof. Dr. Matthias Goldmann (Faculty of Law, Goethe-University Frankfurt)

Title: *Imperial Law's Ambiguity: A Postcolonial Approach to Restitution and Reparation Claims*

Abstract:

In the course of the past decades, numerous states and communities in the Global South have raised claims for restitution and reparation against former imperial powers. According to a popular view, many of these claims are ill-founded from a legal perspective. According to the principle of intertemporal law, reference is to be made to the law of the imperial past, and it is believed that reparation and restitution claims find no basis in it. This conventional view of imperial law has been criticized, notably by critical theories of law, for entrenching imperial injustice. Surprisingly though, it has rarely been seriously questioned. Many advocates of the conventional view and many of their critics consider imperial law as a monolithic, unequivocal, and impervious means for the defense of imperial interests.

This keynote challenges both views. On the basis of insights from postcolonial theory, it argues that imperial law of the 19th century is fundamentally ambiguous. It reflects the contradictions pervading imperial projects and the irritations caused by imperial encounters. It served as a means to justify an imperial expansion that raised various degrees of skepticism among an increasingly democratic domestic audience. It also had to navigate complex patterns of diverging interests in the territories subject to European expansion, taking into account the constraints imposed by limited resources. The conventional view eclipses the ambiguity by oscillating between the normative and the factual, by taking the brutality of imperial power as evidence of legal positions. Far from exculpating imperial law from its role in facilitating the European expansion, the keynote instead calls for recognizing the ambiguity of imperial law and for investigating the resultant gaps and contradictions in legal arguments establishing title to imperial artefacts in Western states, or the rejection of restitution claims. At the example of selected imperial artefacts situated in Germany, it demonstrates how the mentioned ambiguities undermine legal title.

This has repercussions for the role assigned to law in debates and negotiations about the restitution of imperial artefacts. It raises the question whether legal provenance research might help to rebalance structurally asymmetric negotiations.

17) Iain Sandford (Partner, Sidley Austin LLP) & Ada Siqueira (Associate, Sidley Austin LLP)

Title: *The Destruction of the Juukan Gorge Caves: A Study on the Role of International Law in Protecting Cultural Heritage in Times of Peace*

Abstract:

The Juukan caves were a site in Western Australia sacred to the Puutu, Kunti Kurrama and Pinikura people. The caves had high archeological significance due to their 46,000-year-old petroglyphs and artefacts. They were destroyed this year to facilitate mining, with authorization granted under Western Australia's Aboriginal Heritage Act of 1972. Despite acting within Australian law, Rio Tinto, the company responsible, subsequently explained that "[t]he destruction ... should not have occurred". Australia's laws protecting Aboriginal heritage are now subject to a Parliamentary inquiry.

In addition to shining a light on gaps in Australian law, the events at Juukan allow us to examine the potential for public international law (“PIL”) to protect cultural heritage, specifically through restoring and protecting rights of traditional owners and through assigning rights to the other direct and indirect victims of attacks on cultural heritage.

The paper highlights two existing lacunae in PIL. *First*, while there is a robust framework addressing the prohibition of destruction of cultural heritage in times of war, no similar structure exists regarding such acts in peacetime. *Second*, while international court decisions and conventions have incorporated human rights notions to deem harm to cultural heritage as an offence against people, rather than simply harm to property, no PIL framework yet makes this explicit. Nonetheless, emerging norms show that traditional owners and others can be recognized as direct or indirect victims when heritage is destroyed, broadening the spectrum of harm and the potential for claims.

Against this background, and through the case study of the Juukan caves, the paper explores potential international legal risk for companies, including the possibility of international claims regarding the destruction of cultural heritage. It will also explore potential international legal risk for States for failing to prevent destruction of cultural sites such as the Juukan caves.

18) Dr. Norman Aselmeyer (Lecturer & Research Associate, University of Bremen)

Title: *Intangible Heritage: The Man-Eaters of Tsavo and their Global (After)Lives*

Abstract:

The “Man-Eaters of Tsavo” were a pair of notorious lions responsible for the death of dozens of people. When the British decided to build a railway connecting Uganda with the Indian Ocean, nobody expected man-eating lions to terrorize Indian and African railway workers, with several hundred allegedly killed between 1896 and 1903. At its peak in 1898, the lions’ attacks led the workers to strike and brought the entire construction of the railway to a halt. The gruesome stories from East Africa were reported in newspapers around the world. John Henry Patterson, one of the British railway engineers, killed two of the Tsavo lions and immortalized their horrors in his memoir published in 1907. After more than two decades as trophy rugs in his home, Patterson sold the remains of the Tsavo lions to the Chicago Field Museum in 1924, where they are still the museum’s greatest attraction. Claiming them as a part of the country’s heritage and history, Kenya has been asking for the lions’ repatriation since the 1990s without avail. In this paper, I explore the afterlives of the Tsavo lions, arguing that these artifacts have developed a story of their own unrelated to their East African origin. Hollywood movies and uncountable documentaries have spun a myth about Patterson and celebrated the adventure in imperialism associated with them. The heritage that Kenya claims is this intangible side of the story, inseparable from the two stuffed lions today. The paper thus adds a new dimension to the restitution of imperial artifacts, showing that their cultural value is based not only on their original meaning but also on their (global) afterlives.

19) Marcelo Marques Miranda (PhD Researcher in “Heritage of Indigenous Peoples” programme, Faculty of Archaeology, Leiden University) & Jully Acuña Suárez (PhD Researcher in “Heritage of Indigenous Peoples” programme, Faculty of Archaeology, Leiden University)

Title: *Repatriation as a means, not as an end*

Abstract:

Our research addresses issues in decolonization, repatriation, provenance and representation of indigenous peoples’ cultures in museums, specifically the Camëntsá people (Colombia). We present our arguments based on the collections of several museums at a local, national and international level.

Many see repatriation as the last step in decolonization without taking into account that objects may remain in the same state of coloniality. Emerging movements are reclaiming the repatriation of objects held in European museums to Latin America but ignoring that these are going to National Museums that maintain racist, violent and colonial representations of indigenous peoples, and that these museums would still hold the power over objects, tell the Western side of the story, and decide who has access to them.

Furthermore, we hold that the fact that objects were legally acquired by museums does not erase the coloniality and violence behind such act. It is important to note that museums were created to strengthen the colonial discourse and that objects collected, for example, by missionaries, were part of a symbolic demonstration of their power over indigenous peoples and were exhibited to create the image of ‘savage peoples’, supposedly disappearing through the civilizing and evangelizing process. Also, problematically, other objects were collected as part of development works that aimed at inserting indigenous cultures into the capitalist market under the frame of “ethnic handcrafts”, consequently banalizing the spiritual significance objects have. Therefore, should not decolonization be also about a respectful, empowering and culturally appropriate representation? Indigenous peoples cannot be simple objects of study or curiosity but must be subject to the same rights as all human beings. Thus, addressing colonialism cannot be simply about recognizing objects provenance and repatriating them, but also entails acknowledging coloniality is ongoing and that museums are perpetuating it by not including and adequately representing indigenous peoples.

20) Dr. Tomás Irish (Senior Lecturer in Modern History, Swansea University)

Title: *“The Danger of Arbitrary Decisions”: The Paris Peace Conference and Cultural Reparations after the First World War*

Abstract:

At the start of June 1919, the American president Woodrow Wilson wrote of his concern at “the danger of arbitrary decisions being made with respect to the appropriation of works of art, relics, etc, in Vienna, Constantinople and elsewhere.” The First World War was marked by cultural destruction that violated international law and outraged international audiences, but we know little about how these issues were resolved thereafter. This paper examines the Paris Peace Conference of 1919 and the cultural provisions of the post-war treaties. A wide variety of cultural claims were submitted to the conference, either from victor states seeking the spoils of war, or new, post-imperial states, seeking cultural capital to bolster their claims to self-

determination. The collapse of multi-ethnic empires such as the Ottoman and Habsburg empires further complicated the question of how to judge competing claims to cultural property and demonstrated the persistence of civilizational worldviews as well as wartime hostility.

Thus paper examines the process through which these treaties were negotiated, paying particular attention to the crucial role played by lobbyists such as museum directors, writers, and politicians. It will focus on the treaties of Saint-Germain-en-Laye (with Austria) and Sèvres (with Turkey). Key individuals, such as Sir Frederic Kenyon, the director of the British Museum, had particular influence in the drafting of these treaty articles. In the cases of the negotiation of both Saint-Germain and Sèvres, western museums and learned societies asserted the right to retain cultural property under the rubric of 'civilization'. In seeking to influence these treaties, lobbyists often articulated the fear that if treaties promoted the widespread restitution of museum collections, that process could be mirrored in the museums of London, Paris, and New York. As such, this paper will present a historic precedent to contemporary debates about museum restitution.

21) Sebastian Willert (PhD Researcher, TU Berlin)

Title: *A German Excavation for the Ottoman Imperial Museum? The Scramble for Objects between Berlin and Istanbul at Tell Halaf, 1911–1914*

Abstract:

In the late 19th century the German Empire strengthened its economic, military and cultural activity in the Ottoman realm. Thus, Berlin became a key global player within the international *scramble for objects*. Simultaneously the directors of the *Müze-i Hümayun* (Imperial Museum), Osman Hamdi Bey (1842–1910) and later Halil Edhem Eldem (1861–1938), established protectionist campaigns against Western access to antique sites and the exodus of cultural assets to European and American Museums. With the help of the 1906 Antiquity law the Ottoman Museum directors tried to minimize the influence of foreign archaeologists, to ban the export of antique objects and to introduce a basis for the expansion of the Imperial Museum's own collection.

The German-Ottoman relations on the archaeological level were moulded by two paradoxically perspectives: Archaeologists enjoyed close scientific exchange, but the ultimate goals were contested between Ottoman efforts to preserve antiquities on Ottoman territory and German aims to translocate objects to Berlin. Conflicts simmered over issues such as the sovereignty over cultural assets, the dispossession and translocation of antiquities and the appropriation and acquisition of artefacts.

Although the German excavator Max von Oppenheim (1860–1946) accepted the Ottoman conditions for his excavation at Tell Halaf in 1910 and despite several confiscations through Ottoman gendarmes, between 120 and 150 boxes containing various antiquities reached the Royal Museums in Berlin by 1914.

Against the background of the Ottoman Antiquity law, the paper analyses systematic misappropriations of German archaeologists with the help of an extensive network including German diplomats. It aims to examine strategies directed from Berlin to circumvent the Ottoman legal framework in order to assert the Berlin Museum interests. At the same time, it illustrates Ottoman countermeasures and to what extent Istanbul, itself a colonial actor, used the law to expand the Imperial Museum's collection.

22) Dr. Florian Wagner (Assistant Professor for Contemporary European History in Global Perspective)

Title: *Colonialist Notions of Property: How European Lawyers Legitimized Dispossession (1880s-1950s)*

Abstract:

This paper analyzes the notions of property developed by colonial administrators, anthropologists, and lawyers between the 1880s and the late colonial period. I will look at the way European lawyers in the colonies strategically used concepts of property in European, Islamic and so-called “customary” laws to justify expropriations and plunder. The focus will be predominantly on the African colonies. Using archival material and published sources, I intend to show how lawyers and anthropologists formed an epistemic community across empires and designed a colonial law along the needs of colonial administrations. The discussion about objects, then, is situated in the broader debate about landed property and dispossession in colonial law. I will argue that colonizers developed schemes of dispossession that seemed to be “legal” but were actually more subtle forms of taking property away from the colonized population. A crucial question will be to what extent these legal schemes lived on in the postcolonial period and shaped debates about restitution and reparations.

23) Dr. Evelien Campfens (Postdoctoral Fellow at Research Group Museums, Collections and Society, Leiden University)

Title: *Whose cultural objects? Introducing ‘heritage title’ in a human rights law approach*

Abstract:

Since the first days of international law cultural objects have a special, protected, status because of their intangible ‘heritage’ value to people, as symbols of an identity. Despite this, throughout history, cultural objects were looted, smuggled and traded on. At some point, their character changes from protected heritage in an original setting to valuable art or commodity in the hands of a new owner, where their legal status will depend on the (private) law of the country where they happened to end up. This paper suggests that, irrespective of acquired rights of new possessors, original owners or creators should still be able to rely on a ‘heritage title’ if there is a continuing cultural link. The term aims to capture the legal bond between cultural objects and people, distinct from ownership, and is informed by universally applicable human rights law norms.

This paper, in other words, adds a legal perspective to the restitution debate and proposes a human rights law approach to structure the normative framework for claims. Three elements are key in such an approach. In the first place, it implicates a shift in focus from past events - the unlawfulness of the loss in the past that is decisive in an ownership approach - to present-day interests. In the second place, the rights involved are defined in terms of rights of access, control or ‘equitable solutions’, as opposed to restitution of absolute ownership rights, which enables the weighing of interests people may have in the same object and the aiming at participatory solutions. A third element is the *classification* of cultural objects depending on their specific social function and heritage value.

24) Dr. Jihane Chedouki (Postdoctoral Researcher, Centre National de la Recherche Scientifique)

Title: *From a moral function to a utilitarian function: the transformation of ancient objects and monuments in the Arab world in the 19-20th centuries*

Abstract:

The contact of colonial administrators with a wide range of territories and populations around the world engendered an epistemological transformation which impacted many aspects of pre-modern institutions and the worldview of colonised populations. Consequently, the invention of archeology and cultural heritage as a legal institution in the 19th and 20th centuries had changed our relationship with ancient objects and monuments and transformed their role in our societies. My study on the notion of cultural heritage in the Arab world during colonialism in comparison to the meaning invested in ancient monuments and objects before colonisation had shown the transformation of their role from a moral function within the society to a commodity that allows their ownership by individuals, institutions and States in the name of historic, archeological or artistic interest. This transformation was also concomitant with the subversion of the meaning of ownership in pre-modern legal system that governed the Arab region. In my presentation, I will argue that the application of private and public ownership regimes to cultural heritage as a mean of « protection » by the colonial administration encouraged the expropriation of ancient objects and the dismantlement of monuments to be placed in museums and private collections outside of their places of origin. Also, I will show how this colonial approach to ancient monuments that omit their moral function and its perpetuation by post-colonial countries is still sustaining ongoing looting of ancient objects to respond to the demands of formal and informal antiquities markets around the world.

25) Gretchen Allen (Library Conservator, Maynooth University Special Collections)

Title: *A Way for the Giant's Cause: an examination of Irish indigenous rights in the case of Charles Byrne*

Abstract:

Despite repeated calls for his repatriation by the native Irish population of Northern Ireland, the 7'7" tall skeleton of the "Irish Giant" Charles Byrne has been on public display in the museum of the Royal College of Surgeons (RCS) in London for over two hundred years. This is in direct opposition to Byrne's widely reported dying wishes to be buried at sea in order to prevent his unusually tall body being stolen, dissected, and displayed by surgeon and founder of the Hunterian collection John Hunter. However, despite Byrne's precautions, Hunter stole his corpse and made it the centerpiece display of his medical collection, a position it retains in the RCS collection today. The RCS has repeatedly refused calls to repatriate Byrne to Northern Ireland, or even to remove him from display, despite their willingness to repatriate aboriginal remains from former British colonial holdings like Tasmania and Australia. This paper examines the case for the native Irish population of Northern Ireland to claim kinship with Charles Byrne in the same way other aboriginal populations have claimed their ancestral dead from the same collection. It utilizes the repatriation criteria provided by the Department of Culture, Media, and Sport (DCMS) as well as the United Nations (UN) to draw a direct line from Charles Byrne, an Irish Gaelic-speaking, Catholic man

from County Tyrone, to the Irish communities in the same area today who are calling for his return. This paper argues that the continued retention and display of Byrne's remains perpetuates the British oppression of Northern Ireland's native Irish population, just as retaining and displaying Aboriginal Australian and Tasmanian remains perpetuated their oppression, and that Charles Byrne's remains should be repatriated to the Irish people.

26) Dr. Caroline Drieënhuizen (Assistant Professor, Cultural History, Open University of the Netherlands) & Dr. Fenneke Sysling (Assistant Professor, History Department, Leiden University)

Title: *Java Man: restitution claims at the natural history museum*

Abstract:

This paper sketches the history of Indonesian restitution claims for 'Java Man', the fossilised remains of a homo erectus (the skullcap, molar, and thighbone) that were excavated in Dutch colonial Indonesia in 1891-92. These remains are now one of the highlights of the in 2019 reopened Naturalis, the natural history museum in Leiden.

As soon as Java Man arrived in the Netherlands, it became a contested specimen and part of discussions about repatriation, especially in the early 1950s, when Indonesia had just become independent, and again in the 1970s. In our paper, we pay particular attention to Java Man's representation in both the Netherlands and Indonesia within these discussions. For Indonesia, Java Man was a symbol for precolonial greatness, while the Dutch saw the fossils as 'universal' and emphasised how Dutch scientific hero Eugene Dubois had discovered them.

In describing this history, we problematize the presence of thousands of colonial objects in Dutch natural history museums. As in other countries, cultural objects and human remains collections have been the subject of debate in recent years, but natural history collections have not been part of these discussions. We argue that this is the case because natural history museums have successfully depoliticised objects by insisting on a difference between cultural objects and objects from nature. Tracing its long contested political ownership, we show on the other hand how the fossils of Java Man are sites of competing national and disciplinary histories and identities.

Panel Chairs:

Raphael Schäfer (Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg)

Ana Delic (PhD Researcher, Law Faculty, Tilburg University)

Dr. Walter Nkwi Gam (Assistant Professor, History Department, Leiden University)

Dr. Alexandra Ortolja-Baird (Lecturer, Early Modern European History Department, King's College London)

Dr. Anne-Isabelle Richard (Assistant Professor, History Department, Leiden University)

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