ARTICLE

The return of cultural objects displaced during colonialism. What role for restorative justice, transitional justice and alternative dispute resolution?

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Abstract

This article focuses on the question of the return of the cultural objects displaced during the colonial era (hereinafter 'colonial objects') and of the dispute resolution means that may be used to achieve it. It starts by portraying the special significance of colonial objects for nations and communities. Next, it looks at restitution, as a facet of both restorative justice and transitional justice and as the most satisfactory form of reparation. It then examines the obstacles that claimants face when trying to recover colonial objects. Finally, the article argues that restitution claims should be resolved through procedures alternative to litigation, the so-called alternative dispute resolution (ADR) mechanisms, because these mechanisms make it possible to achieve the objectives typically pursued through restorative justice and transitional justice processes, namely dialogue, truth, reparation and reconciliation.

Keywords: alternative dispute resolution means, colonialism, restitution and return, Restorative Justice, transitional justice.

1 Introduction: defining cultural heritage

Cultural heritage is an evolving notion that includes any tangible and intangible expression through which the creativity and the ways of life of peoples find expression, such as buildings, monuments, cultural objects, languages, rites, music and literature.[1] However, cultural heritage is not an objective fact about the world. The importance of, for instance, archaeological materials, items of fine art and indigenous artefacts does not derive from their aesthetic values, historical origin

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1 The term 'cultural heritage' conveys a meaning that is wider than the term 'cultural property', which is used to indicate tangible, movable items, such as archaeological materials, as well as immovable assets, such as monuments.

or uniqueness (which, however, serve to differentiate them from ordinary, fungible, merchandises). Rather, it springs from the values given to such cultural objects by the individuals, communities (including groups bound by ethnic, racial or religious ties) and nations that created them or for whom they were created or whose identity and history they are connected with (Gillman, 2006: 44). Put differently, the value of cultural objects does not *inhere* in such things but is *accorded* to them by people. The value of cultural objects therefore stems from the 'relation' established by individuals, communities and nations with such things (Dick, 2018: 12; Lixinski, 2013: 3; Loulanski, 2006: 213). It follows that cultural heritage is not protected and promoted for its physical dimension alone. Rather, it is the relationship between cultural heritage items and people, individually or in groups, and the diversity of these relationships, which is protected and promoted (Vrdoljak, 2013: 1). This means that the archetypal tangible dimension of any cultural object is completed and accompanied by an intangible, human, dimension, which is the store of symbolic, spiritual or historical values embodied in such an object and which is independent of aesthetic or monetary significance (Donders, 2020: 385).

This intrinsic link between cultural objects and human beings explains why such objects have often been targeted in times of war and military occupation. Indeed, the destruction and damage to monuments and buildings, as well as the looting of cultural objects, have been committed throughout history (along with heinous acts such as mass killings and torture) to humiliate the pride and self-esteem and to annihilate the identity and history of the people for whom such cultural objects were of special significance (Lenzerini, 2013: 251; Sands & Rai, 2022: 343, 345).

Likewise, the special nature of cultural objects explains why the claims of individuals, communities and nations for the return of items ransacked in the distant past survive despite the passage of time. This is demonstrated by the claims concerning the objects of cultural or historical importance looted during the colonial era (hereinafter 'colonial objects'), such as ceremonial objects and human remains. One example relates to the *ngadji*, a drum sacred to the Pokomo, a people of Kenya's Tana River valley. The drum was confiscated by British colonial officers in 1908, and the Pokomos continue to ask for its return to the British Museum (Bearak, 2019).

This article seeks to catalyse discussions of the experts and practitioners of three fields – cultural heritage, restorative justice, transitional justice – on how to ensure the meaningful return of colonial objects.[2] In particular, this article demonstrates, on the one hand, that there is a wide gap between the hopes and expectations of the stakeholders involved in disputes over the return of colonial objects. On the other hand, it suggests that this gap could be narrowed if the claimants of colonial objects import the values, principles and objectives that

2 The terms 'return', 'restitution', 'repatriation' and 'recovery' will be used interchangeably in this article. Note, however, the distinction proposed by Kowalski: restitution concerns wartime plunder, theft and the violation of national laws vesting ownership of cultural objects in the state; return involves claims for cultural objects taken away by colonial powers or illicitly exported; repatriation aims to re-establish the integrity of the cultural heritage of a given country or ethnic group in the event of cession of territory or breakdown of multinational states (Kowalski, 2004).

typically characterise restorative justice and transitional justice processes into the non-contentious procedures alternative to litigation, the so-called alternative dispute resolution (ADR) mechanisms, which are increasingly mobilised to recover colonial objects.

2 Losses of colonial objects

European imperial powers conquered the territories of Africa, America, Asia and Oceania because, as these were not ruled by Christians, they were considered as *terra nullius*. The occupation of such lands between the 16th and the 20th centuries brought about not only the development of a global trade but also the exploitation of such territories and their inhabitants. Colonisers perpetrated all sorts of violence against non-European peoples, ranging from discrimination to genocide (Renzo, 2019). Moreover, the invaders occupied themselves with the destruction and removal of the cultural objects of native peoples (Opuku, 2008). Misappropriations occurred through military operations;[3] private expeditions;[4] missionary collecting;[5] gifts;[6] purchase or barter.[7]

The pillage of colonial objects was based on a mix of motives, from pure greed (Van Beurden, 2017: 63) to the salvage paradigm, i.e. the 'racialised' construction of indigenous people as inferior human beings (Cunneen, 2016: 193). In this sense, Lowenthal stressed that 'European mandates to plunder stemmed from the common view that their Christian and scientific legacy was immeasurably superior to the barbarous customs of others' (Lowenthal, 1998: 240-241).

Notwithstanding the form and reasons for the taking, it is beyond doubt that the colonial objects removed by colonisers found eager purchasers in Europe, notably public museums. Just as slavery was an integral part of the European economy, the removal of cultural objects from colonies was at the heart of the colonial enterprise (Blake, 2015: 3; Sarr & Savoy, 2018: 12-14). The museums of former imperial powers can thus be regarded as archives of the pillage perpetrated during the colonial era (Sarr & Savoy, 2018: 2).

3 Military actions to expand territory or to subjugate native people (or keep them subjugated) were common in colonial times. During these conflicts, many cultural objects were taken as spoils of war. As is well known, belligerents possessed an unlimited right to pillage what belonged to the enemy. There is a general consensus that the practice of taking properties during military actions did not violate international law in the period prior to the Hague conventions of 1899 and 1907 (O'Keefe, 2006; Toman, 1996).

4 These expeditions aimed at collecting cultural objects for European museums (Van Beurden, 2017: 42, 233).

5 Missionaries committed large-scale iconoclasm and confiscated religious objects to facilitate the conversion of native peoples to Christianity (Van Beurden, 2017: 45-47, 234).

6 For many local rulers presenting gifts to foreign visitors was part of their culture. European colonisers often carried gifts with them for native peoples. However, although gift-giving was common during colonialism, in many cases gifts from local rulers were an expression of subjugation, and those from colonial administrators were rewards for loyalty (Van Beurden, 2017: 233).

7 Although normal barter and exchange occurred (without violence), the authority of invaders and the threat of reprisals often 'obliged those concerned to accept the offers for purchasing the objects' (Sarr & Savoy, 2018: 57).

It is also certain that the massive removal of colonial objects (as well as the violence that led to it) left its marks on the collective memory of surviving communities. Stories about the removal passed from generation to generation, thereby reinforcing the idea that injustice has to be undone (Sarr & Savoy, 2018: 50-51; Van Beurden, 2017: 71). It is not hard to find evidence of this. For example, in 1993 African leaders stated that 'the damage sustained by African peoples is not a "thing of the past" but is painfully manifest in the damaged lives of contemporary Africans'.[8] Moreover, in 2014 the Community of Latin American and Caribbean States recognised the enduring and nefarious legacy of genocide, slavery and the plundering of cultural resources.[9]

3 The return of colonial objects

Against this background, it should come as no surprise that, since the beginning of the decolonisation process, newly independent states and indigenous peoples have continually reiterated the responsibility of former imperial powers to make reparation[10] through the restitution of colonial objects. Restitution is the form of reparation that allows restoration of the *status quo ante*, i.e. the situation that existed before the violations and misappropriations committed during the colonial era (Scovazzi, 2011: 351-356). As such, restitution entails the recognition of the (past) wrong and the resurrection of the culture that invaders sought to make disappear.

Francisco de Vitoria (1486-1546), a Spanish lawyer and professor of theology at the University of Salamanca, was among the first scholars to question the legality (and morality) of European claims to the newly discovered territories and to raise the issue of reparation. Departing from the assumption that 'indians' shared all attributes of rational human beings, he accused the *conquistadores* of the illegality of the spoliation conducted against the indigenous peoples of South America and called for the restitution of cultural objects (Prott & O'Keefe, 1989: 803-804). The importance of restitution for colonised people was also voiced by Victor Hugo. He reacted with the following words to the destruction and plundering of the Old Summer Palace in Beijing in 1860 by French and British troops:

> One day two bandits entered the Summer Palace. One plundered, the other burned.... One of the two victors filled his pockets; when the other saw this he filled his coffers. ... We Europeans are the civilized ones, and for us the Chinese

8 Declaration of the Abuja Pan-African Conference on Reparations for African Enslavement, Colonisation and Neo-Colonisation, 27-29 April 1993, Abuja, Nigeria.

9 Declaration adopted at the II Summit of the Community of Latin American and Caribbean States (CELAC), 28-29 January 2014, Havana, Cuba.

10 The obligation to make reparation by re-establishing the situation that existed before a wrongful act (*restitution in integrum*) is a rule of customary international law. See Permanent Court of International Justice, *Case Concerning the Factory at Chorzów (Merits)*, 1928, Series A, No. 17, 47. Under the Articles on Responsibility of States for Internationally Wrongful Acts, completed by the International Law Commission in 2001, there are three main forms of reparation: restitution, compensation and satisfaction (see Articles 34, 35, 36, 37).

> are the barbarians. This is what civilization has done to barbarism.... I hope that a day will come when France ... will return this booty to despoiled China (Hugo, 1985: 527-528).

More concrete steps towards the restitution of colonial objects were taken during the 1960s and 1970s following the emergence of new states and their admission to the United Nations (UN). In 1973, the UN General Assembly passed the first of a series of resolutions whereby it deplored the 'wholesale removal ... of *objets d'art* ... as a result of colonial or foreign occupation', and stressed that 'the restitution of such works would make good the serious damage suffered by countries as a result of such removal'.[11] Furthermore, it affirmed that 'the prompt restitution to a country of its *objets d'art*, monuments, museum pieces, manuscripts and documents ... constitutes just reparation for damage done'.[12] Similar statements were reiterated in subsequent resolutions, notably Resolution 36/64 of 27 November 1981, where an appeal was made to museums and collectors 'to return totally or partially, or make available to the countries of origin' any requested colonial object.[13] In 1978, the then Director General of the United Nations Educational, Scientific, and Cultural Organisation (UNESCO), Amadou M'Bow, issued a 'Plea for the Return of an Irreplaceable Cultural Heritage to Those Who Created It', whereby he asserted that the men and women of former colonies should obtain 'the return of at least the art treasures which best represent their culture, which they feel are the most vital and whose absence causes them the greatest anguish' (M'Bow, 1978). In the same year, the General Conference of UNESCO established the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation (ICPRCP), with the mandate to assist UNESCO member states in dealing with disputes falling outside the framework of existing non-retroactive conventions,[14] such as the disputes concerning colonial objects.[15] It has to be noted that these disputes can also be submitted to the Art and Cultural Heritage Mediation Program, which was established in 2011 by the International Council of Museums (ICOM) and the Arbitration and Mediation Center of the World Intellectual Property Organisation (WIPO).[16] Finally, it is worth mentioning the Declaration on the Rights of

11 Resolution 3187 (XXVIII) of 18 December 1973, 'Restitution of works of art to countries victims of expropriation' (emphasis in the original).

12 Ibid. (emphasis in the original).

13 Para. 7.

14 Most notably the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.

15 Art. 3(2) of the ICPRCP's Statutes provides that a return request can be made for 'any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation'. The mandate of the ICPRCP has been broadened in 2010. As a result, the ICPRCP can 'submit proposals with a view to mediation or conciliation to the Member States concerned' (see Art. 4(1) of the ICPRCP Statutes).

16 On the ICPRCP and the ICOM-WIPO Art and Cultural Heritage Mediation Program, see Chechi (2014a).

Indigenous Peoples. Adopted by the UN General Assembly in 2007, it recognises that

> all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,[17]

and that the artefacts and human remains that are crucial to the identity and religious system of indigenous peoples must be returned to them.[18]

It follows from the foregoing that the international community has become aware that colonised peoples have been deprived of their cultural heritage by European invaders. It is because of this historical experience of dispossession that many colonial objects have been returned. Holding on to cultural objects against the will of the peoples who created them, or for whom they were created, or whose particular identity and history is connected with, weakens the cultural development of such peoples and prevents them from enjoying their heritage and the rights associated with it. In this connection, it has been argued that a new general principle applies to the cultural heritage items removed from peoples subject to colonial domination, the 'principle of non-exploitation of the weakness of another State or people for cultural gain'. This would apply to situations of war, colonial domination and foreign occupation and would derive from the prohibition of seizure of cultural objects in times of armed conflict, and the corresponding obligation of restitution, which are regarded as belonging to customary international law (Scovazzi, 2011: 366, 394).

However, the return of colonial objects does not merely serve to undo and repair the confiscations that allowed the European powers to amputate the culture of the inhabitants of Africa, America, Asia and Oceania and to enrich their own museum collections. The restitution of colonial objects can also be understood as a facet of both restorative justice and transitional justice (Cunneen, 2016; Vrdoljak, 2020). It is to these conceptions of justice that we turn now.

4 The return of colonial objects as a facet of restorative justice and transitional justice

Restorative justice has been defined as

> an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.[19]

17 Preamble, fourth recital.

18 See Arts. 11, 12 and 31.

19 Retrieved from www.euforumrj.org/en/restorative-justice-nutshell (last accessed 14 November 2022). See also UNODC (2020: 3-4); and ECOSOC (2002: paras. 1-3).

This definition emphasises a number of aspects that are crucial for understanding restorative justice. Firstly, restorative justice encompasses processes common in domestic criminal justice systems that seek the resolution of matters arising from crimes (and prevent their recurrence). These do not necessarily constitute alternatives to criminal proceedings. Rather, they complement them (UNODC, 2020: 11). The idea behind restorative justice is that prosecution and penal sanction (retributive justice) are not the best means to achieve justice in certain contexts (Braithwaite, 2002: 16; Clamp & Doak, 2012: 342, 345-346). Second, restorative justice requires the voluntary participation, communication and collaboration of the person who has been affected by the offence, the person who committed the offence, and the persons who have been indirectly affected by the commission of the offence, e.g. the family members of the victim and of the perpetrator, and possibly the members of the communities connected with those directly involved (Braithwaite, 2002: 11). Facilitators can help participants to contribute to restorative justice processes (Kirkwood, 2022: 2-3, 5). Third, restorative justice is intended to repair the harm suffered by victims, namely the material consequences of an offence (e.g. through the restitution of lost property) and its non-material effects (e.g. through the restoration of the sense of security, dignity and sense of empowerment). Accordingly, reparation ought to be meaningful in relation to the original offence and mutually agreed (Braithwaite, 2002: 11-12).[20] However, as noted previously, restorative justice does not rule out traditional forms of punishment (e.g. fine or incarceration) but remains firmly aimed at producing restorative, forward-looking outcomes (UNODC, 2020: 7). Fourth, and consequently, restorative justice is aimed at the reconciliation between the person responsible for the harm and the person harmed, or with the family members of the victim or others indirectly affected by the offence, as well as with the community.[21]

It should be noted that – although this is not evidenced by the foregoing definition – the scope of restorative justice has broadened over the past few decades. The main focus of restorative justice has long been on cases involving juveniles, first-time offenders and low-level crimes in established democracies.[22] However, in many countries restorative justice today applies also to white-collar crimes, war crimes and other serious violent crimes, such as terrorism, violent extremism, homicide, sexual assaults, hate crimes and violence against children

20 There is therefore a difference between restorative justice process and conventional criminal justice processes with respect to reparation. The reparation that takes place via restorative justice processes constitutes a win-win outcome because it is the result of dialogue and deliberation, whereas the reparation that takes place via conventional criminal justice processes is imposed by adjudicators. In the latter case, there is the risk not only that reparation has little relevance and meaningfulness for the victim but also that the perpetrator is not fully committed to completing the reparation (Kirkwood, 2022: 7).

21 However, there are cases where reconciliation is not wished for. For instance, in cases of sexual offences or domestic abuse the persons harmed often refuse reconciliation (Kirkwood, 2022: 4).

22 It should be noted that restorative justice has been the dominant model of criminal justice from the ancient Arab, Greek and Roman civilisations until the end of the Middle Ages (Braithwaite, 2002: 3-5).

(Braithwaite, 2002: 16; EFRJ, 2021; Laundra, 2022; UNODC, 2020: 67-68).[23] Moreover, it has been argued not only that restorative justice might promote sustainable development (Braithwaite, 2002: 211) but also that it can focus on environmental harm (Forsyth et al., 2021).

Moving to transitional justice, this has been defined as

> the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecution, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.[24]

This definition indicates that transitional justice processes – including international criminal courts and truth and reconciliation commissions – apply to societies that have been affected by protracted violence, serious human rights violations and mass atrocities committed in the context of past armed conflicts,[25] military dictatorships, post-communist and post-fascist regimes and failed states (Sands & Rai, 2022). This means that transitional justice applies to societies in transition from conflict and repression to democracy. In these contexts, conventional, retributive, criminal justice processes cannot be used given the presence of many (alleged) perpetrators (which might also be entrenched in the apparatus of the state), broken institutions, exhausted resources, diminished security and a distressed and divided population. Accordingly, transitional justice is very much a public affair constrained by its aims of reconciliation and nation-building in post-conflict or post-dictatorship contexts. More particularly, transitional justice aims to: (i) acknowledge the occurrence of widespread international crimes; (ii) ensure justice and accountability through the prosecution and punishment of perpetrators; (iii) prevent the repetition of similar widespread and systematic violations;[26] (iv) fulfil the right to truth, i.e. the right of the victims and of society at large to know what had occurred under past conflicts or repressive rule; (v)

23 Of great importance for the development of restorative justice has been the work of ECOSOC (see Resolution 2002/12), the Council of Europe (see Recommendations No. R (99) 19 (1999) and CM/Rec(2018)8) and the European Union (see Directive 2012/29/EU).

24 UN Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies S/2004/61. Another definition provides that transitional justice corresponds to 'the ways countries emerging from periods of conflict and repression address large scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response' (International Center for Transitional Justice 'What is Transitional Justice?', 2019, www.ictj.org/about/transitional-justice).

25 Especially non-international armed conflicts characterised by ethnic and religious divisions.

26 In this respect, the prosecution of perpetrators has a role to play in deterring the future commission of such crimes. In addition, constitutional/legislative reforms are necessary in contexts where public institutions become instruments of repression and injustice. Furthermore, the guarantees of non-recurrence require educational measures.

provide reparation to the victims;[27] and (vi) facilitate the reconciliation between victims and offenders. Transitional justice can achieve its goals with the participation of not only victims and perpetrators but also of civil society at large. However, the attribution of the 'victims' and 'perpetrator' labels is very problematic in transitional settings because during civil war conflicts and repressive regimes both sides of the divide often commit offences against each other (Clamp & Doak, 2012: 346-347).

In light of the foregoing overview (which is brief owing to editorial constraints), it appears that there is some overlap between restorative justice and transitional justice. Firstly, restorative justice and transitional justice emphasise voluntary, inclusive and non-adversarial frameworks to allow dialogue and exchange between victims and perpetrators, as well as the relevant communities (Clamp & Doak, 2012: 340, 348). Second, they share values, principles and objectives, such as accountability, truth telling, reparation and reconciliation (Lambourne, 2016, 58-59). With respect to reparation, it is important to note that reparation can take material or symbolic forms. While material reparation includes restitution of property or compensation for loss thereof, symbolic reparation is resorted to in cases where the injury or harm cannot be repaired and where the harm is 'moral' rather than 'material' in nature. Examples include the offer of an apology or an undertaking not to repeat the offence (Clamp & Doak, 2012: 351). In addition, at the trial, survivors, families and communities could ask perpetrators of war crimes or crimes against humanity for information about the fate of the victims and the whereabouts of their bodies. They could also ask the judges, prosecutors and (local or national) authorities involved in the criminal trial for a symbolic recognition of their loved ones, for instance the naming of a public space like a school or park after them, the building of museums or memorials or establishing days of commemoration. Moreover, survivors of war crimes or crimes against humanity could ask for the reconstruction of the heritage – such as religious or symbolic buildings – that was destroyed during civil war conflicts and repressive regimes (Nickson & Braithwaite, 2014: 5, 8, 9).

Against this background, it can be argued that restorative justice and transitional justice processes can apply to restitution claims involving colonial objects removed in the distant past, provided they are understood in broad terms. On the one hand, resort to restorative and transitional justice requires acceptance of the assumption that the states seeking to recover colonial objects are still in a phase of transition, although colonial occupation ended decades ago (Scovazzi, 2011: 370). This assumption derives from the absence of the objects that are essential to the history, heritage, identity and development of formerly subjugated communities. As demonstrated, the descendants of the victims of imperial powers will feel a sense of injustice and distress stemming from the misappropriations and

27 The right of victims of human rights violations to reparation is enshrined in international law (see supra n. 10) and has been reaffirmed in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN GA Resolution A/Res/60/147 of 16 December 2005).

the atrocities that accompanied them until the requested objects are returned. On the other hand, restorative justice and transitional justice should be construed as processes applying to macro-settings involving large groups of peoples that, however, did not participate in or experience the removal of colonial objects and the crimes associated with it. In effect, it is impossible, for obvious reasons, to identify the victims of such crimes or to find and prosecute the colonialists that committed such crimes. At best, it is possible to identify the descendants of the victims and the current holders of looted cultural objects. The descendants of the victims (and the countries where they reside) should be treated as victims for the purposes of restorative and transitional justice as long as they can demonstrate the existence of a cultural link with the community of the original victims and with the claimed colonial objects.

5 Obstacles to the return of colonial objects

Over the course of time, many colonial objects have been returned to their place of origin. For example, Italy returned the Aksum stele to Ethiopia in 2007,[28] whereas the Medical Center of the University of Leiden returned to Ghana the head of King Badu Bonsu II in 2009.[29] In addition, a number of *Mokamokai*[30] have been restored to New Zealand in 2011 by the city of Geneva[31] and the city of Rouen.[32] The last example that is worth mentioning concerns a 500-year-old stone cross, which was repatriated to Namibia by Germany in 2019 (Trilling, 2019).

Although this study cannot be analytic and provide a comprehensive examination of each case, it can be submitted that these and other examples demonstrate that states and indigenous peoples have recovered colonial objects for the following reasons. Firstly, a series of landmark cases concerning Holocaust-related art or illicitly exported cultural objects have laid the groundwork for claims to be made about colonial objects. Second, governments have obtained the restitution of representative cultural objects as part of the development aid provided by former colonial powers (Stahn, 2020b: 829). Third, the development of human rights law has given indigenous peoples multiple bases to advance their claims (Prott, 1995: 229). Fourth, indigenous communities and grass-roots groups have exerted pressure on public institutions to acknowledge that their collections have been shaped by looting and racism (Hicks, 2021; Shariatmadari, 2019). Fifth, with respect to human remains, museums and scientific institutions are simply no longer interested in keeping and displaying this sordid residue of their colonial past.

28 Contel, Chechi, Renold, *Affaire Obélisque d'Axoum*.

29 Tuyisabe, Chechi, Renold, *Affaire Tête du roi Badu Bonsu II*.

30 The collection and trade in *Mokamokai* (mummified heads of Maori peoples decorated with tattoos) started in 1770 and continued until about 1840, although that trade was made illegal in 1831. Watt (1995: 79).

31 Contel, Bandle & Renold (2013). *Affaire Tête Maorie de Genève*.

32 Contel, Bandle & Renold (2012). *Affaire Tête Maori de Rouen*.

Nevertheless, no steady restitution trend can be discerned. In effect, the engagement of former imperial powers and their museums reveals inconsistencies and shortcomings. Although it is generally recognised that the return of objects is essential to the collective identity and history of formerly subjugated peoples and to their right to self-determination, on many occasions museums and other holding institutions have responded to restitution claims with denials or offers of long-term loans. Moreover, favourable responses to return claims have been given sometimes after decades of responding negatively.[33] There is therefore a gap between the demands of former colonies and indigenous peoples and the responses of former colonisers and their museums.[34]

States and museums (but also private collectors and universities) set forth many arguments against the restitution of colonial objects. Firstly, museums argue that they have a duty to preserve and display objects for the benefit of the public and that by sending back disputed objects they would betray their *raison d'être* and undermine public access. Second, western museums raise doubts about the capability of requesting countries to properly preserve and show cultural objects because they lack resources, infrastructure and personnel. Third, museums fear that the repatriation of cultural objects would lead to the emptying of the world's museums. Fourth, museums deploy legal arguments, relying, in particular, on ownership rights, good faith and on the statutory measures constraining the deaccessioning of artworks from public collections.[35] They also argue that war plunder was lawful when the acquisition was made or that existing legal instruments are not retroactive.[36]

The latter argument is the most powerful obstacle to the reparation of the cultural losses under consideration. The problem of the non-retrospective application of the law is embodied in the doctrine of inter-temporal law. This doctrine maintains that juridical facts must not be assessed on the basis of currently applicable international law rules but only on the law in force at the

33 For instance, the return of the *Mokamokai*, which was favoured by the city of Rouen, was opposed by the French government on the grounds that any item that is part of the national patrimony is inalienable (ibid.).

34 Van Beurden (2017: 117, 212 and 236) (demonstrating that the number of objects returned by former colonisers differs greatly from what former colonies ask for and that the quality and quantity of the objects conserved in the museums of former colonies is less than that conserved in the major European museums); and Sarr and Savoy (2018: 3) (asserting that '90 percent to 95 percent of African heritage is to be found outside the continent in the major world museums').

35 The principle of inalienability of public collections, which makes the deaccessioning of artefacts by museums impossible, finds its reason, at least in civil law countries (e.g. Italy, France and Spain), in that museum collections belong to the indisposable *domain public* (Boussard, 2021; Schönenberger, 2009: 161). By contrast, in England, the British Museum, the British Library, the Tate Gallery and the National Gallery are subject to bans on disposal defined by specific legislative acts (Hausler, 2021).

36 Former colonies urged to include a retroactivity clause in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 so as to allow its application to colonial objects. This initiative failed owing to the opposition of former imperial powers.

respective time.[37] However, it has been contended that this argument does not hold with respect to past illegitimate acts of deprivation, the effect of which continues today. In these cases, the issue of retroactivity should not impede the effective and adequate reparation of the wrongful acts committed (Francioni, 2007: 43; Stahn, 2020a: 801).

It must be stressed, however, that these legal barriers become relevant only when restitution is sought through litigation. In democratic societies, litigation before domestic courts represents the most obvious option for litigants for the resolution of all types of disputes, including cultural heritage-related disputes. There are obvious reasons for resorting to litigation. Firstly, it proceeds in a seemly and efficient manner based on well-established rules of procedure and concludes with a ruling that can be enforced through the ordinary state machinery. Second, the judiciary provides neutrality and impartiality. Third, recourse to litigation may exert pressure on the defendant, who often becomes inclined to provide a constructive response (Chechi, 2020: 718-719).

Yet litigation is not always the most suitable method to settle claims concerning the return of colonial objects. The reason is that litigation presents various drawbacks (Chechi, 2014b: 140-145). Access to courts is the first problem. Lawsuits may be barred by the expiry of limitation periods. Also, courts may dismiss a restitution claim if the judge of the forum concludes that the claimant is not a proper plaintiff under the law of the forum or does not have an interest in the subject matter of the litigation (Prott, 1989: 247-248). The second barrier is represented by the burden of proving title. Claimants must show that they have a superior right of possession to requested cultural objects in order to prevail over the possessors. Third, resort to litigation entails considerable economic and human expenses. Indeed, litigants have the burden of paying the legal costs for expensive and lengthy proceedings. Fourth, the recognition and enforcement of a judgment of national court in a foreign jurisdiction often entail difficulties for the winning party. Fifth, litigation does not provide secrecy and confidentiality. Sixth, courts may lack independence. Even when the courts in the country where a claimed object is located agree to consider the claim, a sense of judicial loyalty to the forum state's interests is likely to influence the outcome of proceedings. Seventh, not only do judges lack experience in art and cultural matters, but they are also unwilling to consider the interests of certain stakeholders. The interests of indigenous groups, for instance, cannot be easily handled in legal terms. Moreover, judges are unable to investigate what the requested objects actually mean to indigenous peoples and to take account of the traumas deriving from past misappropriation. Courts are not concerned with historical research; they focus on providing remedies to claimants (O'Donnell, 2019: 129-130). Eighth, as an adversarial system, litigation entails zero-sum solutions that often cause antagonism between winners and losers.

37 *Island Palmas (The Netherlands v. USA)*, Arbitral Tribunal, Award of 28 April 1928, United Nations Report of International Arbitral Awards, Vol. 2, 1949, 829.

6 The return of colonial objects. What role for restorative justice, transitional justice and ADR mechanisms?

It follows from the foregoing that the legal path is not always suitable for the settlement of disputes over the return of colonial objects. It is for this reason that claimants increasingly opt for ADR mechanisms. The following sections outline these procedures and submit that claimants could achieve the meaningful return of colonial objects by importing into such non-contentious procedures the values, principles and objectives that typically characterise restorative justice and transitional justice. This article proposes to link ADR mechanisms with restorative justice and transitional justice processes because, by operating together, they can facilitate the return of colonial objects – an objective that cannot be secured through adjudicative and adversarial mechanisms.[38]

6.1 ADR mechanisms

The methods of dispute resolution can be divided into two categories: legal methods, such as litigation and arbitration, which result in binding decisions, and diplomatic (or ADR) methods, such as negotiation, mediation and conciliation, which allow the parties to retain control over the procedure and to achieve win-win solutions. As opposed to the former, the latter mechanisms – which will be outlined in what follows – facilitate the cooperation (rather than confrontation) between the parties, which may accept or reject a proposed settlement (Von Schorlemer, 2007: 76).

Negotiation can be defined as the voluntary process that allows the parties to share information, engage in discussions or exchange writings in order to arrive at a compromise settlement agreement. As such, it allows like-minded disputants to create win-win solutions whereby creative and mutually satisfactory outcomes are envisaged (Fellrath Gazzini, 2004: 62) and legal obstacles are set aside (Cornu & Renold, 2009: 517). Various instances demonstrate that negotiation has been used extensively with regard to restitution requests. For example, in 2008 Italy returned to Libya a marble sculpture, known as the 'Venus of Cyrene', by also apologising for the 'deep wounds' inflicted on the people residing in this once Italian colony in the period 1911-1943.[39] Moreover, in the 1970s the Netherlands and Belgium returned numerous objects to their former colonies (Indonesia and the Democratic Republic of the Congo, respectively) through inter-state negotiations (Van Beurden, 2017: 123-185).

Mediation entails the intervention of a neutral third party for the purpose of assisting the litigants to reach a mutually satisfactory agreement in a flexible,

38 It should be noted that national criminal justice authorities do not resort to ADR means when dealing with the (alleged) perpetrators of ordinary crimes. This is because crime is more than a dispute between parties, given that there is also a public safety interest in ensuring that responsibility is established, punishment imposed, harm repaired and future occurrences prevented (UNODC, 2020: 12).

39 The 'Venus of Cyrene' was removed in 1915 from the ancient Greek settlement of Cyrene following the Italian invasion of 1911. The terms of the restitution were established by the Italian and Libyan governments with two accords signed in 1998 and 2000 (Chechi, 2008).

expeditious, confidential and less costly manner, including by taking extra-legal factors into consideration. It is when the antagonism between the parties impedes direct negotiations that a mediator is essential to assist in de-escalating contention and promoting dialogue and reciprocal concessions. Therefore, the mediator (which is selected by the parties) only controls the procedure, ensures that it is structured fairly, and does not impose any decisions on the parties. According to Norman Palmer,

> Mediation seeks to resolve disputes, not according to the legal analysis and redress of past conduct, but according to the identification of common ground, the development of future relationships and the attainment of future goals (Palmer, 2007: 107).

It is not easy to discover the existence of a mediated claim. This is due to the confidentiality that mediation guarantees the parties. The dispute between the Natural History Museum of London and the Tasmanian Aboriginal Centre is illustrative. This dispute concerned not only the return of a collection of human remains but also the question of whether the museum could carry out scientific tests – including extractions of DNA, chemical analyses of slivers of bone and scans – before the return. Although the parties first resorted to litigation in the United Kingdom, this dispute was eventually resolved through mediation,[40] whereby the parties jointly determined the extent of permissible scientific investigations on the remains at stake and on their return.[41]

Conciliation involves an independent commission or an individual (selected by the parties) that acts as a third party. The task of the conciliator is to investigate the dispute and propose a solution to the parties. This implies a more in-depth study of the dispute than in mediation, combined with the independence of the third party as it is found in judicial adjudication, but aiming for an amicable settlement that culminates in a final recommendation, which can be accepted or rejected by the parties. To the knowledge of the present author, no cases concerning colonial objects have been resolved through conciliation. Instead, conciliation is often employed to resolve Holocaust-related claims. In effect, following the adoption of the Washington Principles on Nazi-confiscated art in 1998,[42] some states have set up non-forensic bodies to resolve Holocaust-related claims that provide a scheme of resolution that, to some extent, resembles conciliation.[43] Arguably, the most

40 This confirms that recourse to litigation alone may exert pressure on the defendant.

41 Bandle, Chechi & Renold (2012).

42 These non-binding principles, which were adopted at the Washington Conference on Holocaust Era Assets, organised by the United States in December 1998, call upon states to assist the return of stolen artworks to their original owners. Principles 8 and 9 affirm that 'steps should be taken expeditiously to achieve a just and fair solution', whereas Principle 11 establishes that '[n]ations are encouraged to develop … alternative dispute resolution mechanisms for resolving ownership issues'.

43 These are the Spoliation Advisory Panel (United Kingdom), the *Kommission für Provenienzforschung* (Austria), the *Commission d'indemnisation des victims de spoliations* (France), the Restitution Committee (the Netherlands), and the *Beratende Kommission* (Germany).

concerned (former colonial) states could establish similar bodies with the task of dealing with the return of colonial objects.

6.2 Restorative justice and transitional justice to exploit the full potential of ADR mechanisms

It follows from the foregoing that ADR mechanisms can be regarded as the most suitable means to settle disputes over the return of colonial objects. This is because ADR procedures combine important virtues. The first advantage resides in the parties' power to tailor the settlement process. The parties can make sure that the process focuses on their interests, objectives, needs and the circumstances of the dispute. This means that the parties can set aside all existing obstacles posed by ordinary laws, most notably the expiry of limitation periods, the non-retroactivity of the law, and the legal rights of the parties as conferred by existing domestic legislation. This also means that sensitive non-legal issues, such as moral or ethical considerations or historical, emotional, spiritual factors, can be accommodated within the process. Accordingly, ADR means permitting the resolution of cases concerning colonial objects by prioritising the factual circumstances of the taking, to the ensuing damage, and to the meaning that the reclaimed objects have for the claimants' culture, memory and identity. Second, ADR procedures are in general speedier and less costly.[44] Third, non-judicial mechanisms provide for flexibility and creativity in that they broaden the number of solutions available to the parties beyond simple restitution. Fourth, extra-curial resolution ensures confidentiality and privacy. Fifth, ADR entails neutrality and fairness. This is because disputants can appoint independent specialists with expertise in the specific subject matter at issue, as well as knowledge of the cultural and linguistic backgrounds of the parties. Finally, ADR methods allow the parties to achieve the objectives typically pursued through restorative and transitional justice processes: (i) dialogue;[45] (ii) truth; (iii) reparation; and (iv) reconciliation. In effect, the non-adversarial dispute settlements mechanisms outlined allow the parties to establish a conversation over historical cases of misappropriation with a view to acknowledging the circumstances that led to the misappropriation and the crimes associated with it. In addition, ADR means also allow the parties to find an agreement on how to repair the harm caused (e.g. through the return of the disputed objects or alternatives to it, including compensation and memorialisation). Finally, such procedures can bring about the reconciliation between non-western former colonies and indigenous peoples, on the one hand, and former colonisers and their museums, on the other.

However, it should be stressed that ADR mechanisms are not free from flows. The main weakness is that they are consensual in nature. In other words, a party to a dispute cannot be forced to resort to negotiation, mediation or conciliation. A party can hence choose to reject or ignore its counterpart's proposal to settle the

44 However, it should be noted that many inter-state negotiations concerning the return of colonial objects have lasted a long time (Van Beurden, 2017: 214).

45 As noted earlier, given that victims and colonisers are no longer alive, dialogue can be established between the descendants of the persons that experienced the misappropriation of the colonisers and the collecting institutions that received the objects concerned after the removal, even if such institutions had not been directly involved in the misappropriation.

dispute through ADR. The consensual nature of these mechanisms explains why many claims involving colonial objects remain unresolved, such as the cases of the *Hoa Hakananai'a*[46] and of the *Ségou* treasure.[47]

Arguably, this drawback – the voluntary nature of ADR processes – could be addressed if claimants would offer to holders of claimed colonial objects incentives as well as persuasive evidence demonstrating that such artefacts should be returned. Solely spotlighting the presence of colonial objects and requesting their return is not sufficient. Nations and peoples should, first, provide evidence that the claimed objects were removed illegitimately from the place of origin–by force, unequal treaty, theft, deception or without compensation. Second, they should demonstrate that there is a 'cultural context' where the claimed objects can meaningfully return, namely the patrimony of a collective group, be it a nation or a community within a nation, where they can be safeguarded, exhibited, made available to specialists for educational and scientific purposes, or used in rituals according to the culture and belief system from which the objects came, even if such rituals may lead to their consumption or destruction (Chechi, 2014b: 308). Third, claimants should persuade holding institutions to settle a colonial-era restitution claim through an ADR procedure involving restorative justice and transitional justice experts. These specialists could not only facilitate the dialogue between the parties about their respective interests and needs but, arguably, also identify a number of guiding principles to be applied in the ADR process selected by the parties. These principles could include the following: (i) ADR procedures should be designed to fit the needs, capabilities and culture of the parties; (ii) communication between the parties should be direct and authentic; (iii) holding institutions should acknowledge that the removal of claimed colonial objects was one of the effects of colonisation; (iv) holding institutions should tolerate gaps or ambiguities in the provenance of claimed objects owing to the passage of time; (v) the parties should acknowledge and accept each other's views, needs and emotions relating to claimed objects; (vi) holding institutions should acknowledge that the restitution of colonial objects allows the restoration of claimants' dignity, empowerment and self-determination; (vii) the unconditional return of claimed objects should be regarded as the preferred mode of reparation; (viii) the parties can reach mutual understanding and agreement on other forms of reparation (taking into account the facts and circumstances surrounding the specific case), including loans, the production of replicas, transfer to a third party and shared ownership; (ix) the parties should rigorously honour and implement the agreement concluded at the end of the procedure.

46 This is one of Easter Island's stone giants, which was removed by a British naval captain in 1868. The British Museum, where the statue has stood for over 150 years, has so far rejected all restitution claims submitted by the Chilean government and of the Rapa Nui, the indigenous inhabitants of Easter Island (Zakaria, 2018).

47 In 1890, a treasure of jewels and manuscripts was removed from the royal palace of Ségou, the then capital of the Toucouleur empire, in present-day Mali, by the French army. The descendants of the Toucouleur empire have requested various French museums to return these objects since 1944 (Sarr & Savoy, 2018: 51-52).

In sum, ADR procedures can become imbued with the values, principles and objectives of restorative justice and transitional justice only with the conscious engagement of the parties concerned. In effect, it must be conceded that the goals of restorative justice and transitional justice have been achieved unwittingly in past settlements (Visconti, 2022).

6.3 An overview of ongoing initiatives: anything new under the European sun?

The debate over the fate of colonial objects is currently steady but uneven. As will be demonstrated in what follows, whereas the authorities of certain former metropolitan states seem committed to establishing proactive and serious strategies to repatriate permanently colonial objects, others continue to approach return claims on a case-by-case basis. The latter is the case of Italy (Visconti, 2021), but even France, which provided the first, vital stimulus to this debate, has yet to take decisive steps forward. As well known, French President Emmanuel Macron announced his intention to facilitate the return of looted objects to former French colonies in sub-Saharan Africa in 2017.[48] Accordingly, he commissioned a study to Senegalese economist Felwine Sarr and French art historian Bénédicte Savoy. Released in 2018, the Sarr-Savoy Report proposed a chronological, juridical and financial framework through which the colonial objects that were removed through violence or situations of unequal relations could be returned to sub-Saharan African states. However, as hinted previously, the proposals purported by the Sarr-Savoy Report have not been implemented to date.[49]

In Germany, the culture ministers of the sixteen states agreed on two sets of guidelines in March 2019: the 'Framework Principles for Dealing with Collections from Colonial Contexts',[50] and the Guidelines 'Care of Collections from Colonial Contexts'.[51] Both purport the adoption of a novel approach based on dialogue and reconciliation with former German colonies. Furthermore, they promised to create the conditions for the restitution of cultural objects taken 'in ways that are legally or morally unjustifiable today', notably transparency and increased provenance

48 Retrieved from www.elysee.fr/emmanuel-macron/2017/11/28/discours-demmanuel-macron-a-luniversite-de-ouagadougou (last accessed 25 October 2022). This proclamation was unexpected given that French museums, by virtue of the principle of inalienability, had routinely and categorically refused to return anything to former colonies (Lecaplain, 2017).

49 In effect, the French government resorted again to the method of the law of exception (according to which the principle of inalienability can be set aside on a case-by-case basis) in 2020 for the restitution of 26 objects from Paris's Musée du Quai Branly to Benin (see Sayar, Desboeufs, Renold, *Affaire Trésor de Béhanzin*) and of a sabre and a scabbard to Senegal from the French Army Museum (see Sayar, Desboeufs, Renold, *Sabre de El Hadj Omar Tall*). This method was used in the past for the restitution of Maori heads housed in the French museums (n 26), and the mortal remains of the person known by the name of Saartjie (Sarah) Baartman (Renold, Chechi, Renold, *Case Sarah Baartman*).

50 Retrieved from www.disputeresolutiongermany.com/2020/08/art-law-contact-point-for-collections-from-colonial-contexts-established/ (last accessed 28 November 2022).

51 Retrieved from www.museumsbund.de/publikationen/guidelines-on-dealing-with-collections-from-colonial-contexts-2/ (last accessed 28 November 2022). The first version of the Guidelines was published in May 2018.

research.[52] For the implementation of these standards, the German government created a centralised authority to handle information requests about colonial-era objects in German museums, as well as the Agency for International Cooperation between Museums. As part of this same strategy, in July 2022 the German government signed a joint declaration with the Nigerian government on the return of more than one thousand Benin Bronzes.[53]

In the Netherlands, a set of guidelines, 'Return of Cultural Objects: Principles and Process',[54] was adopted in March 2019 for the National Museum of World Cultures.[55] These guidelines include a 'commitment to transparently address and evaluate claims for the return of cultural objects according to standards of respect, cooperation and timeliness' and, importantly, signal a shift 'from case-by-case scenarios' to 'more systematic and equitable' approaches. In March 2020, the Dutch culture minister returned a gold-inlaid kris (a large dagger) to the Indonesian ambassador on the basis of research conducted by the National Museum of World Cultures. It belonged to Prince Diponegoro, a Javanese rebel leader and Indonesian hero who waged a five-year war against Dutch colonial rule from 1825 to 1830 (Hickley, 2020).

In Belgium, a task force, established in 2021 to address the issue of the colonial collections found in museums and private collections, published the report 'Ethical Principles for the Management and Restitution of Colonial Collections in Belgium'. This stressed the importance of ethical considerations as opposed to a strictly legalistic approach and provided a number of recommendations for Belgian heritage institutions with colonial collections.[56] According to these recommendations, Belgian institutions should commit to: (i) establishing a comprehensive overview of their (colonial) collections; (ii) developing (or improving) provenance research; (iii) improving communication and cooperation with communities of origin; and (iv) determining the context of origin of objects and the circumstances of the removal.[57]

In the United Kingdom, guidance on restitution and repatriation for English museums was published in August 2022 by the Arts Council England ('Restitution and Repatriation: A Practical Guide for Museums in England').[58] This document offers guidelines to museums on provenance research and on the steps that should be carried out by museums following receipt of a return claim: 1. developing an understanding of the object(s), the parties and the possible need to involve third party stakeholders; 2. working through the formal claim, including information

52 See the website 'German Contact Point for Collections from Colonial Contexts' at: https://www.cp3c.org/index.html.

53 'Historic Return of Bronzes to Nigeria' 1 July 2022. Retrieved from www.auswaertiges-amt.de/en/aussenpolitik/themen/-/2540358?s=09 (last accessed 25 October 2022).

54 Retrieved from www.tropenmuseum.nl/en/about-tropenmuseum/return-cultural-objects-principles-and-process (last accessed 25 October 2022).

55 This was founded in 2014 by a merger of the Tropenmuseum in Amsterdam, the Museum Volkenkunde in Leiden and the Afrika Museum in Berg en Dal. It also oversees the Wereldmuseum in Rotterdam.

56 Retrieved from https://restitutionbelgium.be/en/report (last accessed 25 October 2022).

57 Retrieved from https://restitutionbelgium.be/en/report#conclusions (last accessed 25 October 2022).

58 Retrieved from www.artscouncil.org.uk/publication/restitution-and-repatriation-practical-guide-museums-england (last accessed 25 October 2022).

sharing, record keeping and communications; 3. assessing the claim based either on legal or ethical factors (the significance of the object to the claimant, how the object was removed from its place of origin or from a past owner, how the museum has engaged with the object, and who is raising the claim). This document, however, does not have an impact on the statutory norms that currently prevent institutions such as the British Museum and the Victoria & Albert Museum from deaccessioning their collections.[59]

All in all, these developments demonstrate that museums and their constituencies are aware that the consequences of the dispossession, violence and atrocity committed by colonialists are not wholly in the past, and that return claims are not iconoclastic attacks but occasions to repair wrongs and establish the truth about such historic crimes (Hicks, 2021). However, it is too early to draw conclusions as to whether these developments might bring about concrete strategies for the permanent return of colonial objects to the nations of Africa, America, Asia and Oceania.

7 Instead of a conclusion

This article endeavoured to show that there are no hard law rules to deal with the appropriation of artefacts in colonial contexts and that until now a strategy – whether at the national or international level – to address the restitution claims of former colonised peoples has yet to emerge. In effect, the restitutions of colonial objects since the beginning of the decolonisation process have been piecemeal. As a result, numerous claimed items are still in the museums of former imperial powers. These objects testify to a chasm between the hopes and demands of former colonies and indigenous peoples and the responses of the museums of former colonisers (Van Beurden, 2017: 117, 236).

Moreover, by shedding light on the initiatives taken by a number of former metropolitan states, this article demonstrated that more and more museums seem increasingly eager to 'decolonise' their collections by questioning past acquisitions, modifying the presentation of artefacts, and facilitating the return of colonial objects removed illegitimately – taken by force, unequal treaty, theft or deception. It therefore seems safe to affirm that, on the whole, western museums are no longer reluctant to deal proactively and responsibly with the legacy of colonialism.

This article has also demonstrated that former colonies and indigenous peoples seeking to recover colonial objects should opt for ADR methods. The reason is that ADR mechanisms empower the parties to shift away from legalistic hurdles, to bring to the fore the narratives and interests of claimant peoples, as well as ethical and moral principles, and eventually to achieve mutually agreeable solutions. Moreover, this article emphasised that the nations and peoples seeking to recover

59 This argument has been routinely employed by these and other UK institutions to rebuff return claims. Therefore, it should not come as a surprise that in the UK much of the current debate over restitution revolves around the amendment of the domestic statutes that govern national museums. By contrast, there are few statutory restrictions for non-national museums and university museums in the UK.

colonial objects could exploit the full potential of ADR mechanisms only by importing into such processes the values, principles and objectives of restorative justice and transitional justice. Arguably, this course of action would allow claimants and collecting institutions to cope with the structural racism encoded in our societies and in our museums – one of the lasting legacies of the colonial era – and to avoid the use of forcible self-help by claimants. This is what happened at the Bibliotèque Nationale in Paris, where a Mexican lawyer stole an Aztec Codex to repatriate it to Mexico (Merryman & Elsen, 2002: 263), at the Musée du Quai Branly in Paris, where four activists took a 19th-century funerary post to return it to Chad (Azimi, 2020), and at the fictional Black Panther's Museum of Great Britain, where character Erik 'Killmonger' Stevens took a war hammer that had been removed by British soldiers from Wakanda, a fictional African country (Cascone, 2018).

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