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Legal issues in African art

Mary Rhoads Martin
University of Iowa

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LEGAL ISSUES IN AFRICAN ART

by

Mary Rhoads Martin

An Abstract

Of a thesis submitted in partial fulfillment of the
requirements for the Doctor of Philosophy degree in
Interdisciplinary Studies – Ph.D. degree in Art and Cultural Policy
in the Graduate College of
The University of Iowa

May 2010

Thesis Supervisor: Professor Christopher D. Roy

ABSTRACT

This dissertation surveys the legal and ethical implications of the journey of artworks from Africa to Europe and the United States, beginning with events of the nineteenth century and continuing to the present. It addresses the laws regarding works of art from undeveloped countries, with focus on sub-Saharan Africa. The laws offer insight into what cultural value has been assigned to African art, and the changing laws and ethical norms reflect how African art has been perceived at different times.

This work also discusses to what extent the unique aspects of African art should affect laws protecting the cultural property of sub-Saharan African countries. The dissertation focuses especially on Nigeria, the home of the Kingdom of Benin. It also addresses the legal issues of art from Mali, Cameroon, and the Democratic Republic of the Congo. It shows when, where, and how the legal issues for sub-Saharan art are similar to, or different from, the legal issues for other regions.

Three spheres of academic endeavor were pursued in producing this work: African art history, ethics, and legal studies. From the combination of these areas emerges a narrative with a broad variety of events and people. Although the story is told chronologically, it is based on a set of legal and ethical issues. The common issues fall into four categories: plunder and illegal import/export; ethical collection and display; authenticity and forgery; and ownership and copyright.

African artworks found their way to the West in the nineteenth century. There they were considered “savage fetishes” and put in ethnographic museums. In the twentieth century, Western artists such as Picasso were inspired by the aesthetics of

African art, and private collectors began acquiring it. Now the world's major art museums display African art.

Since World War II, important international conferences have established an increasing level of protection for cultural property, and thus for African art. International conventions have not prevented illicit art traffic, however. The story of the Afo-A-Kom's return to Cameroon in 1975 illustrates the diverging interests of collectors, museums, the public, and the source country.

Forgery has been an increasing problem for African art throughout the twentieth century and into the twenty-first century, fed by the high prices that authentic works receive in auction and at galleries. In 1991, for example, Sotheby's sold a forged terracotta ram from Mali for more than a quarter of a million dollars.

Today's attitudes and laws concerning African art reflect a complex interplay of historical events and legal changes over time. From the nineteenth century to current times, some progress has been made. Key issues remain from colonial times, however. Despite a growing body of international and national legislation to protect cultural property, African art is still seen by some as a commodity that can be stolen, illegally exported and imported, forged, destroyed or censored.

Abstract Approved: _____
Thesis Supervisor

Title and Department

Date

LEGAL ISSUES IN AFRICAN ART

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Mary Rhoads Martin

A thesis submitted in partial fulfillment of the
requirements for the Doctor of Philosophy degree in
Interdisciplinary Studies – Ph.D. degree in Art and Cultural Policy
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The University of Iowa

May 2010

Thesis Supervisor: Professor Christopher D. Roy

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Graduate College
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CERTIFICATE OF APPROVAL

PH.D. THESIS

This is to certify that the Ph.D. thesis of

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has been approved by the Examining Committee
for the thesis requirement for the Doctor of
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To Mom, Aunt Meg and Trevor

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CHAPTER I: INTRODUCTION

The nineteenth century was marked by colonial expansion, and with the spread of European colonial interests came the growth of a massive audience for culture. An increasingly ravenous populace hungered for literature, music, art, and scientific studies. As military men and captains of capitalism pursued Africa (figs. A1-A5) and Asia for political and economic reasons, scientists and interested parties delved into the study of the flora, fauna, art, religion, and music of newly acquired territories. Given the combination of intellectual curiosity and political expansion, it is no wonder that many cultural artifacts were removed to Europe during this period. The removal of African artworks from their source countries reflects a sort of wholesale cultural piracy on the part of the colonizing powers that has not been wholly admitted to, even to this day. Study of the works that were taken reveals complex and difficult challenges regarding where they should be, and who should own them.

The history of an object's ownership is often more complex than the artwork's meaning. In this, the history of arts parallels the history of politics, social upheaval, and governmental change. This dissertation will survey the legal and ethical implications of the journey of artworks from Africa to Europe and the United States, beginning with events of the nineteenth century and continuing to the present. It will address the laws regarding works of art from undeveloped countries, with focus on sub-Saharan Africa. The laws offer insight into what cultural value has been assigned to African art, and the changing laws and ethical norms reflect how African art has been perceived at different times.

This dissertation will focus especially on Nigeria (fig. A6), the home of the Kingdom of Benin. It will also address the legal issues dealing with Mali (fig. A7), Cameroon (figs. A8-A9), and the Democratic Republic of the Congo (fig. A10). It will show when, where, and how the legal issues for sub-Saharan art are similar to, or different from, the legal issues for other regions. It will also discuss what is unique about African art, and to what extent this should affect laws protecting the cultural property of sub-Saharan African countries. This work combines an interest in legal issues with an interest in African art. It aims to deepen the understanding of African art in the way that scholars such as John Merryman have done for legal issues in Western art.

Nothing comprehensive has been written before on this topic, which is influenced by three spheres of academic endeavor: African art history, ethics, and legal studies. Pertinent laws and case studies have been researched; artworks and exhibits of African art have been examined; historical records and documents have been studied. This has been done to get a sense of the problems and also what solutions have been tried and how effective they have been. From the combined study of these areas emerges a narrative with a broad variety of events and people. To combine the historical account with the legal and ethical issues involved, the following chapters are arranged in order of time, beginning with European discovery of the continent of Africa and its rich artistic tradition. Although the story is told chronologically, it is based on a set of legal and ethical issues. The common issues fall into four categories: plunder and illegal import/export; ethical collection and display; authenticity and forgery; and current practices regarding ownership and copyright. The following section will review useful scholarship that explores these issues.

Review of Literature: Introduction

No published research has done a thorough examination of all aspects of legal issues in African art. Some books address a single topic, such as illicit excavations of archaeological works in sub-Saharan Africa. Others have dealt with the impact of colonialism on African art. Still other works have covered many issues, but have focused their research on different geographical areas, such as Native North America or Europe. Because of this, the reference sources for this dissertation are varied.

One excellent reference on the overall issues in art and law is *Law, Ethics and the Visual Arts*.¹ The most recent (fifth) edition is compiled by professors John Henry Merryman, Albert E. Elsen, and Stephen K. Urice. The first chapter of this text draws the reader in with fascinating cases of the Napoleonic plunder and the National Socialists' collecting of art. One strong point of this work is that it includes some legal theories and suggestions for solutions to various legal problems. It also contains articles from a variety of perspectives, and states applicable laws throughout the text. In this way, readers can gain insight from the scholars who wrote about the cases and issues, but can also draw their own conclusions based on the facts and the laws. The book is thorough in terms of legal issues in United States law. However, it deals with only a few African-related issues, including the cases of the Afo-A-Kom (fig. A11) and the bust of Nefertiti (fig. A12).

Plunder and Illegal Import/Export

The Merryman book includes discussions of plunder and looting, topics that have long fascinated historians and art historians. There is extensive literature about art theft

¹ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics, and The Visual Arts*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007).

and relocation, especially concerning the World War II era. In part, these works influenced the research for this dissertation to delve into similar topics with African art.

Plunder as an element of war probably began in prehistoric times. The wholesale removal of art from the kingdom of Benin, now part of Nigeria, is the first major event of this dissertation. As Paula Girshick Ben-Amos, a professor of anthropology and African Studies at Indiana University, states in *The Art of Benin*, “art of the Benin Kingdom came to public and scholarly attention in the West in 1897 when members of a British Punitive Expedition brought out thousands of objects as war booty.”² Research about Benin has addressed its culture and sophisticated art, and also what happened to its artworks during and after the British invasion. In *Benin Art*, published in collaboration with photographers W. and B. Forman, art historian Philip Dark notes the quality of the art found by the British:

The members of the Punitive Expedition were amazed to find in Benin City an enormous quantity of bronze castings, ivory carvings and other art objects. Unfortunately, a fire broke out during the capture of the City which undoubtedly consumed a number of them, particularly wood carvings. Nevertheless, what remained was a massive testimony to the existence of a long and flourishing art tradition.³

Ben-Amos’s work also emphasizes the loss of historical record when the palace was burned, writing that “this important edifice was destroyed by fire in 1897 and thus we can only know about it through these accounts and artistic descriptions.”⁴

² Paula Girshick Ben-Amos, *The Art of Benin* (Washington D. C.: Smithsonian Institution Press, 1995), 9.

³ W. and B. Forman, and Philip Dark, *Benin Art* (London: Batchworth Press Ltd., 1960), 9.

⁴ Paula Girshick Ben-Amos, *The Art of Benin* (Washington D. C.: Smithsonian Institution Press, 1995), 41.

Henry Ling Roth's *Great Benin: Its Customs, Art and Horrors* was published in 1903, six years after the Punitive Expedition. This work outlines the history of Benin through European eyes, starting with the first Portuguese visitors in the 15th century, and describing the grandeur of the city of Benin before it was sacked. The "horrors" in the book's subtitle refer not to British brutality, but rather to cultural practices of the Benin people that included, according to Roth, human sacrifice. Perhaps the most important parts of *Great Benin*, for this dissertation, are the appendices that concern the Punitive Expedition itself. They include the treaty made by the British with a representative of Oba Ovonramwen, the king of Benin, the diary of Felix Roth, a surgeon with the English expedition, and a description of the surrender and trial of the king after the Punitive Expedition. Roth expresses no discomfort with the British behavior in Benin.⁵

After Benin, the next large-scale art plunder within the range of this dissertation occurred during World War II. One useful reference is *The Spoils of War*.⁶ Edited by Elizabeth Simpson, this book includes papers from a 1995 symposium on cultural property that was displaced by the events of World War II. The first part of this text outlines the extensive losses by country, and the second section discusses the applicable laws and directives. The final sections deal with the reappearance of cultural property and current searches for missing works. In her paper, "World War II and the Displacement of Art and Cultural Property," Lynn Nicholas theorizes that the subject of

⁵ Yet, it seems unlikely that Roth would have gone to his neighbors' house and, without permission, taken the art from their walls or the chairs from their living room!

⁶ Elizabeth Simpson, ed., *The Spoils of War* (New York: Harry N. Abrams, 1997).

World War II looting is so fascinating because of its unprecedented scale, and the level of professionalism by which art works were removed and preserved.⁷

The Rape of Europa: the Fate of Europe's Treasures in the Third Reich and the Second World War, also written by Lynn Nicholas, documents the political backdrop that enabled the large-scale removal of European art.⁸ Nicholas describes how the German government enacted laws to control its national culture, including "a new entity which would eventually regulate everyone connected with the arts: the *Reichskulturkammer*, or Imperial Chamber of Culture. Membership in this umbrella organization was required of all artists, writers, musicians, art dealers, architects, and so forth."⁹ Unlike works that consider specific collections, *The Rape of Europa* outlines the overall manner by which art was taken, from the early Nazi confiscations in 1933 all the way up to 1994. This well-organized and systematic procedure stands in sharp contrast to the random pillage of art from Africa.

In their book, *Beautiful Loot: the Soviet Plunder of Europe's Art Treasures*, Konstantin Akinsha, a Ukrainian art historian, and Grigorii Kozlov, a former USSR museum official, discuss the looting of Germany by the Russians and also, to some extent, the looting of Russia by the Germans.¹⁰ This book outlines the World War II and Cold War political chess game that Russia and Germany played with each other, using art

⁷ Lynn Nicholas, "World War II and the Displacement of Art and Cultural Property," *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, 1997), 39.

⁸ Lynn Nicholas, *The Rape of Europa: the Fate of Europe's Treasures in the Third Reich and the Second World War* (New York: Vintage Books, 1994).

⁹ Lynn Nicholas, *The Rape of Europa: the Fate of Europe's Treasures in the Third Reich and the Second World War* (New York: Vintage Books, 1994), 9.

¹⁰ Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot: the Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995), 15.

as pawns. The Nazis and Soviets both wanted to display their political power in “supermuseums,”¹¹ massive collections of world art that they acquired through organized looting. How did their approach differ from those for other major museums, such as the Louvre and the British Museum? The difference is that objects originally placed in today’s “encyclopedic” museums¹² were removed from the source countries with some sort of permission, a firman or a *partage* agreement. These agreements were often legal, but in practice, many works were acquired from deceit that was not that much different from pure looting. One can understand the desire of the Egyptians and Greeks to get their artwork back to their own countries, and the continuing controversy over whether artifacts such as the Elgin Marbles should remain in museums such as the British Museum.

Looted artworks, some of them currently found in “encyclopedic” museums, provide the topic of Sharon Waxman’s recent book, *Loot: The Battle over the Stolen Treasures of the Ancient Art World*. It deals with issues similar to those in this dissertation, but limits its scope to the countries Egypt, Italy, Greece and Turkey. The text switches back and forth between nineteenth-century discoveries and the current climate of opinion regarding where objects such as the Rosetta Stone should reside. Waxman describes the European practice of bringing trophies of conquest home. “Except for the Turks, non-Europeans did not enter Europe. And after conquering foreign cultures, Europe brought back home trophies that it desired, along with slaves,

¹¹ Ibid., 33.

¹² James Cuno, *Who Owns Antiquity?* (Princeton: Princeton University Press, 2008), xix.

spices, treasures, and raw materials.”¹³ In Egypt, however, the European explorers tried to get a firman, or the legal right to their discoveries. They also obtained authorization for their excavations. Waxman writes:

Borchardt’s excavation was an authorized one, and the terms of his digging were set under the system of *partage*, French for “division,” from the verb *partager*, “to share.” The excavator would share his finds with Egypt in a process conducted by an “Egyptian” official who was in fact, French. Egyptian authorities would have first choice and could rule out as national treasures anything they deemed too important to leave the country.¹⁴

The ways in which cultural artifacts were removed from Egypt, Turkey, Greece and Italy, differ greatly from the methods used in Nigeria, Mali, and the Congo. There, heavy taxation and violent military actions were often used to take such items. The discrepancy in technique may best be explained by racism and greed.

Tightly bound up with the issues of theft or plundering is illegal exportation and importation. *Plundering Africa’s Past*, edited by Peter R. Schmidt and Roderick J. McIntosh,¹⁵ concerns the problems of illicit trade and its relationship to the looting of African art. It contains papers by anthropologists, archaeologists and art historians, including Peter Schmidt, Roderick McIntosh, Henry Drewal, dele jegede, and Samuel Sidibé. Other articles are by lawyers, ambassadors and journalists, such as Maria Papageorge Kouroupas, Robert R. LaGamma, and Michel Brent.

In his article, “The Illicit Trade in African Antiquities,” journalist Michel Brent looks at the reasons why laws have been ineffective:

¹³ Sharon Waxman, *Loot: the Battle over the Stolen Treasures of the Ancient World* (New York: Henry Holt and Company, 2008), 4.

¹⁴ *Ibid.*, 56-57.

¹⁵ Peter R. Schmidt and Roderick J. McIntosh, eds., *Plundering Africa’s Past* (Bloomington & Indianapolis: Indiana University Press, 1996).

There is no doubt that if this illicit trade continues on the European side of the Atlantic without being disturbed, it is largely thanks to a kind of legal black hole. The exportation of works of art may be forbidden in Africa, but their importation into Europe is not forbidden. Add to this the fact that in Belgium the possession of a stolen object can be redressed by law only if a complaint is lodged within three years of the date of the theft you will understand why the country has become—with Switzerland—the hub of the illicit trade in African objects as well as many other classes of art.¹⁶

While the problems have been written about in detail, few solutions are suggested.

According to Kouroupas, Executive Director of the Cultural Property Advisory

Committee for the United States Department of State, laws offer a partial answer:

It becomes increasingly clear that laws, while of absolute importance, represent neither the only nor the ultimate answer to the problem of pillage and illicit trade. Although they must have a prominent and enforceable presence, laws are most effective in an integrated partnership with the policies and infrastructures that support the viability of museums and other cultural institutions in achieving the effective management of cultural resources.¹⁷

Kouroupas is correct about the need for museums and cultural institutions to agree with the laws and to work actively to solve the problem; however, collectors and private institutions must act in accordance with the laws and guidelines as well. Most of the articles in this book are a call to arms to stop the plundering of African objects. The text is most effective in alarming the reader about the extent and brutality of plundering.

In *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, editors Neil Brodie and Kathryn Walker Tubb survey worldwide occurrences of theft

¹⁶ Michel Brent, "The Illicit Trade in African Antiquities," *Plundering Africa's Past*, eds. Peter R. Schmidt and Roderick J. McIntosh (Bloomington & Indianapolis: Indiana University Press, 1996), 75.

¹⁷ Maria Papageorge Kouroupas, "U.S. Efforts in Protecting Cultural Property," *Plundering Africa's Past*, eds. Peter R. Schmidt and Roderick J. McIntosh (Bloomington & Indianapolis: Indiana University Press, 1996), 93.

from archaeological sites or illegal archaeological excavations.¹⁸ This book consists of papers given at a World Archaeological Conference in South Africa that dedicated itself to the topic of illicit trade in antiquities. In their introduction, Brodie and Tubb claim that much recent plunder of archaeological sites is commercially motivated, and that “stolen material needs a market.”¹⁹ They state that the situation has grown out of control, despite the UNESCO’s 1970 adoption of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. In their view, new technologies are making it ever easier to access remote areas and locate artifacts.²⁰

Several articles in the collection are relevant to this dissertation in a general way. Patrick J. Boylan’s article, “The Concept of Cultural Protection during Times of Armed Conflict: from the Crusades to the New Millennium,” starts with the famous case of the four bronze horses at Saint Mark’s Cathedral in Venice, Italy. Boylan’s account reminds one that a nation’s cultural objects were regularly stolen in wartime throughout history, and returned with the winner as a sign of the victory. Boylan points out that these horses became a symbol of victorious nationhood because they were taken more than once:

After being for almost six centuries among the best-known features of Venice, the four horses were in turn seized by France on the orders of Napoleon I and taken to Paris in 1798, only to be returned under the detailed terms of the peace treaty of the Congress of Vienna of 1815. (During World War II they were again to become a key State target for art

¹⁸ Neil Brodie and Kathryn Walker Tubb, eds., *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology* (London and New York: Routledge, 2002).

¹⁹ Neil Brodie, “Introduction,” *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London and New York: Routledge, 2002), 1.

²⁰ Neil Brodie, “Introduction,” *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London and New York: Routledge, 2002), 1.

looting—this time as a part of the ‘wants’ list of Hitler’s art collecting squads.)²¹

The remaining sections of Boylan’s article discuss a variety of cultural reparations that were written into peace conferences. The article does not deal specifically with African art, but this absence points out the need for African art to be addressed. This is especially true when one considers how long Western art has been included in peace conferences, including the 1815 Vienna Conference that required France to return the Four Horses to Venice, Italy.

Brodie and Tubb’s collection is interesting because it not only outlines the problems; it also suggests possible resolutions to the problems of art theft. Susan Keech McIntosh’s article “Reducing Incentives for Illicit Trade in Antiquities: the U.S. Implementation of the 1970 UNESCO Convention” mostly discusses United States involvement in preventing illicit trade. She starts with the hopeful assertion that the U.S. was “the first major art-importing country to ratify the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property”.²² She then describes the US importation restriction laws with countries such as Guatemala, Peru and Mali. McIntosh also outlines the impact of these laws on Mali, which is her area of specialty.

Another article of interest in this collection is “The Rape of Mali’s only Resource,” by Téréba Togola. While McIntosh points out positive aspects of the new

²¹ Patrick Boylan, “Cultural Protection in Times of Armed Conflict: from the Crusades to the New Millennium,” *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London and New York: Routledge, 2002), 1.

²² Susan Keech McIntosh, “Reducing Incentives for Illicit Trade in Antiquities: the US Implementation of the 1970 UNESCO Convention,” *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London and New York: Routledge, 2002), 241.

legislation to help deter site looting and destruction in Mali, Togola points out that Malian cultural property is vital for the nation because “Mali has no oil, no uranium and no diamonds.”²³ Togola suggests that the solution to Mali's lack of natural resources could be found in tourism.²⁴

In *Stealing History: Tomb Raiders, Smugglers, and the Looting of the Ancient World*, Roger Atwood examines the illicit acquisition of objects from Peru and Iraq, including the looting of art and archaeological objects.²⁵ Atwood asserts that looting in Iraq became rampant after the fall of Saddam Hussein. During Saddam Hussein's time, people caught looting were executed.²⁶ Atwood also describes the practices of professional grave robbers of Peru, known as *Huaqueros*,²⁷ detailing the entire process from the looting of objects to their sale in galleries. This work addresses the accords that the United States government has made with archaeologically rich countries. Atwood claims that shutting off the U.S. market does not stop the flow of illicit cultural property into galleries and museums, but merely redirects it:

As the U.S. government signs more treaties with source countries restricting the import of antiquities, American dealers have been losing business to their competitors in Europe for the best, fresh-from-the-ground artifacts. “My government is working to put me at a severe disadvantage to European art dealers. But is that going stop someone in Peru from

²³Téréba Togola, “The Rape of Mali's only Resource,” *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London and New York: Routledge, 2002), 250.

²⁴*Ibid.*, 254.

²⁵ Roger Atwood, *Stealing History: Tomb Raiders, Smugglers, and the Looting of the Ancient World* (New York: St. Martin's Press, 2004).

²⁶ *Ibid.*, 5.

²⁷ *Ibid.*, 19.

digging up tombs? Of course not. These pieces go to Europe now,” said Demirjian. “They will find their market.”²⁸

Gallery owners have made the same argument since the beginning of these treaties. The most engaging thrust of this book is Atwood’s discussion of the *Sipán* royal tombs in Peru. It is perhaps the most interesting because it follows the works from grave robbing to the 2002 formation of the Royal Tombs of Sipán Museum in Lambayeque, Peru.

Another concern arising from wartime plunder is that of repatriation, or the restoration of art to its source nation. The associated legal and ethical questions concerning the Parthenon, or Elgin, Marbles in England have been debated ever since they arrived on British soil. Within the scope of this dissertation is the question of whether art should be returned to Mali, Nigeria, or the Democratic Republic of the Congo. This will be discussed in Chapter Five.

The Ethics of Collection and Display

In addition to plunder or illegal removal of art, an important issue is how to collect African art ethically in the first place. Current thought about ethical collecting is discussed in Chapter Five. Related to that question is how ethically to display African art. When African art was first introduced to Europe, no thought was given to this issue. In fact, ethnographic exhibitions in the nineteenth century featured live people, as discussed in Chapter Two. However, there was an early dissenting voice in France. Quatremère de Quincy was an art critic and architectural historian of the early nineteenth century, who claimed that art must be seen in its context in order to be fully

²⁸ Ibid., 32.

appreciated and understood.²⁹ Quatremère was involved in Napoleon's removal of art from locations in Europe and their relocation to the *Palais du Louvre*, but he did not generally support moving artworks to museums. His theory was widely disputed in his time.³⁰ This theory was so controversial that Quatremère published his views anonymously in his *Lettres à Miranda sur le déplacement des monuments d'Art de l'Italie* in 1796.³¹ Today contextual analysis is often insisted on by art historians who specialize in non-Western art.

Even today, though, there is a wide variety of display approaches around the world. For example, the Pitt Rivers collection is organized in a similar way to the nineteenth-century museums, exhibiting like items crowded into iron and glass display cases. Newer, more innovative practices of showing non-Western art incorporate more open displays and explanations of the items' cultural context; three examples using this approach are the National Museum of African Art,³² the Museum of the American Indian,³³ and the University of Iowa Museum of Art.³⁴

The Scramble for Art in Central Africa, edited by Enid Schildkrout and Curtis A. Keim, is a collection of papers from a 1990 conference that reviewed earlier art

²⁹ Steven Adams, "Quatremere de Quincy and the instrumentality of the museum." *Working Papers in Art and Design*. Retrieved December 10, 2007 from <http://www.hert.ac.uk/artdes/research/papers/wpades/vol3/safull.html>

³⁰ Ibid.

³¹ Ibid.

³² See the collections website, <http://africa.si.edu/collections/index.html> for their display and explanations of cultural context.

³³ See the website, <http://www.nmai.si.edu/> for their display and explanations of cultural context.

³⁴ See the website, <http://www.uiowa.edu/uima/index.shtml> for their display and explanations of cultural context.

collecting³⁵. The text focuses mainly on nineteenth-century collecting of Central African Art, mostly from the former Belgian Congo, where methods differed greatly from the early collecting of Egyptian or Greek art and the system of *partage*. Schildkrout and Keim describe two waves of collecting art. In the first, the artworks were collected as “curios” or “fetishes”, and in the second, they were collected as trophies. In neither case was the art collected in a scientific manner:

Before the Berlin Conference of 1885, traders and explorers made haphazard collections of souvenirs and curios wherever they went. This was the first stage of collecting beyond the coast, for one cannot ignore the important commissions of ivory objects made along African coasts centuries earlier. The period dominated by curio collecting, in which objects served as souvenirs of contact, was followed by a period of trophy collecting in which large collections of artifacts (often mostly weapons), along with animal skins, horns, and tusks from hunting expeditions, were a tangible means of showing penetration, conquest and domination.³⁶

Clearly the Punitive Expedition of Benin was a prime example of trophy collecting. From the perspective of a scholar of African art history, it is also clear that up to the present time there has not yet been an ideal situation for collecting African art; that is, a transaction that would benefit all parties.

A fascinating reference to the issue of authenticity in African art is Shelly Errington’s *The Death of Authentic Primitive Art and Other Tales of Progress*.³⁷ This text has three parts: Two Centuries of Progress; the Death of Authentic Primitive Art; and Other Tales of Progress: Nationalism, Modernization, and Development. Errington’s

³⁵ Enid Schildkrout and Curtis A. Keim, eds., *The Scramble for Art in Central Africa* (Cambridge: Cambridge University Press, 1998).

³⁶ Enid Schildkrout and Curtis A. Keim, eds., *The Scramble for Art in Central Africa* (Cambridge: Cambridge University Press, 1998), 21.

³⁷ Shelly Errington, *The Death of Authentic Primitive Art and Other Tales of Progress* (Berkeley: University of California Press, 1998).

approach differs from that of McIntosh and Togola, whose works focus more on art in its context and on the art markets in America and Europe. She advances the idea of evolving viewpoints in the eighteenth, nineteenth and twentieth centuries by examining American and European exhibitions that displayed other cultures.

Errington catalogues how non-Western art was displayed over time, from the ethnographic museum to the art museum, including the labels that were used. She notes that the Europeans thought of Africans as primitive, but the Africans saw their own culture as civilized and advanced.³⁸

While Errington takes a broader view, concentrating on theory concerning the interaction of non-Western art and western consumerism, Annie E. Coombes's book, *Reinventing Africa: Museums, Material Culture and Popular Imagination in Late Victorian and Edwardian England*, focuses on the specific relations between colonial England and Anglophone Africa.³⁹ Her first three chapters narrate the circumstances surrounding the Punitive Expedition of Benin, and the subsequent transfer of the art objects into the British Museum. The later chapters outline various interests in exhibitions as spectacles of the British Empire, highlighting a broad range of non-Western culture. Coombes discusses the Franco-British Exhibition that displayed not only art and architecture from around the world, but people as well:

The rhetoric of racial fitness, and the superiority of the specifically Caucasian races, surfaced in different sections of the exhibition. This obsession with 'nationhood', in 1908, can partly be explained as a

³⁸ Ibid., 74.

³⁹ Annie E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination in late Victorian and Edwardian England* (New Haven and London: Yale University Press, 1994).

response to the perceived threat to Britain's imperial supremacy from Germany, America, and Japan.⁴⁰

The exhibition of 1908 was a means to show and outdo other countries on one hand, and to repair a tenuous relationship with Paris on the other. Coombes's text has an underlying theme of exhibition design theory, asserting that what is displayed and how it is displayed reveal a great deal about the culture of the displayer. She *implies that* England's demonstration of African art and culture was a means of declaring its own colonial clout. None of the texts outlined in the previous section examine how the laws and the art world interact, and how one can infer colonial agenda from how the law was manipulated to advance a political agenda. Art, of course, was a pawn in the political game.

Like Coombes, historian Andrew Zimmerman deals with a specific time period in *Anthropology and Antihumanism in Imperial Germany*. Describing the views of German anthropologists and museum administrators, he says that they considered that African and Asian people were "human yet could not be acknowledged as possessing full "humanity."⁴¹

Zimmerman's text is important for outlining the imperialist actions and philosophies that led to unsavory methods of collecting African art, and to why African art and artifacts made their way into "natural history" museums rather than art museums. The idea that any group of people can be unworthy of being called a "culture" is appalling to the contemporary person. Knowledge of a group's history allows for the

⁴⁰ Ibid., 189.

⁴¹ Andrew Zimmerman, *Anthropology and Antihumanism in Imperial Germany* (Chicago and London: The University of Chicago Press, 2001), 2. Zimmerman discusses this paradox as dating back to at least the sixteenth century (also page 2).

formation of a cultural framework. Graebner and Ankermann, two men with doctorates in history who worked at the Museum of Ethnology, led to a shattering of the idea that non-Western cultures were like some sort of pre-Fall Adam and Eve. Zimmerman's conclusion traces the progression of the concept of non-Western people from being human but not having full humanity, to the dichotomy of cultural people versus natural people, and finally to humanism.

*Authenticity and Forgery in
International Art Trade*

In *The Death of Authentic Primitive Art and Other Tales of Progress*, cultural anthropologist Shelly Errington points out that non-Western art was intimately changed by Western collectors.⁴² Such figures as the “colons” (statues of colonial officers) were made expressly for colonial tourists. But collectors sought art that was “untouched” and “very old.” It is a sad irony that the people who came in and changed cultures sought to collect cultural objects which were unchanged or “untouched.” So as the popularity of collecting African art has grown, forgery has become an issue. The number of “authentic” works of African art has not kept pace with the demand for them. The disparity between the demand for African art and the supply of African art has given forgers the opportunity to fill that void. The skill of some forgers is quite advanced, even to the point of getting the works to pass thermoluminescence tests by placing a portion of an old work in the new work. This will be discussed in Chapters Four and Five.

By the nineteenth century, some African artworks began to show European traits. For example, wooden figural groups with crucifixes made by the Kongo (fig. A13), and

⁴² Shelly Errington, *The Death of Authentic Primitive Art and Other Tales of Progress* (Berkeley, University of California Press, 1998), 7.

the *asipim* chair of the Asante (fig. A14), seem partially to reflect European aesthetic values, but also to retain their own local sense of cultural value. One cannot help but wonder if the artists incorporated western elements in part as a defense mechanism to save their work from being destroyed by the missionaries.

Raymond Corbey's book, *Tribal Art Traffic: A Chronicle of Taste, Trade, and Desire in Colonial and Precolonial Time*,⁴³ examines the collecting process all the way from Africa to Europe and America. This text also describes selected collectors and dealers of non-Western art in terms of their taste and economics. Interviewing seven art dealers, Corbey asked questions about fakes and forgeries, and whether it was easy to be deceived by a fake work. Mamadou Keita, one of the art dealers, replied, "Everyone is taken in. That's part of the price you pay, as a dealer or as a collector, and it's how you learn—those lessons are unforgettable."⁴⁴ Corbey's text also deals with the notion of authenticity. Interviewing art historian Frank Herreman, Corbey asked whether art that was made for the Western market was valid for exhibitions. Herreman replied, "I don't think that we have the right to decide what is art and what isn't—who is an artist and who isn't."⁴⁵

Looting, forging, and artificial aging of artworks continue to occur throughout the world. In *Unpacking Culture: Art and Commodity in Colonial and Postcolonial Worlds*, editors Christopher B. Steiner and Ruth B. Philips examine non-Western art in

⁴³ Raymond Corbey, *Tribal Art Traffic: A Chronicle of Taste, Trade and Desire in Colonial and Post-Colonial Times* (Amsterdam: Royal Tropical Institute, 2000).

⁴⁴ *Ibid.*, 161.

⁴⁵ *Ibid.*, 219.

the spheres of ethics and the art trade.⁴⁶ The introduction to this book contains Steiner's theory of authenticity, which is key to understanding the non-Western art market. Steiner and Philips claim that industrialization and mass production in the western world led to an increasing desire to collect its opposite, namely handmade, one of a kind art.⁴⁷ They also observe that non-Western artists are keenly aware of the tastes of the art market:

Neither the speed and acuity with which indigenous artists responded to changes in taste and market nor the dialogic nature of their creative activity has been adequately recognized. Rather, until recently, both art historians and anthropologists have resoundingly rejected most commodified objects as spurious on two grounds: (1) stylistic hybridity, which conflicts with essentialist notions of the relationship between style and culture, and (2) their production for an external market, which conflicts with widespread notions of authenticity.⁴⁸

This book also draws attention to the double standards in criticism of Western and non-Western art. It is acceptable for a Western artist to make art that she or he knows will do well on the market. But Philips and Steiner point out the perception that non-Western art should remain stylistically stagnant and unaware of the international art trade, in order for the objects to be appreciated by Western art historians and anthropologists. When an African artist, say, studies the journal *African Arts* and then makes a sculpture that she or he knows will be popular, some gallery owners and critics deem the work inauthentic because it is no longer made for the original intended purpose. Thankfully, this is becoming less true as time goes by. Philips and Steiner refute the

⁴⁶ Ruth B. Philips and Christopher B. Steiner, eds., *Unpacking Culture: Art and Commodity in Colonial and Postcolonial Worlds* (Berkeley: University of California Press, 1999).

⁴⁷ *Ibid.*, 7.

⁴⁸ Ruth B. Philips and Christopher B. Steiner, eds., *Unpacking Culture: Art and Commodity in Colonial and Postcolonial Worlds* (Berkeley: University of California Press, 1999), 9.

notion that market-based art is not “authentic” art, claiming that art should be deemed so regardless of its economic objective.

In his article, “The Art of the Trade: On the Creation of Value and Authenticity in the African Art Market,” Christopher Steiner also looks at the economics of the contemporary African art market. He claims that the presentation of art objects is very important. Contemporary tourists to Africa want to have their own adventurous experience. Steiner points out that contextualizing the environment of objects for sale is not limited to the African art market: “The manipulation of context through the calculated emplacement of objects is a widespread practice among art dealers around the world.”⁴⁹ For example, sellers of African art might stage the “discovery” of “unknown” masks in a dark hut, to fetch substantially higher prices for the pieces than if they had simply placed them next to similar objects in a stall. Steiner’s work is important to this dissertation because it points out the somewhat sketchy ethics of even the legal African art market, and connects its practice to characteristics of the European art market.

Steiner also offers his views on the market for African art in *African Art in Transit*. As in the later collection, *Unpacking Culture: Art and Commodity in Colonial and Post Colonial Worlds*, Steiner challenges the notion of authentic African art in this book. He addresses the idea that, in order for African art to be authentic, it must be made by someone in the culture for its intended use without any motivation of future sales in a market. Like art on the European market, African art is often intended to fulfill the needs

⁴⁹ Christopher B. Steiner, “The Art of the Trade: On the Creation of Value and Authenticity in the African Art Market,” *The Traffic in Culture: Refiguring Art and Anthropology*, George E. Marcus and Fred R. Myers, eds., (Berkeley: University of California Press, 1995), 154.

of consumers. Steiner also debunks the notion that art forgery, or simply creating works to do well in the market, only happens in Africa. Steiner writes:

As the supply of antiques dwindle, however, some artists and forgers are tempted by economic motivation to stimulate the effects of natural age. Roman fondness for original Greek art, for example, is said to have led to the production of “weathered” copies. In the Renaissance, the young Michelangelo was persuaded to age artificially the surface of a marble sculpture of Cupid by burying it for a time in the dirt.⁵⁰

Current Laws and Practices

Regardless of whether one examines the question of legal issues in the African art world from a historical, legal, cultural, political or economic perspective, it all boils down to the question of ownership. Michael Brown’s book, *Who Owns Native Culture?*, asks the essential question. While the title makes the question seem simple, the text outlines its complexity. Brown, an anthropologist who is interested in ethical issues in cultural anthropology, offers examples of native people who are fighting for their heritage as it is manifested by cultural property. He argues that transforming culture into property is messy, trying to impose order on the inherently untidy world.⁵¹

Another growing topic of concern in non-Western art, along with forgery, is that of copyright infringement. How can the laws protect the intellectual property of non-Western cultures? Brown highlights this issue with examples, including an electronic database of traditional healing methods and plant medicines that India developed to make it more difficult for medical and pharmaceutical companies to patent a traditional Indian

⁵⁰ Christopher B. Steiner, *African Art in Transit* (Cambridge: Cambridge University Press., 1994), 103-104.

⁵¹ Michael Brown, *Who Owns Native Culture?* (Cambridge, Massachusetts: Harvard University Press, 2003), 8.

healing procedure or plant.⁵² One interesting question raised in this book is whether the law can control the exchange of ideas, and if so, how. In his conclusion, Brown asserts that the law is a helpful factor for indigenous groups seeking to protect their cultural or intellectual property. He states that the situation would be much more difficult if economic status were the only deciding factor. Legal rights agreements, such as the Native American Graves Protection and Repatriation Act in the United States (NAGPRA), have given Native American groups more influence with museums.⁵³

After reading Brown's text, one is left with the question of what the future will hold: will the laws created be useful in practice or just in theory? He discusses the claims made by native peoples that their heritage is a protected legal resource. Although this work focuses mainly on North and South America, Australia and India, the approach is applicable to African studies.

Colin Renfrew's book, *Loot, Legitimacy, and Ownership*, addresses similar issues to *Illicit Antiquities* (discussed above in the section on plunder). It also provides a number of legal appendices which includes the UNESCO Convention, the UNIDROIT Convention, and museum policies such as the International Council of Museums' code of professional ethics.⁵⁴ Renfrew states that the problems of loot, legitimacy and ownership are global. In the book's introduction, Renfrew proposes two possible solutions that

⁵² Ibid., 2.

⁵³ Ibid., 247.

⁵⁴ Colin Renfrew, *Loot, Legitimacy, and Ownership* (London: Gerald Duckwork and Company, Ltd., 2006).

might seem obvious: cut off the supply or destroy the demand.⁵⁵ As he writes about cutting off the supply:

The first is to diminish or eliminate the clandestine excavation in the countries of origin. Clearly that is no easy task. It is desirable that each nation should have strong laws protecting its antiquities and a sound and well-informed antiquities service, with well protected and well displayed national monuments, accompanied by a network of local museums centred upon a national museum. In this way economic value of the heritage in terms of travel and tourism is of benefit to local communities, and there is less incentive to loot the heritage for private financial gain.⁵⁶

Renfrew implies that the first solution is not an option for most countries, because the desire for supply would still exist. Further, most archaeologically rich nations do not have the financial resources to make it possible. The second proposed solution, to destroy the demand for illicit antiquities, is perhaps just as problematic. Renfrew elaborates:

The second approach to the problem is to tackle the distribution and consumption of illicit antiquities. The role of the academic community should be a clear one. It is to persuade the informed public that the purchase of unprovenanced antiquities has the inevitable consequence of funding the ongoing looting process.⁵⁷

While it is clear that countries and the International Council of Museums can enact laws to prevent museums from acquiring unprovenanced objects in their collections, there is still the matter of private collectors. Another difficulty for Renfrew's second solution is that provenances can be faked. The remainder of Renfrew's text is

⁵⁵ Ibid., 15-16.

⁵⁶ Ibid.

⁵⁷ Colin Renfrew, *Loot, Legitimacy, and Ownership* (London: Gerald Duckwork and Company, Ltd., 2006), 16.

focused on closer examination of the issues of looting. In his conclusion, Renfrew does state that the only way solutions will happen is through public desire for change.⁵⁸

Like Renfrew, James Cuno, the Director of the Art Institute of Chicago, also suggests solutions to the problems of exhibiting art of questionable provenance.

In *Who Owns Antiquity?: Museums and the Battle over our Ancient Heritage*, Cuno asserts that “we cannot afford to waste time debating the same tired question of whether or not museums should acquire unprovenanced antiquities.”⁵⁹ He believes that the real need is to address the loss of cultural property, writing that “we are losing ground against the destruction of the archaeological record through war, environmental damage, economic development, looting, and acts of nature and against the rise of nationalism and its claim on antiquity and on culture, generally.”⁶⁰

While lamenting the failure of cultural property laws to stop plundering, Cuno also proposes a solution. He recommends reinstating the old archaeological method, *partage*:

Under [*partage*], foreign-led excavation teams provided the expertise and material means to lead excavations and in return were allowed to share the finds with the local government’s archaeological museum(s). That is how the collections of archaeological museums at the University of Chicago, the University of Pennsylvania, and Harvard and Yale Universities were built; as well as important parts of the collections of the British Museum and the Metropolitan Museum of Art. It was also how the collections in archaeological museums in Egypt, Iraq, Afghanistan, and Turkey were built. Foreign museums underwrote and led scientific excavations from which both the international archaeological and local political communities benefited.⁶¹

⁵⁸ Ibid., 92.

⁵⁹ James Cuno, *Who Owns Antiquity?: Museums and the Battle over our Ancient Heritage* (Princeton: Princeton University Press, 2008), xxxvi.

⁶⁰ Ibid., xxxvi.

⁶¹ Ibid., xxxiii.

Cuno's book considers individual cases such as the Elgin Marble debate, the Rosetta Stone issue, and the controversy of the Chinese bronzes. At the same time, he also advocates the encyclopedic museum as a means of eradicating prejudicial thought:

This is the promise of the encyclopedic museum, the museum as a repository of things and knowledge, dedicated to the dissemination of learning and to the museum's role as a force for understanding, tolerance, and the dissipation of ignorance and superstition, where the artifacts of one time and one culture can be seen next to those of other times and other cultures without prejudice. This is the concept of the museum dedicated to ideas, not ideologies, the museum of international, indeed universal aspirations, and not of nationalist limitations, curious and respectful of the world's artistic and cultural legacy as common to us all.⁶²

While Cuno's book takes a clear position on the legal politics of cultural property, one wonders what his stance would be if he were not the museum director of a large "encyclopedic" museum.

Sometimes the law clearly supports the owner of a displaced cultural artifact, but an ethical outcry takes over. The Afo-A-Kom (fig. A11) case is interesting because the law did not help in the return of the statue; yet, it was returned because people rallied around the need for justice. Fred Ferretti, a journalist who wrote for the *New York Times* at the time of the controversy, wrote *Afo-A-Kom: Sacred Art of Cameroon* in 1975,⁶³ two years after the spiritual "thing of Kom" statue was returned to Cameroon. In the book's introduction, Ferretti tells of the successful return of the statue; he then proceeds to describe the theft of the Afo-A-Kom from the royal sanctuary in Laikom, Cameroon, in the summer of 1966. This book brings up the question addressed in this dissertation regarding how Africa might be able to protect its cultural property through laws. Are

⁶² Ibid., xxxii.

⁶³ Fred Ferretti, *Afo-a-Kom: Sacred Art of Cameroon* (New York: The Third Press, 1975).

there laws in other countries which could serve as a model for Cameroon? Examples might be: the border control policy in Mexico, NAGPRA in the United States, or the large-scale organization which protects cultural property in Italy.

Censorship is another element of the complex history of legal issues in African art. The recent Chris Ofili case (fig. A15) at the Brooklyn Museum of Art, discussed in Chapter Five, is among the most famous of attempts to censor art that people do not understand, do not want to understand and therefore find objectionable. Nigerian-British artist Ofili is not the first to come under fire by politicians; famous artists such as Robert Mapplethorpe and Karen Finley have also been censored.

Looking back from the history of colonialism in Africa in the nineteenth century to the present day, one may wonder how much progress has occurred in the legal world for African art.

Arbiters of Change

The treatment of African art has evolved slowly. Much of the progress for the legal rights of African art was brought about—directly or indirectly—by people. One person who had an effect on the view of Africa and its art is the British spinster Mary Kingsley (fig. A16), who traveled to Africa for adventure and published books that discussed her experiences. She fell in love with Africa, relishing the climate and culture. She even turned her London flat into a mini-Africa of sorts: packing it with African art and turning up the heat as high as she could. While her language was typical of the Victorian age (for example, she called a statue a “fetish), Kingsley’s enormous love and respect for Africa and Africans was evident in her writing. Her books helped to change the popular perspective of Africa at the end of the nineteenth century.

Mary Kingsley's *Travels in West Africa* was published in 1897.⁶⁴ This work tells of an intellectually adventurous woman writing about her own experiences in Africa.⁶⁵ The book interests this dissertation because Kingsley encountered and faced her own cultural biases throughout the book. The love which she developed for Africa drew her to bring Africa back with her. In fact, some of the scientific artifacts and artwork collected by Kingsley can still be found in England's museums. Adam Hochschild, in *King Leopold's Ghost*, writes that "*Travels in West Africa* is both a high-spirited classic of travel writing and one of the first books by a European that treats Africans as human beings."⁶⁶

Another person who had an influence on the European reception of African art is Oba Ovonramwen (figs. A17-A18), a Benin king who tackled the difficult task of trying to keep his kingdom and his subjects safe, despite British attempts to manipulate or strong-arm him into turning over the territory. He tried to outwit the colonial efforts to gain control of the natural resources of his land. Yet, only ten years into his rule and when Oba Ovonramwen was still a young man, his kingdom was attacked and his leadership was blamed. He was forced into exile. His possessions were taken, his people were killed, and in the later court battle, he was blamed. Philip Aigbona Igbofe, professor of history at the University of Ibaden in Nigeria, wrote *Benin Under British Administration: The Impact of Colonial Rule on an African Kingdom 1897-1938* in 1979. Professor Igbofe discusses the exile of Oba Ovonramwen after the Punitive Expedition:

⁶⁴ Mary Kingsley, *Travels in West Africa* (1897; reprint, London: National Geographic Society, 2002), frontispiece.

⁶⁵ *Ibid.*, 1.

⁶⁶ Adam Hochschild, *King Leopold's Ghost* (New York: Houghton Mifflin, 1999) (first paperback ed), 188.

The deportation of Oba Ovonramwen entailed considerable adjustments in the existing political system thought to be under the Oba's effective rule, the assumption being that all such areas had been subdued by the conquest of Benin. Indigenous resistance to this attempt at the consolidation of British rule produced abundant friction, which led the British to resort of punitive expeditions euphemistically referred to as patrols or escorts. The machinery of government established during and after the consolidation of British rule involved the appointment of district heads, the establishment of native courts and the creation of artificial districts.⁶⁷

The story of the Oba is inextricably connected with the events surrounding the Punitive Expedition. Had he not defied the British, the path of Benin art to other locations might have been very different.

Germany became a major location for art from Benin, thanks to Felix von Luschan (fig. A19), Austrian-born curator of the Berlin *Museum für Völkerkunde* and one of the first European scholars of Benin art. He purchased Benin art from British auction houses after the Punitive Expedition in 1897, even before the British were interested in collecting it for themselves. He methodologically studied Benin art. Von Luschan's conclusions are still quoted by Benin scholars for his arguments that Benin art was African, not Western or Egyptian. His passion for the art of Benin led to one of the largest collections of Benin art in the world. Located in Berlin, this collection was later plundered during World War II. Excellent information about von Luschan and his work is found in his exhaustive correspondence, which is contained in the files of the state archives in Berlin.⁶⁸

Paul Guillaume (fig. A20) is another, somewhat unexpected, character in the narrative of African art. Born in Paris and trained as an auto mechanic, Guillaume began

⁶⁷ Philip Aigbona Igbafe, *Benin under British Administration: the Impact of Colonial Rule on an African Kingdom 1897-1938* (Atlantic Highlands, New Jersey: Humanities Press, 1979), xii.

⁶⁸ Collection of letters and documents from the *Museum für Völkerkunde* relating to the acquisition of Benin art, located in the State Archives in Berlin.

to collect works of African art that were sent from Gabon with the raw rubber used to make tires. He then opened his own gallery, where he represented great Western artists including Pablo Picasso (fig. A21) and Giorgio di Chirico. This gallery influenced the artists to study, collect and sketch African art. Guillaume fostered an appreciation for the aesthetic appeal of African sculpture to the Parisian art audience, and changed the art world's perception of African art.⁶⁹

Picasso, who was represented by Guillaume, became interested in African art. In 1905 and 1906, several of the Montmartre artists who had anarchist tendencies were part of the anti-colonialist debates⁷⁰. Perhaps this hotly debated issue struck a chord with Picasso. His collection of African masks, and his love of the romantic notion of the “primitive” African, were strongly influenced by his anarchist outrage at French and Belgian colonial policies in West and Central Africa. Picasso's interest in African art appeared in his work for the first time in 1907, in the painting *Demoiselles d'Avignon*. Picasso and his peers not only influenced the course of modern art, but also served to familiarize the world with the stylized forms of African art.

The following chapters of this dissertation will offer a more detailed view of how the interplay of historical events, ethical considerations, and legal changes have led to today's attitudes and laws concerning African art. They will address legal issues in four categories – plunder and illegal import/export; ethical collection and display; authenticity and forgery; and current practices regarding ownership and copyright – at different times from the nineteenth century to current times. This study explores these issues from a

⁶⁹ Joseph A. Harris, “The Pygmalion of the Avant-Garde,” *Smithsonian* 31, 3 (November 2000): 88.

⁷⁰ Patricia Leighton, “The White Peril and *L'Art nègre*: Picasso, Primitivism, and Anticolonialism,” *The Art Bulletin* 22, 4 (December 1990): 610.

variety of perspectives and suggests some possible means of attaining solutions. It is intended to provide evidence for the reader to draw his or her conclusions about whether and how progress has been made.

CHAPTER II: THE NINETEENTH CENTURY

The European countries' colonial interests in Africa began to collide toward the end of the nineteenth century. Urged by Portugal, the German chancellor Otto von Bismarck hosted the Congo Conference, or *Kongokonferenz* (fig. A22), in Berlin from November of 1884 to February of 1885. It was attended by representatives of Great Britain, Austria-Hungary, France, Germany, Russia, the United States, Portugal, Denmark, Spain, Italy, the Netherlands, Sweden-Norway, Belgium, and Turkey.

According to John D. Hargreaves, "While the Conference expressed internationalist intentions, it had imperialist effects... The 'traditional free trading system' which it hoped to preserve already contained the seeds of colonial imperialism."¹ In the thirty-eight article treaty from the conference, the parties divided Africa into roughly fifty colonial territories. The General Act of the Berlin Conference also declared Africa to be a free trade area, and it proposed to protect Africans and not to allow slavery. European traders could no longer set up posts wherever they wished; the effect was to regulate the scramble for Africa.

Following the defeat of Napoleon, the European countries had taken early steps to address the loss of their own cultural property in war. In 1815, during the Convention of Paris, looting of cultural property was condemned and it was stated that plundered goods should be returned to their country of origin. Yet the European colonial powers routinely looted African countries. This practice proceeded on the basis of the ancient law, 'to the victor belong the spoils.' The art objects and cultural property taken out of Africa were totally unprotected by laws.

¹ John D. Hargreaves, "The Berlin West Africa Conference: A Timely Centenary," *History Today* 34, 11 (November 1984): 17.

This chapter tells the story of how sub-Saharan African art came into contact with Europe: first as Westerners discovered and collected the art in Africa, and then as it became known in Europe. It also discusses some of the legal considerations that influenced how the art was acquired and displayed.

Before 1898: In Africa

This section provides background and context for African artworks that were obtained by Westerners and taken from Africa during the nineteenth century. It starts with an historical discussion of the kingdom of Benin (figs. A23-A33) and the Punitive Expedition of 1897. The plunder of Benin offers one of the most significant examples of indiscriminate military looting from sub-Saharan Africa.² It led to an unprecedented number of art objects being introduced into Europe, and to the debate and contention that continue to the present day. African art was also acquired by Westerners in more peaceful ways. The section concludes with a description and examples of missionary activity and other art collecting in Africa before 1898.

The idea of an Africa that was untouched by Europeans captured the imaginations of Western explorers in the nineteenth century. Of course this dark, primitive Africa existed only in the imaginations of Europeans. What was the kingdom of Benin really like before the Punitive Expedition of 1897?

Benin was a cultural and political center in the current country of Nigeria, located in a high tropical rain forest nearly 80 miles west of the Niger River. Benin's artistic traditions went back for centuries, and the artistic techniques, such as metal casting, were

² The Asante Gold War of 1874 is another significant example of military looting. It occurred in January of 1874 when British troops under Major General Wolseley destroyed the Asante Capital of Kumasi, killing thousands and taking the gold and art from the palace.
<http://countrystudies.us/ghana/7.htm>

extremely advanced. Their works were not simply admired on walls or pedestals; to the Benin people, artworks were important implements of cultural activity. Some of the sculptures that Europeans later collected were originally part of ancestral altars. The sculptures included portrait heads of past divine kings, or Obas. The altars also had elephant ivory tusks that were carved with narrative reliefs of the Obas' reigns. Brass relief plaques on the walls of the palace also narrated a history of cultural and political grandeur for the viewers.³ This elegance and grandeur were destroyed when the British pillaged the valuable "fetishes" and burned the city to the ground.

At its peak at the beginning of the seventeenth century, the kingdom of Benin extended northwest to the state of Dahomey, eastward to the Niger River, and westward beyond Lagos on the coast. Early accounts of voyages to Nigeria provide little description of Benin City itself, but a Dutch account from 1668 indicates that it was quite magnificent.⁴ Paula Girshick Ben-Amos and John Thornton write:

Benin, as it appears in documents of the seventeenth century, was a wealthy and centralized kingdom. The natural reflection of centralized wealth was its magnificent capital city, one whose archaeology has only begun to be explored. Early European visitors never failed to be impressed with the city. The Portuguese compared it with Lisbon, the Dutch with Amsterdam or Antwerp, the Italians with Florence, and the Spaniards with Madrid. Its size was matched by dense habitation; houses built close to each other along long, straight streets. The royal palace, a city within a city, was also impressive, with countless squares and patios and innumerable doors and passageways, all richly decorated with the art that has made Benin famous.⁵

³ Paula Girshick Ben-Amos, *The Art of Benin*, rev. ed. (Washington, D.C.: Smithsonian Institution Press, 1995), 96.

⁴ Olefert Dapper, "Nauwkeurige Beschrijvinge der Afrikaansche Gewesten," *Description de l'Afrique* (Amsterdam: Chez Wolfgang, Waesberge, Boom and van Someren, 1668).

⁵ Paula Girshick Ben-Amos and John Thornton, "Civil War in the Kingdom of Benin, 1689-1721: Continuity or Political Change?" *The Journal of African History* 42, 3 (October 2003): 353.

According to Girshick Ben-Amos and Thornton, there was a civil war from 1689 to 1721. After regaining its might, Benin experienced further turbulence with a civil war in the 1850s and 1860s.⁶ Britain gained control over what is now Nigeria at the Berlin Conference of 1884-1885. Still weakened by its own political turmoil, the kingdom of Benin then encountered Britain's desire to monopolize its natural resources.⁷ Chief among these resources was rubber, since Dunlop's invention of the rubber inner tube had made the rubber trees of Benin very desirable to the British. The area was also rich in gum copal (used in varnishes and lacquer work), gum Arabic (used in products including paint, photography supplies and glue), minerals, palm oil and petroleum.

Art and artists were important in the Kingdom of Benin. Philip Dark, in the introduction to *Benin Art*, describes the layout and craft guilds of the city of Benin:

Most of the important Bini [Benin was populated by Bini and Edo people] crafts are in the hands of special ward-guilds in Benin City; some of them still function. The City is divided into two halves by a broad street. In the smaller southwestern half lives the Oba, his court and palace chiefs; in the larger half live the town chiefs. The two halves of the City divide into more than 40 wards 'the members of each of which have special duties to perform "for the *Oba*"'. Included in these wards are craft specialists.⁸

The crafts included blacksmithing, wood and ivory carving, and bronze casting. The blacksmith shops made tools, weapons, lamps, and jewelry. All ivory and bronze works were considered to be the property of the Oba, and bronze pieces were distributed only at the Oba's discretion. The bronze craftsmen were of high rank, including ten chiefs. Each

⁶ Peter M. Roese and Dmitri M. Bondarenko, *A Popular History of Benin: The Rise and Fall of a Mighty Forest Kingdom* (Frankfurt am Main: Peter Lang, 2003), 277.

⁷ *Ibid.*, 286.

⁸ W. and B. Forman, and Philip Dark, *Benin Art* (London: Batchworth Press Ltd, 1960), 10.

caster had a specialized job; for example, the most senior chief created full-figure sculptures for the ancestral altars.⁹

By 1885, Oba Adolo of Benin had not admitted European visitors into his kingdom for twenty years. His son Prince Idugbowa became Oba Ovonramwen in 1889, following his father's death, and Oba Ovonramwen was more receptive to commerce with Westerners. A British trader named Cyril Punch visited the new Oba in 1889. He kept a journal with descriptions of the Oba and chiefs as well as the palace and surrounding city. Punch's Benin journal from 1889 is important for art historians, because it includes descriptions of the ivory tusks that Oba Ovonramwen commissioned to honor his ancestors. Unlike some of the other Benin artifacts, these pieces can be identified with confidence. Punch writes:

After this we arrived at the covered shed which runs alongside a raised floor, the centre of this is evidently the shrine. I would like much to have got a photo of one, but the camera is not viewed with the eyes of favour. . . there are eight, nine, or ten heads of cast brass, each supporting a tooth of ivory some ten feet high and covered completely with carvings of men, horses, and crocodiles, etc. in high relief.¹⁰

Punch eventually persuaded the palace officials to allow a photograph of the tusks in 1891 (fig. A32). The resulting photograph was published in 1903 by Henry Ling Roth.

Oba Ovonramwen soon benefited from Punch's visits, trading brass, textiles and beads in exchange for supplies from the Europeans. Britain's economic strategy at that time was to gain "free trade" for itself in Nigeria. To do this, Britain got other Nigerian kings to sign agreements that allowed British companies to take free control over their

⁹ Ibid., 11.

¹⁰ Cyril Punch, *Journal by Cyril Punch*, 1889 December 11th. Cyril Punch's journal is at the Bodleian Library Commonwealth and African Studies at Oxford University's Rhodes House.

natural resources. Chief Richard Akinjide, the former Attorney General and current Minister of Justice of Nigeria, spoke in 1997 about the political and legal background of the events that led to the invasion of Benin:

The King of Benin was not as gullible or trusting as the Kings of Lagos, Calabar or Opobo, and refused to sign any treaty of protection with Britain since he could see no need for such protection from a foreign power who had been dealing with them for centuries as equals, and in any event, Benin was a great power when Britain was a Roman colony. The Benin King was somber in stance and in dignity. He stood his ground. Of course, Britain had a hidden agenda. At that time, British African policy was being masterminded by the British Naval and Military Intelligence and the Foreign Office with the Colonial Office playing little role.¹¹

The British created the Oil Rivers Protectorate in 1891. Later renamed the Niger Coast Protectorate, the area included Benin. It was governed by the Royal Niger Company, which reported to the British Foreign Office. A governor general was appointed. There were also vice-consuls and about two hundred men for an army, medical personnel, and other needed occupations. James Phillips became the Acting Commissioner of the Royal Niger Company in 1896, and he undertook an information-gathering trip to ensure that British trading companies were running smoothly. According to Roese and Bondarenko, the British aimed to oust the Oba and establish a council of chiefs in his place. They write:

Accusations about embargoes on various trading items, human sacrifices, despotism, etc. were brought forward. Furthermore the Oba had stopped all trade in the middle of 1896. This of course was bad for European traders and Itsekiri middlemen. Small wonder that they did not talk in friendly terms about Oba Ovonramwen. Therefore we can assume quite rightly that not all accusations were true and at least some have been exaggerated.¹²

¹¹ Quote of Chief Richard Akinjide by Oba Erediauwa, "Opening Ceremony Address by Omo N'Oba N'Edo, Uku Akpolokpolo, Erediauwa, CFR, Oba of Benin," *African Arts* 30, 3 (Summer 1997): 30–34.

¹² Peter M. Roese and Dmitri M. Bondarenko, *A Popular History of Benin: The Rise and Fall of a Mighty Forest Kingdom* (Frankfurt am Main: Peter Lang, 2003), 298.

At the beginning of 1897, the British expeditionary party was massacred on its way to Benin City. Phillips had requested an army of four hundred men; which included two hundred and fifty Europeans and one hundred and fifty Hausa men from Lagos, along with weapons such as guns, machine guns, and the like. When his request for such warlike force was denied, Phillips undertook the journey with eight other English men and two hundred and forty Nigerian servants and interpreters. The ill-fated expedition is described in notes that were published in 1900:

In 1896 an expedition, consisting of some 250 men, with presents and merchandise, left the British settlements on the coast, and endeavored to advance towards Benin City. The expedition was conducted with courage and perseverance, but with the utmost rashness. Almost unarmed, neglecting all ordinary precautions, contrary to the advice of the neighboring chiefs, and with the express prohibition of the King of Benin to advance, they marched straight into an ambushade which had prepared for them in the forest on each side of the road.¹³

Phillips' party was viciously attacked near the village of Egoro on January 1, 1897. Only two of the Europeans and a handful of the African servants survived. It's notable that the plaque commemorating the surviving two English men has no mention of the many African men who died.¹⁴

Ironically, these deaths might have been prevented. The party had been warned in writing by the Oba not to come at that time, as Benin was in the middle of the annual *igwe*

¹³ A. Pitt Rivers, *Works of Art from Benin, Collected by Lieutenant-General Pitt Rivers, Inspector of Ancient Monuments in Great Britain* (1900; reprint, New York: Hacker Art Books, 1968), pages iii-iv. Lieutenant-General Pitt Rivers gave his own collection to Oxford University in 1884 to form a museum.

¹⁴ Peter M. Roese and Dmitri M. Bondarenko, *A Popular History of Benin: The Rise and Fall of a Mighty Forest Kingdom* (Frankfurt am Main: Peter Lang, 2003), 298.

festival.¹⁵ Ekpo Eyo discusses the implications of the *igwe* festival and the timing of the British visit to the Oba:

The Oba requested that the visit be delayed for two months, to enable him to get through the *igwe* ritual during which time his body is sacred and not allowed to come in contact with foreign elements. *Igwe* ritual is the highest ritual among the Edo and is performed not only for the well being of the king but of his entire subjects and the land. But Phillips showed no sympathy. He replied to the king that he was in a hurry and could not wait because he had so much work to do elsewhere in the Protectorate.¹⁶

Other chiefs were aware that Phillips intended to ignore the warning. As Roese and Bondarenko write, “Chief Dore Numa was very worried and tried to persuade Phillips to refrain from going to Benin City. The loyal chief’s warning was in vain because Phillips did not pay heed to the advice of an insider.”¹⁷ Phillips wanted to gain a name for himself as the man who established control of the trade in Benin, and his party set out despite the additional warning, clearly with the motive of deposing the Oba.

By the 11th of January, the British knew of the ill fated trip. Their response was a three-way simultaneous attack on Benin City that is now called the Punitive Expedition.

Eyo writes:

When the city was entered on the same day [February 15, 1897] with the noises of machine guns everywhere, it was a ghost town and the search for the King, the Noblemen, the Chiefs and the others began. The lassa [sic] stronghold of Native authority had fallen and had joined the list of other strongholds similarly humiliated.¹⁸

¹⁵ A modern analogy to interrupting the *igwe* festival might be trying to visit the Vatican during a papal conference!

¹⁶ Ekpo Eyo, “Benin: the Sack that Was,” Segun Toyin Dawodu, <http://dawodu.net/eyo.html>, 4.

¹⁷ Peter M. Roese and Dmitri M. Bondarenko, *A Popular History of Benin: The Rise and Fall of a Mighty Forest Kingdom* (Frankfurt am Main: Peter Lang, 2003), 299.

¹⁸ Ekpo Eyo, “Benin: the Sack that Was,” Segun Toyin Dawodu, <http://dawodu.net/eyo.html>, 6.

The current Oba Erediauwa's speech at the 1997 centenary of the invasion of Benin offers Benin's memory of what happened:

... the British came back in full force in what came to be known in history as the "punitive expedition," rounded up and executed the Benin people that fought against them, burnt every house in the City, exiled Oba Ovonramwen to Calabar, which was the furthestmost town in the territory within the British sphere of influence, and finally set fire to the Oba's palace after carting away about 3,000 pieces of our valuable bronze and ivory works of art which now adorn museums and private collections in England and elsewhere.¹⁹

Richard Gott describes the deliberate humiliation of Oba Ovonramwen:

An immense throng was assembled to witness the ritual humiliation that the British imposed on their subject peoples. The Oba was required to kneel down in front of the British military "resident" the town and to literally trite [sic] the dust. Supported by two chiefs, the king made obeisance three times, rubbing his forehead on the ground three times. He was told that he had been deposed.²⁰

According to Eyo, "between 900 and 1000 [bronze plaques] were reported by cable to the lords of the Admiralty by Admiral Rawson and became the official booty of the expedition to be sold to defray the cost of the pensions of the killed and the wounded."²¹ In fact, the European invaders were astounded by the artistic sophistication of the artifacts found in the Oba's palace compound. The dazzling array of objects included figures of snakes' and rams' heads, cocks and leopards, together with gongs and ceremonial swords and burred staffs, stools and chests, exquisitely detailed pictorial plaques, pendant masks, armllets, combs, trumpets and horns, and carved tusks. The

¹⁹ Erediauwa, Oba, "Opening Ceremony Address by Omo N'Oba N'Edo, Uku Akpolokpolo, Erediauwa, CFR, Oba of Benin," *African Arts* 30, 3 (Summer 1997): 31.

²⁰ Richard Gott, "The Looting of Benin," *The Independent*, 22 Feb. 1997. Retrieved from <http://www.arm.arc.co.uk/lootingBenin.html>

²¹ Ekpo Eyo, "Benin: the Sack that Was," Segun Toyin Dawodu, <http://dawodu.net/eyo.html>, 2.

Europeans were impressed by the technological expertise of the bronze casting and the intricacy of the ivory carving.

Thousands of artworks from Benin left the kingdom with the sack of the city. The items were removed to be trophies of the British conquest much as, centuries before, Roman soldiers had removed sacred items from Jerusalem. According to Barbara Blackmun, some but not all of the art in the Palace of Benin was removed before a fire on February 21, 1897, that burned at least one of Oba Ovonramwen's ancestral altars. Eight of the fifteen surviving carved ivory tusks also display burn marks (fig. A33).²² The next section of this chapter will continue the story of Benin's artworks when they appear in Europe.

Anthropologists and art historians today do not agree on the nature of the 1897 event in Benin City. In 1897, the intelligence officer R. H. S. Bacon wrote about Queen Victoria's proposed action:

It was clear that the expedition's orders included torching shrines. Even before British troops ever reached Benin, several villages were set ablaze, an action that appears to have been standard practice.²³

Yet recent scholars still debate whether the violent circumstances in Benin amounted to a "sack" or not. According to William Fagg, a sack "may be said to take place when an invading army sets out to destroy a town—usually by fire, with or without its inhabitants—and get out quickly, being in no mood for self-immolation."²⁴

²² Barbara W. Blackmun, "Continuity and Change: The Ivories of Ovonramwen and Eweka," *African Arts* 30, 3 (Summer 1997): 68-79.

²³ Reginald H. S. Bacon. *Benin: The City of Blood* (London: Arnold, 1897), 78.

²⁴ William Fagg, "Benin: The Sack that Never Was," *Images of Power: Art of the Royal Court of Benin*, eds. Flora S. Kaplan and Mary Anne Shea (New York: New York University Press, 1981).

Systematically refuting Fagg's arguments, Eyo states that Benin City that there was "(1) an intent to burn as well as an actual fire; (2) an indiscriminate slaughter of the people and (3) general looting."²⁵

Another outrage against the kingdom of Benin was the trial of Oba Ovonramwen, which followed the destruction of the city and its cultural contents. The current Oba Erediauwa makes the case that the trial should be deemed illegal:

The account of the trial in the authoritative book of the time titled *Great Benin*, by H. Ling Roth, showed clearly the speeches from the trial: first, there was no acceptable evidence that Oba Ovonramwen ordered the killing of the white men; second, the white men themselves conceded the right of the people to defend the territory in view of the specific rumors that the Europeans were bringing war; third, the Oba had been deposed even before the trial because he was tried literally as a commoner; fourth, the Oba and the chiefs (and I quote from Roth): "were supposed to be guilty"; and fifth--and this should be of interest to present-day lawyers--since the offense was committed against the British, the British took the position of being the complainant, the prosecutor, the judge, and the jury--in utter violation of the rule of natural justice known very well to the English Common Law: *nemo iudex in causa sua*. Finally, according to the account of Ling Roth in his book...Oba Ovonramwen went into hiding on the advice of some of his chiefs, and it was the same chiefs who revealed the spot to the British. And when the Oba was fished out of hiding, the British took it as a conclusive sign of guilt.²⁶

It is remarkable that Oba Ovonramwen was assumed to be guilty, even though there was no evidence against him. This goes against British Common law that is supposed to assume innocence first. However, such disregard for Africans' rights was then common practice by the colonial powers in Africa.

²⁵ Ekpo Eyo, "The Dialectics of Definitions: 'Massacre' and 'Sack' in the History of the Punitive Expedition," *African Arts* 30, 3 (Summer 1997): 34-36.

²⁶ Oba Erediauwa, "Opening Ceremony Address by Omo N'Oba N'Edo, Uku Akpolokpolo, Erediauwa, CFR, Oba of Benin," *African Arts*, 30, 3 (Summer 1997): 30-34.

The tragedy of 1897 led to the wide distribution of Benin artworks throughout the world. However, art from Africa was also collected and sent abroad long before 1897. Some of the earliest collectors of African art were missionaries from churches whose motivation was to convert the indigenous people to Christianity. Generally, the missionaries traded for or paid for the objects they collected.

The Roman Catholic Church sent missionaries to the Congo in the 1600s, as is evident in the St. Francis sculptures and crucifixion scenes that are found in Congolese art. The early missionary collections were taken back to the Church for study.²⁷ A study of the religious philosophies could have helped the Church determine what philosophical tools to use in converting the Africans. Most missionaries were interested in the welfare of the indigenous people and in the art they produced. However, the missionaries did not always save what they collected. Sometimes they destroyed what they considered to be heathen art:

The destruction of indigenous ritual objects by or at the instigation of missionaries, a sort of rite of passage, was a quite common centuries-old practice. This sort of thing happened, for instance, in the course of Catholic missionary activities by the Portuguese in the Lower Congo area in the sixteenth century and during the proselytizing by the London Missionary Society in Polynesia at the beginning of the nineteenth century.²⁸

Some of the earliest African art collections in America originate from missionary collecting. Two early missionary groups from the United States were the United Brethren in Christ and the American Missionary Association. The American Missionary

²⁷ William Hart, "Trophies of Grace? The 'Art' Collecting Activities of United Brethren in Christ Missionaries in Nineteenth Century Sierra Leone," *African Arts* 39, 3 (Summer 2006): 16.

²⁸ Raymond Corbey, *Tribal Art Traffic: A Chronicle of Taste, Trade and Desire in Colonial and Post-Colonial Times* (Amsterdam: Royal Tropical Institute, 2000), 65.

Association started missions on Sherbro Island in the late 1840s.²⁹ One might expect that the art collected by missionaries would be different in character from that collected by military personnel or merchants. However, it appears that the missionaries did not consider the works they brought back from Africa to be art. Most found that the work done by the Africans was savage and crudely done, although it seems this did not prevent them from taking the work.

Missionaries found that the American people were very interested in the objects brought back from Africa, and eager to learn about the cultures in Africa. Many missionaries had successful lecture tours based on what they saw and learned in Africa. They often brought objects with them on the lecture tours. Daniel Flickinger, of the United Brethren in Christ mission, offers a brief description:

Great crowds attended my public addresses and listened with ears and eyes to the descriptions and exhibitions of their idols, articles of clothing, and other curios which I brought from Africa.³⁰

It's not surprising that the missionaries were also curious about the religions they intended to annihilate. In their addresses to American audiences, lecturers also discussed the various deities that were revered by the Africans.

One element of the American interest in returning missionaries' lectures may have been the fact that many missionaries did not survive to return home. For example, many missionaries from the mission in Freetown, Sierra Leone, contracted malaria and died between 1855 and 1870. Amid concerns that this mission was too dangerous, the

²⁹William Hart, "Trophies of Grace? The 'Art' Collecting Activities of United Brethren in Christ Missionaries in Nineteenth Century Sierra Leone," *African Arts* 39, 3 (Summer 2006): 15.

³⁰Daniel K. Flickinger, *Fifty-five Years of Active Ministerial Life* (Dayton, Ohio: United Brethren Publishing House, 1907), 49.

United Brethren in Christ invited an African-American couple, Joseph and Mary Gomer, to take over that mission.³¹

Joseph Gomer proved to be an ideal choice for many reasons. Born a freeman in Michigan, he moved to Chicago when he converted to Christianity and the Methodist Church. He was a carpenter by trade, and he was drafted as a cook in the Union army during the Civil War. When he was released in 1865, Gomer returned to Chicago via riverboat from New Orleans. On the riverboat he met his future wife Mary.³² Finding a carpenter named Joseph and his wife Mary probably held metaphorical appeal to the United Brethren in Christ Church. Although neither had religious-leader training, both of the Gomers proved to have strong leadership skills.

The mission was very successful. From their arrival in Africa in 1870, the Gomers showed an ability to convert native leaders who were considered impossible to convert. The Gomers stayed in Sierra Leone for twenty-two years until Joseph's death in 1892. Their skills as leaders and diplomats, together with Joseph's carpentry and farming skills, served them well. Joseph Gomer was a respected figure in Sierra Leone, and a "Gomer Memorial" song is still in people's memory in Sierra Leone. Doris Caulker-Lenga Koroma, a Methodist Minister and descendent of Thomas Neale Caulker, who was a chief at Shenge and the Gomers' first convert,³³ remembers the song for Joseph Gomer:

³¹ Darrell Reeck, "Mary and Joseph Gomer: Extending the Spirit of Amistad in Sierra Leone," *Historical Bulletin of World Methodist Society* 27 (Third Quarter, 1998). Retrieved on January 12, 2008 from <http://gbgm-umc.org/umhistory/sierra-leone/gomer.html>

³² Ibid.

³³ William Hart, "Trophies of Grace? The 'Art' Collecting Activities of United Brethren in Christ Missionaries in Nineteenth Century Sierra Leone," *African Arts* 39, 3 (Summer 2006) : 15.

Christmas don cam
Christmas don cam
Daddy Gomer
Buy close for me
Buy close for me
*Buy Close for me*³⁴

The song notes the new clothes that Gomer gave the children for Christmas. In Sierra Leone style, the memorial song celebrates his good attributes of generosity rather than mourning his passing. Caulker-Lenga Koroma learned the song when she was in Sunday school in Shenge.

Joseph Gomer must have admired the wooden African sculptures that were given to him through his missionary work. His journal has drawings of some of these objects, including a twin figure drawing that was published by Daniel Flickinger (fig. A34).³⁵ The work was collected in the Temne town of Rotufunk in 1877. The figure is a wooden carved standing female with a neck pendant that is a probably a British coin with the image of a white European woman, presumably Queen Victoria. It also has beads around its waist and in its ears, and cowrie shells encircling its arms. The location of this twin figure is unknown today. Some of the other objects collected by Gomer, such as a Janus-faced sculpture, are now in the collection of the Florida State Museum.

In 2008, the Evangelical United Heritage Center at the United Theological Seminary in Trotwood, Ohio, exhibited letters and artifacts from the mission as well as

³⁴ Darrell Reeck, "Mary and Joseph Gomer: Extending the Spirit of Amistad in Sierra Leone," *Historical Bulletin of World Methodist Society* 27 (Third Quarter, 1998). Retrieved on January 12, 2008 from <http://gbgm-umc.org/umhistory/sierra-leone/gomer.html>

³⁵ Ibid.

some of the African art collected by Mary and Joseph Gomer.³⁶ In one of the papers,

Joseph Gomer writes:

Early next morning we reached Rotufunk. I was standing in front of the house. A girl passed, going toward the river, with an image ornamented with beads in her hand. I asked her to show it to me, and offered to buy it. She said it was a woman's child, and she was going to wash it. I spoke to the king, asking him to get it for me. He sent for the woman, who said she gave birth to twins and one of them died. She had this image made, and believed that the spirit of the dead child now dwelt in it and minded the family.³⁷

Gomer traded his revolver, Arabic Bible, and an English Bible for the twin or *ibeji* figure of the Yoruba culture.

There is some speculation that Gomer, who was not a Christian until he was an adult, was interested in African religions because he intended to convert. However, Gomer sent the *ibeji* figure (described above) back to the church for its collection, and it seems unlikely that he would have done that if he were considering the Temne religion. Further, if Gomer did plan to adopt the Temne religion, he might have respected the meaning of the statue and allowed the family to keep it.

Many African artworks also made their way to Europe in the arms of nineteenth-century explorers and collectors, including the famed British adventuress Mary Kingsley (1862-1900). Kingsley's art collecting grew from her interest in the social and religious structures of Western African cultures. Although unmarried women had very few options

³⁶ Press Release. Retrieved on January 12, 2008 from <http://www.united.edu/eubcenter/exhibit07gomers.shtml>

³⁷ Joseph Gomer, October 2, 1877, quoted in William Hart, "Trophies of Grace? The 'Art' Collecting Activities of United Brethren in Christ Missionaries in Nineteenth Century Sierra Leone," *African Arts* 39, 3 (Summer 2006): 19.

during the Victorian era, Kingsley traveled to Africa in 1893, and again in 1895, to study botany and African religion. How did she find herself in Africa?

In her biography of Kingsley, Katherine Frank implies that Kingsley's failure to marry was based more on the obligation she felt to help her parents run the household than on lack of admirers.³⁸ While serving as her mother's nursemaid and her father's assistant, she read accounts of travelers' adventures around the world. After her father's death in 1892, Kingsley found herself with an annual income that allowed her to travel. Aiming to educate herself on the culture and science of the tropics, she chose Africa over South America solely because it was the less expensive option. Her goals were to collect flora and fauna for British collections, and to gain a deeper understanding of African religions. Although she thought at first that she would die, given the dangers associated with "darkest Africa," instead she lived to write two books, *Travels in West Africa* (1897) --an immediate bestseller--and *West African Studies* (1899).

Kingsley examined the geography, botany, religion, culture, social customs, and art of each place she encountered. She became well known from her lecture tours after her second trip to Africa. There were many newspaper articles about her, similar to this one about her second book from the "London Literary Letter" of the New York Times:

Miss Mary Kingsley, the West African traveler, is just publishing a volume of sketches, or rather, studies, of West Africa. Miss Kingsley is not only an intrepid traveler, but she has that rare gift in a woman, true humor. Her new book ought to be both a valuable and an entertaining one.³⁹

³⁸ Katherine Frank, *A Voyager Out: The Life of Mary Kingsley* (Boston: Houghton Mifflin, 1986), 43.

³⁹ W. L. Alden, "London Literary Letter," *The New York Times*, 10 Dec. 1898: BR840

Kingsley satisfied the public curiosity with books and lectures on what she had learned. During three years of lecture tours in England, she spent much time defending African polygamy and other practices that British people found shocking, including the sexual aspect of initiation rites. She also found the Africans' lesser degree of privacy an interesting fodder for her research.⁴⁰

Kingsley's fascination for all aspects of West Africa provides one example of the Europeans' growing interest in African art and culture at the end of the nineteenth century. Given her interest in religion and science, it's not surprising that Kingsley collected art objects. At her death in June, 1900, Mary Kingsley bequeathed fifty objects from Africa to her brother Charles. He, in turn, donated the objects (art, plants, and implements such as tools and tobacco pipes) to the Pitt Rivers Museum at Oxford University in September, 1900. Interestingly enough, some items from the plunder of Benin made their way into Mary Kingsley's hands. One of these Benin works, now at the Pitt Rivers Museum, is a decorated vessel that has figures of snakes protruding and radiating out of a face on the lid (fig. A35). This piece was to be used in a ceremony that was about to occur when the British invaded Benin, the Oba's ceremony in honor of his father, the past Oba.

1897 and Following: African Art in Europe

The appearance of Benin artworks in Europe coincided with a time of growing interest in Africa. In England, exhibitions about Africa had begun with the Great Exhibition of 1851, and there were numerous exhibitions well into the twentieth century.

⁴⁰ Katherine Frank, *A Voyager Out: The Life of Mary Kingsley* (Boston: Houghton Mifflin, 1986), 75.

Not objective acts of African study, many of them were spectacles that aimed to recreate the experience of ‘discovering’ Africa.⁴¹ According to Philip Dark:

Benin art was thus not familiar to Europe before the Expedition of 1897, and certainly not the bronze art upon which its fame largely rests. Its sudden appearance in Europe came at a time when objects from exotic cultures were becoming more familiar to European eyes: scholars, particularly in Germany, had been taking a keen interest for some time in assembling ethnographical collections from cultures remote from and unfamiliar to Europe.⁴²

The British government sold a number of Benin pieces in a series of auctions to help pay for the expedition. Members of the expedition also brought back their own pieces, which they kept or sold. The dissemination of looted art from Benin was so widespread that most African art collections in England contain at least one work of art from Benin.

One of the first public displays was an exhibit of "some interesting bronzes from Benin City" in the Royal Colonial Institute in London in June, 1897.⁴³ European collecting of Benin art began as the consequence of England’s political conquest of modern-day Nigeria, but Europeans soon began to collect these works for their beauty.

As Elazar Barkin writes:

Culturally, however, the conquest was a watershed event. The treasures seized by British soldiers soon became the most highly prized of all African art, their value undiminished to this day. In Europe the quality of the plunder was celebrated as unprecedented, and the new veneration of

⁴¹ A modern analogy might be today’s ‘reality’ television shows where men ‘survive’ the wild and the audience is supposed to forget that a film crew is there.

⁴² Philip Dark, *An Introduction to Benin Art and Technology* (Oxford: Clarendon Press, 1973), 14.

⁴³ David Gill, “Some Thoughts on the Benin Bronzes,” 2008. Retrieved from <http://www.modernghana.com/news/176411/1/some-thoughts-on-the-benin-bronzes.html>.

Benin art overshadowed the violence surrounding its use and the events of 1897.⁴⁴

The British Museum also had an exhibition of carved ivories and three hundred plaques from Benin City in 1897. The press described the exhibition as a reminder of the original British party's massacre that led to the Punitive Expedition. As noted by Annie Coombes, the exhibition provoked a striking paradox: "a thriving market response to Benin culture on the grounds of aesthetic merit and antiquity, while simultaneously fostering the spectacle of a bloody and senselessly cruel society."⁴⁵ Although popular, the artworks were not readily accessible. Coombes writes:

The location of the Benin material on view to the public at the British Museum reinforces the fragility of the ethnographic department's status within the institution of the Museum itself. The ethnographic section was at the time part of a larger department of British and Medieval Antiquities and Ethnology, and in fact the actual ethnographic galleries were only open to the public on certain days of the week and then for only two hours in the evening.⁴⁶

A few critics' racism led them to believe that the artworks from Benin could not have been made by Africans. Based on the long history of Portuguese trade in Nigeria, they deduced that the work was of Portuguese descent.⁴⁷ Another proposed thesis was

⁴⁴ Elazar Barkan, "Aesthetics and Evolution: Benin Art in Europe," *African Arts* 30, 3 (Summer 1997): 36-41.

⁴⁵ Annie E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven and London: Yale University Press, 1994), 43.

⁴⁶ *Ibid.*, 60.

⁴⁷ Henry Ling Roth, "Notes on Benin Art," *Reliquary* 5 (1898): 170.

that the art from Benin was Egyptian in origin.⁴⁸ Yet other people, including Mary Kingsley, argued that Africans had created their own art.⁴⁹

German museum professional Felix von Luschan also came to believe that the works from the kingdom of Benin were made by local artists. While on a trip to England he learned of the auction of some objects from the Punitive Expedition. Some of them were described in a note found in the museum files:

“The two following lots were found in the King of Benin’s palace when the city was taken in March last: 93. An ivory armlet, carved in high relief with masks and scroll ornament, and double snakes enclosing star-shaped plaques of gold, and inlaid raised borders with European copper gilt ornaments of the fifteenth century, which probably formed the links of a Knight’s belt *Worn by the King of Benin* and 94. A curious sacrificial Cup and Cover, of stained ivory, carved as the head of a monster with metal inlay.”⁵⁰

According to the files, von Luschan purchased lot 94 for 15 pounds.⁵¹ With both public funds and private donations available to him for the purchase of African art, he acquired many other works from Benin for the *Museum für Völkerkunde*, or Museum of Ethnology, in Berlin.

According to some scholars, these purchases led to a rivalry between Germany and England for articles from Benin. The English felt that the art of Benin was theirs

⁴⁸ Annie E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination*. (New Haven and London: Yale University Press, 1994), 59.

⁴⁹ Katherine Frank, *A Voyager Out: The Life of Mary Kingsley*. (Boston: Houghton Mifflin, 1986), 212.

⁵⁰ Collection of letters and documents from the *Museum für Völkerkunde* relating to the acquisition of Benin art, located in the State Archives in Berlin. Lot information from Christies on King Street in St James Square, London.

⁵¹ Collection of letters and documents from the *Museum für Völkerkunde* relating to the acquisition of Benin art, located in the State Archives in Berlin.

because Nigeria at the time was a colony of England. In his book, *Great Benin*, Henry Ling Roth expresses the British disappointment over their loss:

From what I can ascertain, the bulk of these bronzes has been secured by the Germans, and it is especially annoying to Englishmen to think that such articles, which for every reason should be retained in this country, have been allowed to go abroad. Not that I wish to, nor do I blame the Germans in the least for what they have done, but it is only one more example of their alertness, and of our apathy. These articles have been lost to us, directly through the want of funds, but indirectly owing to grave omissions on our part in times gone by, to circumstances which unfortunately continue. To many, this loss apparently a small matter when compared with great domestic questions of the day, nevertheless the principle involved is an important one.⁵²

In a methodical and thorough manner, von Luschan explored all avenues for acquiring Benin art. He wrote to auction houses and the German consul in Lagos to search for more examples. He wrote to art collectors and traders. He even wrote to other museum professionals. His search for Benin art for the museum also became research about Benin art and culture. He began using cards to document all known Benin objects that were in public and private hands. From this indexing system, he published a catalogue, *Corpus Antiquitatum Beninensium*. Von Luschan's work led to the comprehensive book *Die Altertümer von Benin* in 1919. Von Luschan was the first to claim that the Afro-Portugese ivories were from Benin. He also called these objects art when others were focusing on Benin as the "City of Blood".⁵³

By 1898 in Germany, there was a huge interest in collecting art from Africa. The German museums had large budgets, especially the Berlin *Museum für Völkerkunde*.

⁵² Henry Ling Roth, *Great Benin: Its Customs, Art and Horrors* (Halifax: King and Son, 1903), xix.

⁵³ "City of blood" refers to the widely held belief that the people of Benin practiced human sacrifice. For one account, see Richard Gott, "The Looting of Benin," *The Independent*, 22 Feb. 1997. Retrieved from <http://www.arm.arc.co.uk/lootingBenin.html>.

With an annual governmental grant of two thousand pounds, and wealthy patrons who were interested in ethnology, the Berlin museum had enough income to finance expeditions. The German imperial law also helped. More strict than *partage*, it stated “that all collections acquired by Germans traveling or living abroad on *Reich* business be offered to the Berlin museum of ethnology before being sold or donated to any other museum.”⁵⁴

It is not surprising that Berlin became a leading center of anthropology, ethnology, and prehistory. Aided by law, von Luschan was able to acquire works from across the world. According to Zimmerman, the *Museum für Völkerkunde* amassed the largest anthropology collection in the world, collecting over two thousand works per year between 1895 and 1907.⁵⁵ Not only art was collected. Skulls, and flesh with tattoos or scarification, were the most common human body items taken from colonial wars. According to Zimmerman, peace time made for alternate means of collecting human remains:

Even in times of peace, however, anthropological collections could be acquired by robbing graves. This was a common practice among travelers collecting for anthropologists, who would often covertly exhume corpses and ship them to Berlin.⁵⁶

For the most part, the imperial German anthropologists did not agree with the notion of what they called the Darwinistic “*Affenlehre*” or “monkey doctrine.”⁵⁷ They

⁵⁴ Andrew Zimmerman, *Anthropology and Antihumanism in Imperial Germany* (Chicago and London: The University of Chicago Press, 2001), 153.

⁵⁵ *Ibid.*, 153.

⁵⁶ *Ibid.*, 161.

⁵⁷ *Ibid.*, 7.

categorized humanity into two different subtypes: *Kulturvölker* and *Naturvölker* or cultural peoples and natural peoples.⁵⁸ Cultural peoples have a society with culture and history, while the natural peoples are devoid of culture and history. As Zimmerman writes:

For anthropologists, objects spoke for themselves and therefore did not require the uncertain, subjective interpretation that texts demanded. Indeed, “natural peoples” themselves were conceived of as objects, devoid of history and part of a static, objective, realm of nature.⁵⁹

The Berlin museums pioneered the use of ferro-vitreous, or iron and glass, display cases (fig. A36). They were set up in parallel rows, allowing museum visitors to look through the cases and see items in the cases beyond. This construction became known as the “Berlin iron case.”⁶⁰ Earlier display cases were made of wood and glass, which allowed only one case to be viewed at a time. Iron cases could also support the weight of larger panes of glass. Thus, the Berlin case allowed for larger cases filled with more objects.

Unlike the curators at Oxford’s Pitt Rivers Museum, the Berlin anthropologists did not group like items together to show an evolutionary progression.⁶¹ They used small labels, usually mentioning where the objects originated and occasionally who donated them. Because the Germans categorized Africans as *Naturvölker*, or “natural peoples,” no cultural descriptions were used.

⁵⁸ Ibid., 3.

⁵⁹ Ibid., 149.

⁶⁰ Ibid., 179.

⁶¹ Ibid., 185. Zimmerman here is discussing grouping like items together so that the viewer gets a sense of the object’s evolution.

Art from Africa also captured the public interest in Belgium in the late 1890s. King Leopold II of Belgium was on the verge of bankruptcy by the middle of the 1890s, when the discovery of rubber trees in the Congo saved him from financial ruin. The king claimed rights to the rubber, and he pressured the Congolese into collecting it by imposing taxes. By the late 1890s there was a surplus of wealth, which he spent on lavish projects for himself and for Belgian public projects. Leopold II sponsored an exposition on the Congo in 1897 to publicize his work. The objects from the exposition were eventually placed in the Royal Museum of the Congo, which was later named the Royal Museum for Central Africa.⁶²

In March, 1890, the Victoria Gallery in London had an exhibition that led the viewers step-by-step through Henry M. Stanley's journey down the Nile River to the Congo. Without public funding, the exhibition was arranged by a committee and financed privately. The Victoria exhibition (figs. A37-A39) was very extensive, including maps, dioramas, all kinds of objects, weapons, sketches and paintings of Africa in what might be called a trophy organization. That is, the items were displayed as trophies, heroic mementoes of Stanley in Africa, celebrating the glory of the explorer. The wide-ranging audiences included colonial servicemen, anti-slavery campaigners, geographers, anthropologists, missionaries, ethnographers, art historians and merchants. All had their own motives for learning about Africa. Press reviews of this exhibition praised it as almost an adventure in itself that transported the exhibition audience to Africa.⁶³

⁶² Enid Schildkrout and Curtis A. Keim, "Objects and agendas: re-collecting the Congo," *The Scramble for Art in Central Africa*, eds. Enid Schildkrout and Curtis A. Keim (Cambridge: Cambridge University Press, 1998), 13-14.

⁶³ Annie E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven and London: Yale University Press, 1994), 69.

The Victoria exhibition included two human beings, boys who were said to be orphaned from Swaziland (fig. A40). It also had a slavery section which featured artists' drawings of African women.⁶⁴ Exhibitions with real people, hailed as Africans doing what they would have done in Africa, were introduced in the 1870s. Known as human zoos, or in Germany, *Völkerschau*, they became quite popular.⁶⁵ Such exhibitions were held in Hamburg, Amsterdam, Barcelona, New York and London. Human zoos offered not only Africans, but also Arabians, Eskimos, Hindus, Tibetans, Mexicans, and Irish people, as "troupes" of people for armchair anthropologists to study.

Were there any stirrings of change in the legal protection for indigenous artworks and cultural artifacts as the nineteenth century drew to an end? What little evidence there is comes from outside Africa.

In 1873, the German archaeologist Heinrich Schliemann, while excavating on a hill in Hissarlik, Anatolia, dug through what might have been King Priam's Troy to a tall double gate with a long stone ramp and some remains of a large building. He found a copper container filled with many objects (figs. A41-A42). As Akinsha and Kozlov write:

After transferring everything to the wooden hut where he stored his finds, he locked the door, covered the windows, and spread the treasures on a table. The objects had been packed in a disorderly manner, one crammed inside another or bent to fit a small space. There were a large copper shield and a flat-bottomed cauldron, a silver goblet and three silver vases, a gold bottle and gold cups. There were silver knife blades and copper daggers and lance heads. At the bottom of the largest silver vase Schliemann found two elaborate diadems, a slender fillet, four intricately

⁶⁴ Ibid., 79.

⁶⁵ Ibid., 4-5. For Poster, see also http://en.wikipedia.org/wiki/Human_Zoo.

worked eardrops, fifty-six earrings, six bracelets, two small goblets, and 8,750 rings and buttons, most of them tiny.⁶⁶

Schliemann's digging permit clearly indicated that he must share his findings with the state. However, instead of disclosing his find to the state or the archaeological community, he smuggled the treasure into Greece. Only after arriving in Athens did he write letters to inform the scholarly community of his great discovery. This information made its way to the Turkish government, and the Turks took Schliemann to court. The trial lasted for a year and ended in a victory for Schliemann. In what amounted to a slap on the wrist, he was ordered to pay 10,000 gold francs. He later sent 50,000 gold francs to the museum in Constantinople along with some of the smaller pieces from his archaeological discovery. Schliemann presented his discovery to Germany in 1881, and museum officials in Berlin promised that it would be on view for all time.

While Schliemann has been vilified by the academic community for his unorthodox means of acquiring ancient Trojan art, the nineteenth-century collectors of African art were not reproached for their collecting procedures. This marks one way in which African art was viewed differently from Western art.

In contrast with Europe, the United States was a pioneering government in addressing wartime art looting or plunder. At the end of the United States Civil War, the United States had implemented an important law regarding cultural property. Article thirty-six of the Lieber Code of 1863 states:

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled

⁶⁶ Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995), 8.

by the ensuing treaty of peace. In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, wantonly destroyed or injured.⁶⁷

The Lieber Code, also known as the Lieber instructions, was named after the German-American jurist and political philosopher Francis Lieber. President Lincoln signed it into law almost four months after enacting the Emancipation Proclamation with the famous phrase “forever free.”⁶⁸ Had the Lieber Code been a part of British law in 1897, at the time of the Punitive Expedition, then perhaps the works would never have been taken from Benin, at least not without the Oba of Benin's permission.

Although Lincoln may have been thinking more in terms of humanity than cultural property, the Lieber Code seems very much in line with A. C. Quatremère de Quincy’s thoughts on the responsibility of the law to protect. As noted in Chapter One, Quatremère believed that art should be studied in context. There is a natural progression from the insistence on contextual analysis to advocating, as Quatremère did, the notion that no one nation should appoint itself keeper of all art and literature. Doing so is an act that demonstrates strength but cultural insensitivity.⁶⁹ Benin scholars yearn to see all the thousands of Benin artworks together, just as scholars of the Parthenon Marbles wish to

⁶⁷ <http://www.yale.edu/lawweb/avalon/lieber.htm#sec2>. The Avalon project at Yale Law School is an online database of documents in law, history and diplomacy.

⁶⁸ Ground-breaking artist Edmonia Lewis, a woman of African and Native American descent, used this title for her sculpture created in 1867.

⁶⁹ Steven Adams, “Quatremere de Quincy and the instrumentality of the museum.” *Working Papers in Art and Design*. Retrieved December 10, 2007 from <http://www.hert.ac.uk/artdes/research/papers/wpades/vol3/safull.html>. Quatremère insisted that art remain where it is, even if it is in a politically turbulent climate. To remove art from its context or ‘base’ was to convert a work of art into a curiosity.

see them all together to gain a more thorough understanding of Pericles' Athens.

However, the placement of Benin art in its original context is unknown.

In fact, there may be a stronger legal case to support the return of Benin art to Nigeria than there is to return the Parthenon Marbles to Greece. The 1897 Benin invasion and removal of artwork had no firman, or official permit from the government, to support it. The 1892 English treaty of protection had not been signed by the Oba; it was signed by his chiefs using his name. This is an often overlooked fact, as noted by Philip Igbafe:

Initially [Royal Niger Company Commissioner] Gallwey says that 'the king and chief men were more than anxious to sign the treaty' but in the next breath he admits that the Oba refused to touch the pen although he allowed his chiefs to do so and his name to be used. The ostensible reason Ovonramwen gave was that he was in the middle of an important festival which forbade him to do otherwise. This agrees with Benin palace tradition which maintains that Ovonramwen did not touch the white man's pen and yet he is said to have signed on the treaty.⁷⁰

The entire process of signing the treaty involved three translators: one translating from English to Yoruba, another translating from Yoruba to the Akure language of the king's main advisor, who then translated it to the Edo language of the Kingdom of Benin for Oba Ovonramwen.⁷¹ It's not surprising that there are disputes to this day over the faulty nature of the contract and whether it was binding.

The European countries competed in Africa well into the twentieth century, extending the agreements of the Congo Conference to continue their economic colonialism without hindering each other. For example, the Entente Cordiale of 1904

⁷⁰ Philip Aigbona Igbafe, *Benin under British Administration: The Impact of Colonial Rule on an African Kingdom 1897-1938* (Atlantic Highlands, NJ: Humanities Press, 1979), 42-43.

⁷¹ *Ibid.*, 44.

outlined the end of Britain and France's battle over Egypt and Morocco. With this agreement, the French were allowed to trade in Egypt and the British were allowed to trade in Morocco. Article Four states:

The two governments, being equally attached to the principle of commercial liberty both in Egypt and Morocco, declare that they will not, in those countries, countenance any inequalities, either in the imposition of custom duties or other taxes, or of railway transport charges. The trade of both nations with Morocco and with Egypt shall enjoy the same treatment in transit through the French and British possessions in Africa. An agreement between the two Governments shall settle the conditions of such transit and shall determine the points of entry.⁷²

From the tragic looting of Benin came an awareness of the craftsmanship and beauty of Benin art. A great price was paid to gain this point: loss of context. This knowledge gap on the part of European collectors continued as they, paradoxically, considered the art to be valuable from an aesthetic and intellectual perspective, but considered the people who made it to be barbaric or primitive in nature. And the European colonial powers believed that they owned the rights to these works.

Europeans valued the Benin works in terms of their financial and political worth. The fact that artists and art buyers in the nineteenth and early twentieth centuries found them aesthetically appealing was a bonus. Is art that is stripped of its context craft? Quatremère was concerned that if art becomes devoid of context, then its emphasis will only be on technique, lacking the cultural and spiritual beliefs that cannot be explained in terms of aesthetic principles. Perhaps that is why contemporary African art historians insist on contextualizing the works.

⁷² Great Britain, Parliamentary Papers London, 1911, Vol. CIII, Cmd. 5969 formally titled, the 'Declaration between the United Kingdom and France Respecting Egypt and Morocco'.

As the twentieth century dawned, many European museums had African art because of the increased colonization and interest in African natural resources. A number of factors contributed to western interest in Africa, such as: laws favorable to colonizing powers who looted and pillaged, increase in missionary activities, and what the historian Robin Hallett in his book *Africa Since 1875* calls "the mounting spate of books on Africa."⁷³ This chapter has given examples of these factors in: the looting of Benin in the Punitive Expedition, the missionary Joseph Gomer, and the adventuress and author Mary Kingsley.

Although awareness of, and interest in, African art greatly increased towards the end of the nineteenth century, it was still largely considered a primitive product of an inferior culture. For this reason it was seen only in ethnological museums for the most part, and not knowing the artworks' context and meaning, museums grouped like objects together more like trophies in a case than art to be appreciated and viewed. These trophy cases were often seen in exhibitions which also featured human zoos.

The fact that cultural objects from Africa were not really considered art makes it understandable that there were no laws to protect it from being taken away from its source nation. In nineteenth-century Europe there was nothing like the Lieber Code in the United States, although the Congo Conference, which allowed European countries to further colonize Africa did outlaw slavery. It would remain for the twentieth century to enact laws to protect cultural property.

⁷³ Robin Hallett. *Africa since 1875: A Modern History*. (Ann Arbor: The University of Michigan Press, 1974), 44-45.

CHAPTER III: COLLECTING AND WORLD WARS, 1905-1945

At the beginning of the twentieth century, the continued expansion of European exploration and colonization of Africa was supported by legislation that protected the rights of the colonizing nations. Ironically, this legal protection for the European powers led indirectly to broadening public views of African art and artifacts. Along with greater public exposure, differing ways of viewing African art began to develop. The issues of forgery and authenticity arose with the growing interest in and demand for African art.

Laws changed more slowly than public perception, however. At the end of World War I, the Treaty of Versailles gave some thought, though little protection, to cultural property. Bigger steps on the road to protection did not come until after World War II, when enormous amounts of looting of artworks had served to raise world consciousness of the importance of protecting cultural property.

This chapter has four sections. It starts with an overview of the Treaty of Versailles, and its failure to deal satisfactorily with cultural property. It then outlines the changes in public interest in African art leading up to World War II, including a large rise in the collecting of African art in the 1920s. It also discusses the large-scale plundering of art during World War II, which affected African art that was located in Europe. The chapter ends with the formation of UNESCO in 1945, which began to lay a foundation for preventing illicit art traffic in the future.

The Treaty of Versailles: Attempts to End Retaliatory Looting

As described in Chapter Two, the Congo Conference of 1884-85 had given Europeans *carte blanche* to establish new footholds and to exploit larger and larger portions of Africa. For the most part, they took away whatever art and artifacts they

wanted. Although interest in African art grew before World War I, known then as the Great War, not much happened legally until its end. But many people have very long memories when it comes to plundered cultural property. For example, it is unlikely that Nigeria will give up its desire for the return of the Benin art work, or Greece will give up its desire for the return of the Parthenon Marbles. Perhaps with the same kind of interest, France wanted the return of works that it lost during the war of 1870-1871. In 1919, nearly fifty years later, France succeeded in this because of terms written into the Treaty of Versailles. Article 245 states:

Within six months after the coming into force of the present Treaty the German Government must restore to the French Government the trophies, archives, historical souvenirs or works of art carried away from France by the German authorities in the course of the war of 1870-1871 and during this last war, in accordance with a list which will be communicated to it by the French government;¹

The 1919 Treaty of Versailles formally ended World War I. Legal predecessors to this treaty were the Hague conferences of 1899 and 1907. As Douglas Rigby writes:

International Agreements, first drawn up in 1874 and later confirmed and amplified at The Hague conferences of 1899 and 1907, expressly forbade such practices [cultural plunder] in what was in effect a Magna Carta not for man himself but for his finest achievements, for those objects which mark his ascendancy, dignity, and purpose. Yet it was for 1919 to decide whether or not the victor's "right" to such spoils should receive a truly telling blow. It was then that the new tradition met its greatest test, when in contrast to the partially accidental turn of events a century before, the writers of the World War treaties exercised conscious and enlightened² volition to prevent the retaliative looting of cultural objects. . .

¹ Treaty of Versailles, *3 Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other Powers* 3329 (Washington, D.C.: US Government Printing Office, 1910-1938), reproduced in: John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 58.

² Douglas Rigby, "Cultural Reparations and a New Western Tradition," *American Scholar* 273, 278-84 (Summer 1944), reproduced in: John Henry Merryman, Albert E. Elsen and Stephen K. Urice, eds., *Law, Ethics and the Visual Arts*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 60.

Treaty of Versailles was an attempt not simply to restore spoils of war, but also to prevent future loss during wars. Art in this instance was not appreciated for its artistic merits, but rather for its financial, and consequently, political importance.

This treaty did not deal with art objects in much detail, however. For the most part, its treatment of art continued the dispute between France and Germany that went back to the Napoleonic looting of German art to furnish the *Musée Napoleon*. It also stipulated that the Germans reimburse France for wartime losses, in addition to returning all the items stolen or bought.

An interesting aspect of the Treaty of Versailles is that unlike the 1954 Hague Convention or other later conventions, it did not give art special treatment under the heading of cultural property. Some of the art that was specified in the treaty appeared to be valued mainly for its religious nature. For example, Article 246 stated:

Within six months from the coming into force of the present Treaty, Germany will restore to His majesty the King of Hedjaz the original Koran of the Caliph Othman, which was removed from Medina by the Turkish authorities and is stated to have been presented to the ex-Emperor William II.³

Only one object of African origin was individually specified in the Treaty of Versailles. It mandated the return of the skull of Sultan Mkwawa (fig. A43), which had been taken from present day Tanzania.⁴ The Sultan was a primary chief of the Hehe people who had opposed the German occupation. He was very effective in using guerilla warfare against the Germans until 1898, when he shot himself rather than be captured alive. The British made sure that the skull was the correct one by measuring the sultan's

³ Ibid.

⁴ Ibid.

descendants. The British government kept the skull until 1954 when it was returned to Tanzania, and it is now in the Mkwawa Memorial Museum.⁵

Many scholars have written about the problems of the Treaty of Versailles and what consequences it has had for future wars, such as the war in Iraq. One issue with the Treaty of Versailles concerns what happens later to cultural property that is lost or damaged during war. Is financial reparation sufficient? And how should the losing country make financial reparations without causing horrific inflation such as the one that occurred after World War I (when Germany was bankrupt, and thus made to pay reparation in kind)?

One problem that affected the writing of the Treaty of Versailles was that the victorious powers of England, France, Italy and the United States had differing aims. France wanted Germany to be punished. England wanted to enable Germany to be an economically viable competitor to France and Russia. The United States wanted peace. There was a definite conflict between paranoid France, practical England and the utopian United States. This led to a compromise that was unsatisfactory to all three powers.

Not only the German Empire, but also the Austro-Hungarian Empire, ended at this time. As Lawrence M. Kaye writes:

World War I also resulted in the breakup of the Austro-Hungarian Empire, and both the Treaty of St. Germain of 1919 with Austria and the Treaty of Trianon of 1920 with Hungary included provisions obliging both of those nations to restore to the newly independent states of the Hapsburg monarchy cultural property taken before and during the war.⁶

⁵ Is-Haka M. Mkwakwa, "Kalenga" Retrieved from <http://www.mkwawa.com/day4kalenga.asp>

⁶ Lawrence M. Kaye, "Laws in Force at the Dawn of World War II," *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, 1997), 103.

The Treaty of St. Germain provided for a committee of three people to resolve claims by other countries for the return of objects that were artistic, archaeological, scientific or historic. Some of the items claimed under this treaty were works by Michelangelo, Holbein and Dürer. The Treaty of Versailles also lacked a “statute of limitations.” According to Kaye, this led to “some claims involving Austria and Czechoslovakia dating back as far as the seventeenth century.”⁷

*Collecting and Display of African Art before
World War II: Differing Views*

By the turn of the twentieth century, Benin art from the Punitive Expedition had made its way into such places in England as the British Museum, Liverpool's Mayer Museum, the Pitt Rivers Museum in Oxford, and London's Horniman Free Museum.⁸ European explorers, government officials, soldiers, ship captains and others continued to bring objects back from Africa in increasing numbers. Museums acquired the works through donations and purchases. For example, Emile Torday, an agent for the Belgian Kasai Trading Company, had an agreement with T. A. Joyce, the Keeper of Ethnography at the British Museum. Through this agreement, Torday donated the bulk of the contemporary contributions from the Congo to the British Museum. He also made generous contributions to the Pitt Rivers Museum in 1904, 1907, and 1910. Both the British Museum and the Pitt Rivers also purchased African collections, a number of these from the London Missionary Society.⁹

⁷ Ibid.

⁸ Annie E. Coombs, *Reinventing Africa* (London and New Haven: Yale University Press, 1994). 23.

⁹ Ibid., 148.

In part because of its location at a major port, the Liverpool County Museum (Mayer Museum) assembled an ethnographical collection that "...was one of the largest and fastest-growing in Britain from 1890 to 1913, second only to the British Museum."¹⁰ The Elder Dempster Shipping Line had an agreement with the Mayer Museum which allowed its chief engineer, Arnold Ridyard, to give free transport for any objects that he donated to the museum. As a result, Ridyard was the single most prolific contributor to the West African collections of the Mayer Museum between 1893 and 1916.¹¹

Like many collectors around the turn of the twentieth century, Ridyard acquired primarily wooden sculpture and masks. Louise Tythacott writes:

Ridyard, it seems, never missed a voyage in all his twenty-one years at sea. According to museum stockbooks, he donated objects in groups every three to four months, each time his ship returned from a voyage to Africa. Over time, with this constant flow back and forth between Liverpool and Africa, the collections came to reflect the ports of call of the Elder Dempster ships, mapping some of the key European trading sites on the coastline at the time. Ridyard's collection is remarkable, not only because it is unusually dense in masks and figurative carving but also because the material is coastal and trade-related rather than provenanced predominantly to British colonial territories.¹²

The wealth of new objects from Africa made possible a number of exhibitions, such as the British Museum exhibition of Benin art mentioned in Chapter Two. Around the turn of the century, a number of universal exhibitions included African art. The Brussels Exhibition of 1897 was discussed in Chapter Two. There was also an exhibition

¹⁰ Ibid., 129.

¹¹ Ibid., 130.

¹² Louise Tythacott, "The African Collection at the Liverpool Museum," *African Arts* 31, 3 (Summer 1998), retrieved from: <http://web.ebscohost.com/ehost/detail?vid=8&hid=8&sid=16919708-5fed-488a-b253ffe3d5c63044%40sessionmgr2&bdata=JkF1dGhUeXBIPWlwLHVybCxlYWQmc2l0ZT1laG9zdC1saXZl#db=aph&AN=1505219>

in Berlin in 1896. One result of these exhibitions was that more and more Europeans were introduced to African art. Some, such as Mary Kingsley and Felix von Luschan, found African art culturally interesting and important; however, the art was still generally considered a representation of a primitive or mysterious pagan culture. Shelley Errington offers a possible reason for this:

... as late-nineteenth century Europeans increasingly came to think of themselves as secular, rational, civilized, and technologically advanced, they almost necessarily generated an imagined “Other” that was savage, ignorant, and uncivilized; I suggest this dichotomous structuring of thought was temporalized by the idea of progress, placing the colonized primitives who lived in nature prior to history.¹³

The *Exposition Universelle* of 1900 (figs. A44-A46) had live displays of African people that purportedly showed how they truly lived in Africa. Although both earlier and later international expositions in Paris displayed African culture in some way, the 1900 exposition was remarkable for the enormous scale of its ethnographic exhibitions. They included Dahomean and Congolese villages that attempted to recreate how Africans really lived. Leighton writes:

Prior to 1906, individual Africans, supplied by wild animal importers, were regularly exhibited. For Picasso’s generation, the best known such spectacle in Paris was held at the Exposition Universelle of 1900, which mounted enormous ethnographic exhibits, including “re-creations” of Dahomean and Congolese villages complete with “pikes on which were stuck the actual skulls of slaves executed before the eyes of Bahanzin,” the last king of Dahomey;¹⁴

The exposition served as a political tool to rationalize the colonial treatment of Africa.¹⁵

¹³ Shelly Errington, *The Death of Authentic Primitive Art and Other Tales of Progress* (Berkeley: University of California Press, 1998), 74.

¹⁴ Patricia Leighton, “The White Peril and *L’Art nègre*: Picasso, Primitivism and Anticolonialism,” *Art Bulletin* 72, 4 (Dec. 1990): 611.

¹⁵ *Ibid.*

Public interest in the aesthetic merit of African art began to grow after the French people, and especially French artists, were introduced to this art in international expositions. The *Musée d'Ethnographie du Trocadéro* (figs. A47 and A48) was founded in conjunction with the International Exposition of 1878 in Paris. It was in this museum that Picasso later sketched African art. Even while the *Exposition Universelle* was showing "natives" in living dioramas, French artists began to diverge from the view of African art as "curios" and began to collect African art. One explanation for this was that artists in Europe were beginning to rebel against the academy tradition of representational art.¹⁶ There were so-called "secessions" from the academies in Berlin, Munich, Budapest and Vienna as well. Matisse and Picasso, who originated some of the first important twentieth-century art movements, were among the first collectors of African artworks.¹⁷

Picasso's period of African influence began about 1907. He visited exhibits of African art, hung it on his walls, and sketched it. He was fascinated by what he saw as powerful aggressive and sexualized female bodies in African art and painted them in his own work (fig. A49).¹⁸ Because of African art's influence on Picasso and other great early twentieth-century artists, art dealers and other collectors began to seek out this art.

When one thinks of the decade following World War I, images of the free-living flappers of the 1920s come to mind. This was a time when Josephine Baker's "African dances" were the hit of the Paris cabarets. Following Picasso's lead, many people were collecting African art by 1919 (figs. A50 and A51). Picasso's allegiance to "*l'art*

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid., 626.

primitiv” is connected not only with his previously mentioned love of the aesthetic qualities of African art, but also with his anarchist leanings and anti-colonial sentiment. As Patricia Leighten writes, “It was their anarchism that prepared Picasso and many in his circle to adopt anticolonial postures, which are abundantly evident in the cartoons made by central modernist figures.”¹⁹

American art collectors and museums also acquired African art in the 1920s. Alain Locke, a chief interpreter of the Harlem Renaissance, started using African art as illustrations in the *New Negro* anthology of fiction, poetry and essays (fig. A52) in 1925.²⁰ He used photographs of African art from the collection of Philadelphia businessman Albert Barnes as a means of integrating African-American culture and African art. In 1924, Locke wrote about how African art should be studied: “It follows that this art must first be evaluated as a pure form of art and in terms of the marked influences upon modern art which it has already exerted, and then that it must be finally interpreted historically to explain its cultural meaning and derivation.”²¹

Jeremy Braddock writes, “. . . by the late 1920s, Locke dedicated himself to acquiring a major public collection of African art for Harlem, and providing it with both

¹⁹ Ibid., 609.

²⁰ Braddock, Jeremy, "Alain Locke's Collected Works: The Harlem Museum of African Art." Paper presented at the annual meeting of the *American Studies Association*, 12 Oct. 2006. http://www.allacademic.com/meta/p114124_index.html

²¹ Alain Locke, “Note on African Art: 1924,” *Primitivism and Twentieth-Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003): 187.

an institutional space and a particular critical discourse, each of which would orient the ancient African pieces principally toward New York's African-American citizens."²²

The museum of African art that Locke envisioned never opened, but Locke's collection is now located at the Schomburg Center at Harlem's New York Public Library.

Dr. Albert Barnes started the Barnes Foundation in 1922 in Merion, Pennsylvania.²³ The building was finished in 1925. The Barnes collection, best known for its late nineteenth- and early twentieth- century French works by artists such as Matisse, Renoir and Picasso, also contains African artworks. Although the Foundation stated that Barnes was not a collector like his contemporaries, who collected figurative "primitive" work, one cannot help noticing that most of the one hundred and thirty works of African art are both sculptural and figurative, just as the works that other African art collectors appreciated. As Christa Clarke writes:

As with the collection as a whole, each African sculpture was selected by Barnes to support his educational aesthetic philosophy. Drawing upon the psychological studies of William James, the educational philosophy of John Dewey, and the aesthetic theories of George Santayana and Roger Fry, Barnes advocated a systematic method of formal analysis designed to trace the essential continuity of all great art traditions. His exclusive focus on "plastic form", color, line, light, and space provided a critical framework that encompassed all visual material, regardless of cultural origin or subject matter.²⁴

²² Jeremy Braddock, "Alain Locke's Collected Works: The Harlem Museum of African Art," ASA 2006 individual paper proposal, http://www.allacademic.com/meta/p_mla_apa_research_citation/1/1/4/1/2/p114124_index.html

²³ The Barnes Foundation will be moving to a location on the Benjamin Franklin Parkway according to <http://www.barnesfoundation.org/>. No move date was set as of August, 2009.

²⁴ Christa Clarke, "Recent exhibitions," *African Arts* 30, 1 (Winter 1997), Retrieved from <http://web.ebscohost.com/ehost/detail?vid=8&hid=8&sid=16919708-5fed-488a-b253-ffe3d5c63044%40sessionmgr2&bdata=JkF1dGhUeXBIPWlwLHVybCxlYWQmc2l0ZT1laG9zdC1saXZl#db=aph&AN=1505219>.

Together with one of Barnes's staff members, Thomas Munro, Paul Guillaume and the Barnes Foundation published one of the earliest books on the aesthetic merits of African art in 1926, *Primitive Negro Sculpture*. The display of the Barnes collection is still organized as it was at the time of Barnes's death. Given his stated interest in the aesthetics of any art in terms of repetition of line, form, color, light, and space, it is not surprising that one finds African masks next to early twentieth-century Parisian paintings. The display bases for African sculpture were made in 1922 by a Paris-based Japanese sculptor and cabinetmaker, Kichizio Inagaki.²⁵ Barnes saw African art to be important for the manner in which it educated Western art. As Clarke writes:

To Barnes, the particular significance of African art within this continuum lay in its relationship to modernism. He believed that the figural distortions of African sculpture liberated Western art from the constraints of representation, a point he emphasized through the pairing of Bamana masks and Kota reliquary figures with paintings by Pablo Picasso and Amedeo Modigliani on the wall. Through these arrangements, Barnes sought to demonstrate interrelationships between works of different cultures and periods by revealing their "universal attributes."²⁶

Barnes purchased his entire African art collection in the early 1920s from Parisian dealer Paul Guillaume. Guillaume was a Parisian gallery owner who was born in 1891. Like Barnes, he was known for his collection of Western art and he also collected African art. Guillaume did not come from a wealthy background but started collecting art out of a love for the art of his time. He promoted artists and supplied them with materials when they needed them. At the age of twenty-three he opened an art gallery, with minimal finances (he was the son of a tax collector) and no artistic education. He collected about

²⁵Ibid.

²⁶Ibid.

thirteen hundred works of Western art and many African artworks as well. Joseph Harriss writes:

His first job, at 18, was in an automobile garage near the Arc de Triomphe. He saved his sous and began buying his first paintings: a Picasso for about 50 francs and a De Chirico for even less. The garage imported raw rubber from Gabon to make tires, and some of the shipments contained gifts of African tribal statuettes that Guillaume found fascinating. Excited about the aesthetic qualities of African art at a time when it was generally considered only an ethnographic curiosity, he soon developed a network of sources in France's African colonies. By 1914 he was well enough connected to lend 18 objects to New York's first exhibition of African sculpture as art...²⁷

The exhibition, "Statuary in Wood by African Savages; The Root of Modern Art," was held at Alfred Stieglitz's Gallery 291 in New York City (figs. A53 and A54).²⁸

Guillaume used the proceeds from his sales of African sculpture to buy modernist paintings. He was able to buy this modern art for little money, often from shopkeepers or restaurant owners who got them from artists in exchange for meals or goods. Guillaume made the aesthetic connection between African art and modern Western art as early as 1916, when he placed twenty-five African artworks next to works by his modern French artists. Guillaume hoped to open an art museum filled with his collection that he would donate to France, but that dream remained unfulfilled at his death in 1934.

Albert Barnes was not the only important collector to acquire art from Paul Guillaume. Han Coray of Zurich, Switzerland, also bought African art from Guillaume. Coray was a renaissance man of sorts: he was a teacher, an antique bookseller, a gallery owner, an art patron, an author, an architect, and a publisher. He first displayed African

²⁷ Joseph A. Harriss, "The Pygmalion of the Avant Garde," *Smithsonian* 31, 8 (November 2000): 90.

²⁸ Marius de Zayas, "Statuary in Wood by African Savages: The Root of Modern Art," *Primitivism and Twentieth Century Art: A Documentary History*, eds. Jack D. Flam and Miriam Deutch (Berkeley, University of California Press, 2003), 70.

art in January 1917 such as a caryatid stool by Ngongo ya Chintu of the Luba or Hamba people (fig. A55). This exhibit included a number of Coray's works from African cultures such as the Dan, Guro, Benin, Yombe, Mangbetu, Lega, Kuba, and Chokwe, as well as a Baule work that was on loan from Guillaume. Coray's gallery was the central meeting place for Dada and avant-garde artists such as Hans Arp, Marcel Janco, Wilhelm Lehmbruck, Tristan Tzara, Hans Richter, Hugo Ball and Emmy Hennings.²⁹

Like Barnes, Coray collected most of his art in the 1920s and mostly from Guillaume's Paris gallery. Coray collected around five hundred objects from Africa.³⁰ Due to financial problems, Coray's collection had to be sold and it became the possession of the University of Zurich in 1940. Unlike Barnes, who remained firmly interested in African art's aesthetic qualities alone, Coray became increasingly interested in the cultural context of African art. Interestingly enough, this led to a redefining of his African works. According to Dana Rush, "in the early 1930s Coray began to refer to African masks and sculptures no longer as 'art' but rather as 'cultural work.' With his new approach, Coray made no distinction between African art and African religion."³¹

It is remarkable that such an outburst of African art collection all began when Paul Guillaume worked at a mechanic shop that received free sculpture with the raw rubber from Gabon, and that the great Barnes and Coray collections sprang from such a fortunate circumstance. Guillaume's insistence on the aesthetic importance of African art

²⁹ Retrieved on January 7, 2008 from http://www.artcentrebasel.com/artcentre/exhibitions/african_art

³⁰ Dana Rush, "African art from the Han Coray collection," *African Arts* 33, 1 (Spring 2000): 15.

³¹ *Ibid.*, 88.

regardless of its cultural context spread to his clients as well. The fact that the African art sales financed Guillaume's collection of modern art is also interesting to note.

Guillaume's art came primarily from locations in Africa that were sources of European rubber. It is interesting to ponder whether Picasso's work, which was influenced by Guillaume's African art collection, would have looked differently if the collection had contained works from other regions of Africa – regions controlled by the British, Belgians, Germans, or Portuguese. For example, Arnold Ridyard went to a variety of countries and his collection includes wonderful *nkisi nkonde* from the Congo, including a double-headed dog figure (fig. A56) as well as beautiful Fang masks and Benin works.³²

While collectors in France, Switzerland and the United States were discovering the aesthetic merits of African art, the British Empire continued to celebrate its colonial might. In 1924, and again in 1925, the British Empire Exhibition was held in Wembley, England, from April to November. It featured displays of cultures from British colonies during the reign of King George V. Its purpose was: “to stimulate trade, strengthen bonds that bind Mother Country to her Sister States and Daughters, to bring into closer contact the one with each other, to enable all who owe allegiance to the British flag to meet on common ground and learn to know each other.”³³ This sort of exhibition had been seen in Europe since the mid-nineteenth century. Each pavilion represented a

³² Louise Tythacott, “The African Collection at the Liverpool Museum,” *African Arts* 31, 3 (Summer 1998), retrieved from: <http://web.ebscohost.com/ehost/detail?vid=8&hid=8&sid=16919708-5fed-488a-b253ffe3d5c63044%40sessionmgr2&bdata=JkF1dGhUeXBIPWlwLHVybCx1aWQmc2l0ZT1laG9zdC1saXZl#db=aph&AN=1505219>

³³ *British Empire Exhibition Programme*, (London: Museum of London, Dobson and Molle and Company, Ltd., 1924), retrieved from: <http://www.20thcenturylondon.org.uk/server.php?show=conObject.5864>

colony of the British Empire, and each had its own illustrated exhibition guide.³⁴ The Malayan pavilion (fig. A57), for example, had very elaborate spires and architectural structures. It showed people from the Malay Peninsula working on their various arts and crafts,³⁵ along with displays of beading, silk, gold, and iron work as well as fishing. Malaya was famous in British industry for providing two-thirds of the world's rubber supply. The rubber exhibition went from seed to harvest to finished product.

The South African pavilion (fig. A58) included exhibits from Swaziland, Rhodesia, St. Helena, Ascension Island, and Tristan de Cuhna. The diamond display by De Beers was quite popular, and it was expanded in the second year. A full-service restaurant provided a meal on a four-car train that simulated the trip from Cape Town to Pretoria.

Nigeria, the Gold Coast (fig. A59), and Sierra Leone were represented in the West African pavilions. The Gold Coast Pavilion was well-liked for its drumming and the Cadbury hot chocolate stand on site, which highlighted the fact that the Gold Coast supplied half of the world's cocoa at that time. The architecture of the pavilion imitated the fortresses built by Dutch and Portuguese explorers during the fifteenth and sixteenth centuries. The Asante section of the Gold Coast pavilion showed a royal court, complete with the silver stool that the Asantehene, or king of the Asante, had given to Princess Mary as a wedding gift. Other well-received parts of the Gold Coast pavilion were the pottery-making and diamond-washing demonstrations, which were added in 1925.

³⁴ Retrieved on January 11, 2008 from <http://www.lib.monash.edu.au/exhibitions/recent-acquisitions4/virtual/photos/photo3.html>

³⁵ Ibid.

The pavilions of the British Empire Exhibition were quite elaborate. Blackmun writes of the Nigerian pavilion:

For the Benin section of the Pavilion of Nigeria, a complete replica of a Benin altar was carved out of wood, replete with bells, swords, rattle staffs (ukhurhe), crowned pedestal heads, and simulated tusks. The Exhibition commissioner for Nigeria, Major C. T. Lawrence, explained that “the whole of the carving, which was sent from Benin, has been coloured in England and set out as in the original in Benin”³⁶

An expert carver who worked during Oba Eweka II’s reign, Ogiemwonyi Ugiagbe, lived at the Nigerian pavilion of the British Empire Exhibition.³⁷ He did carving demonstrations of traditional stools and panels for the exhibition visitors. Over four hundred thousand visitors attended the Nigerian pavilion in its second year.

The altars in the Palace of Benin, which had been replaced with newly made objects after the 1897 Punitive Expedition, burned in 1923. By 1926 the altars had been replaced. The tusks in the new altars were smaller than many Benin tusks, averaging less than forty inches long. They were stolen in 1927, and their current location is unknown.³⁸ New tusks were commissioned by Oba Akenzua II, the successor of Oba Eweka II who died in 1933. The next documentation of the altars in Benin was in 1935, when E.H. Duckworth photographed the new tusks, which were larger than the previous ones.

³⁶ Barbara W. Blackmun, “Continuity and Change: The Ivories of Ovonramwen and Eweka,” *African Arts* 30, 3 (Summer 1997). retrieved from: <http://web.ebscohost.com/ehost/detail?vid=9&hid=8&sid=16919708-5fed-488a-b253-ffe3d5c63044%40sessionmgr2&bdata=JkF1dGhUeXBIPWlwLHVybCxlYWQmc2l0ZT1laG9zdC1saXZl#db=aph&AN=9712080738>

³⁷ Ibid.

³⁸ Ibid.

Blackmun claims that Benin ivories were carved for non-traditional reasons as early as 1916, when Oba Eweka II encouraged the sale of such ivories to Europeans as well as to chiefs.³⁹ Given the number of fires and thefts that have occurred since 1897, one is left wondering which of the ivories in museum collections were made for their original intended purpose, to decorate ceremonial altars. It is also curious that the art stolen from the palace altars in 1927 was never found.

Considering all of these events, it not surprising that Benin ivories from the 1897 invasion or earlier are some of the most costly artworks from the continent of Africa. Benin artworks are also the most likely to have legal or at least ethical issues involved in their provenance, because they were so widely dispersed after the Punitive Expedition. The British Empire Exhibitions of 1924 and 1925 led to an increased demand for art from Benin and other cultures.

Given the law of supply and demand, this increase in interest spurred more “supply” to be created. Christopher Steiner writes:

In Côte d’Ivoire, as in France before World War I, one of the key factors in the presentation of an art object is to create an illusion of discovery. . . . Yet, part of the collector’s quest, I would argue, is to discover what has previously gone unremarked.⁴⁰

In the early twentieth century, as Steiner points out, it was no longer just about aesthetic appeal. This is notable because it was only its aesthetic appeal that interested early collectors like Paul Guillaume and his circle in African art. Later, after many exhibitions of African art in Europe, the cultural context came to be considered an

³⁹ Ibid.

⁴⁰ Christopher B. Steiner, “The Art of Trade: On the Creation of Value and Authenticity in the African Art Market,” *The Traffic in Culture: Refiguring Art and Anthropology*, eds. George E. Marcus and Fred R. Myers (Berkeley: The University of California Press, 1995), 154.

integral aspect of African art. This was so important that sellers of African art began to recreate contexts of discovery for the western patrons of African art.⁴¹

Ironically, often the only difference between objects in the back room and the front room was their prices. Dealers learned that certain collectors considered a high price to be a means of ensuring an artwork's older age. Some dealers even fabricated stories of a work's history of use before selling it to the patron. Perhaps this was useful because most people enjoy having an interesting story to relate about their art collection. "I bought this in a market in Ouagadougou" may interest some people, but is generally thought to be too bland a provenance for an enthusiastic collector. Needless to say, African art sellers are not the only merchants who have created new contexts and provenances for their wares.⁴²

Clearly, when one makes the decision to invest a considerable amount of money into collecting art, there is an emotional need to justify the financial investment. One way to address the need is through the adventure of tracking down rare and authentic objects. Perhaps because of this, African art collecting in the early twentieth century involved not only collecting aesthetically beautiful art from Africa, but also possessing objects that suggested the owner was an adventurous and brave person.

World War II, 1939-1945: Wartime Looting

The peaceful days of interwar collecting came to an end as World War II broke out. Often scholars think of the early days of archaeology, and the personal sense of

⁴¹ Ibid.

⁴² Western antique furniture forgers have been doing this for years. A contemporary example is the television show *Antiques Roadshow*, which thrives on the plot tension of whether a work is an authentic antique or a forgery.

entitlement to its findings, as something that existed only in the Victorian era. In some ways, however, the imperialist ambitions of Hitler's government were not unlike the earlier drive to colonize Africa. From today's viewpoint, the treasures discovered and taken from Africa by "heroic" explorers should have been kept as treasures for the nations in which they were found. As with the trophy collecting described in Chapter One, however, the plundering of art works continued throughout World War II.

Before the war began, the Nazi government enacted laws to control all dealings with cultural objects. Lynn Nicholas writes:

On April 7 [1933] a law was passed for "the re-establishment of the professional civil service." This legalized the removal of any government employee who did not please the National Socialists. Museum directors and staff members, artists teaching at art schools and academies, city planners, and university professors were all employees of the state. For those who were not, Joseph Goebbels, the new Minister of Propaganda and Public Enlightenment, had proposed, on March 13, a new entity which would eventually regulate everyone connected with the arts: the *Reichskulturkammer*, or Reich Chamber of Culture. Membership in this umbrella organization was required of all artists, writers, musicians, art dealers, architects, and so forth. Those who did not belong could not hold jobs, sell or exhibit their works, or even produce them. Among those not accepted were Jews, Communists, and eventually, in the area of fine arts, those whose style did not conform to the Nazi ideal.⁴³

Works that did not conform to the preferred style were dubbed degenerate art and were systematically removed. The books of degenerate authors were publicly burned. This was a kind of internal plundering that was combined with the plunder of art from other countries during the war.

The Nazis' terrible theft of art from Jewish collections (fig. A60), such as the Rothschild collection, is well covered in books such as *The Lost Museum, The Spoils of*

⁴³ Lynn Nicholas, *The Rape of Europa: the Fate of Europe's Treasures in the Third Reich and the Second World War* (New York: Vintage Books, 1994), 9.

War, and others. In the *Spoils of War*, Nicholas also notes that: “For the first time in history, the armies of most of the belligerents had highly trained art specialists in their ranks, whose duty it was to secure and preserve movable works of art, and whose professionalism, no matter what their ideology, saved most of the treasures of Europe for us.”⁴⁴

African art that was in European collections had a similar fate to that of Western art. Both African and Western art were taken, but not much research has been done on the African art lost in World War II. As discussed in Chapter Two, the *Ethnologisches Museum* in Berlin, with about 75,000 objects, had one of the world’s most important collections of African art before the war. Thanks to the precise cataloguing of Felix von Luschan, this collection was also well documented.

World War II had quite an effect on the museum’s entire art collection, not just the Benin objects. As Paola Ivanov writes:

The *Museum für Völkerkunde* [now the *Ethnologisches Museum*] was dramatically affected by the events of the Second World War. After 1939 the collections were gradually evacuated to the city’s bunkers and anti-aircraft towers as well as to distant former coal and salt mines. Major parts of the African holdings that had not been on exhibit were sent to Silesia, part of present-day Poland. After the war, the collections did not come back in their entirety. A considerable number of the evacuated crates were taken to the Soviet Union.⁴⁵

Ironically, most of the African art (fig. A61) was taken from its original postwar storage location in Leningrad to Leipzig (in East Germany) in 1977 and 1978, and the crates were

⁴⁴ Ibid., 39. Napoleon’s armies also made use of art specialists. This may be considered an exception to Nicholas’s statement.

⁴⁵ Paola Ivanov, “African Art in the Ethnologisches Museum in Berlin,” *African Arts* 33, 3 (Autumn 2000): 20.

never opened until their return to Berlin after the Wall came down.⁴⁶ In the case of the Benin objects in Berlin, their removal by the Russian army in 1945 was the second time they had been looted. The first time, of course, was during the sack of the City of Benin in 1897.

Another example of art that was removed twice is that of Schliemann's treasure (fig. A62), discussed in Chapter Two. When Berlin was attacked in 1945, Hitler ordered the treasures in the Museum for Pre-and Early History in Berlin to be transported out of Berlin. The museum director could not bring himself to ship Schliemann's treasure away. Akinsha and Kozlov write, "He didn't want them to leave Berlin, and as the Red Army attacked the Zoo tower (fig. A63) he remained with the crates, sleeping on top of them at night."⁴⁷ The director stayed with the three crates filled with Schliemann's treasure and stood his ground until an officer arrived. Akinsha and Kozlov explain:

A few days later, Colonel General Nikolai Berzarin, the Soviet commander of the city, came to inspect the tower and assured the Unverzagt (the German museum director) that the crates would be taken to a safe place. At the end of May, the three crates containing the Trojan gold were loaded onto a Studebaker truck. Unverzagt never saw them again.⁴⁸

The Trojan treasure was lost again, buried somewhere in a hoard of crates. They resurfaced in a discovery of secret repositories just before the collapse of the Soviet Union:

In September 1991 we published in *ARTnews* an article that included photographs of the documents proving that the Trojan gold found by

⁴⁶ Ibid., 20-21.

⁴⁷ Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995), 10.

⁴⁸ Ibid.

Heinrich Schliemann, many Post-Impressionist masterpieces from German private collections, and the Koenigs collection had been transported to the Soviet Union after World War II. We named the main special repositories. In October 1991, the last minister of culture of the USSR, Nikolai Gubenko, organized a press conference to inform journalists that Mikhail Gorbachev had signed a decree establishing a government commission to deal with the trophy-art problem.⁴⁹

The Trojan treasure is now on display at the Pushkin Art Museum. According to Akinsha and Kozlov, very few people knew of its existence until they published their articles.

Yet other artworks suffered a worse fate: destruction. Three events in early 1945 destroyed important works that were located in Berlin. As Akinsha and Kozlov write, “In January of 1945 a bomb exploded in the Pergamon Museum and destroyed the left tower of the most important exhibit of the Islamic Museum, the façade of the Ummayyad Mshatta Castle.”⁵⁰ In February, faïence vessels, furniture, and about five hundred Byzantine and Coptic textiles were destroyed when two bombs exploded on Prinz Albrecht Strasse. And in March, a British bomb hit the State Mint where art treasures were stored; it destroyed the Asian print collection, most of the porcelains from the Museum of Decorative arts, twelve Islamic carpets, musical instruments, a large part of the East Asian collection and the collection of the *Museum für Völkerkunde* [where some African art was housed] and other artworks.⁵¹

The story of the Amber Room of the Catherine Palace near St Petersburg (fig. A64) offers another example of art that was probably destroyed. The Russians

⁴⁹ Konstantin Akinsha and Grigorii Kozlov, “The Discovery of the Secret Repositories,” *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, 1997), 162.

⁵⁰ Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot: The Soviet Plunder of Europe’s Art Treasures* (New York: Random House, 1995), 55.

⁵¹ *Die Verlust der öffentlichen Kunstsammlungen in Mittel- und Ostdeutschland, 1943-1946* (Bonn: Deutscher Bundesverlag, 1954), 12-13.

considered the Amber Room to be their own national treasure, similar to the way the Germans felt about the Trojan gold. The idea to line a room in amber did not begin in Russia, however, but in modern-day Germany, Commissioned first by King Frederick I of Prussia, it was to be made of amber panels with gold gilt frames. Still unfinished when King Frederick died in 1713, the panels were stored away by his successor, Frederick William I, who did not approve of the project. In 1716 the Prussian king gave the amber to Tsar Peter the Great of Russia. Tsarina Elizabeth then had them installed, first in the Winter Palace and later in the Catherine Palace. When the amber was transferred to the Catherine Palace, German craftsmen spent another fifteen years making eight more panels for the much larger room, which was finally finished in 1770.

In November 1941 the room was dismantled by a German ‘art protection unit’, and it was re-installed in 1942 in the Königsberg Castle in East Prussia. It survived the Allies' bombing in 1944 with relatively little damage. The last paper record of the panels was on January 12, 1945. It was then being packed up again to be evacuated to Saxony.⁵² Soviet troops surrounded and set fire to the castle on January fifteenth. It is believed that the Amber Room was destroyed in this fire, although people continue to search for it.⁵³

One interesting aspect of this story is that the work was made by Germans, but for the Russians. If the amber were still intact, it would have an interesting legal problem. The last eight panels were clearly a work for hire and Germany had no legal claim to them. The first panels were a gift to Russia from Prussia, however, and thus a case could be made for Germany’s ownership of them. The case of the Amber Room

⁵² Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot: The Soviet Plunder of Europe’s Art Treasures* (New York: Random House, 1995), 13-14.

⁵³ *Ibid.*, 14.

demonstrates how the lines of ownership can be blurred, making it difficult to know who the rightful owner should be. This phenomenon is found also in dealing with the ownership of African art, including the Afo-A-kom case which will be discussed in Chapter Four.

With such stories as the Amber Room and the Trojan treasure of Schliemann in the background, it may come as no surprise that there was extensive cross-plundering between the Soviets and the Germans during World War II. Items that were not regarded as national treasures by either country became pawns in this game of attack and counter-attack. And the African art in German art collections became one of these pawns.

Despite Belgium's neutrality before World War II, it had a wealth of gold through its colony, the Congo. This made Belgium a prime target, and German occupation of Belgium began in June of 1940. African art may have not been taken by the Germans, but the gold from Africa was taken. During the war, Belgium lost its gold reserves and many workers who were sent to Germany.⁵⁴

Germany had particular interest in regaining artwork that it lost as a result of the Treaty of Versailles after World War I. For this reason, some Belgian artworks were carefully guarded against plunder. The Ghent Altarpiece (fig. A65) was taken anyway.

Jacques Lust writes:

The Belgian government had brought the Ghent Altarpiece to Pau, in the south of France, for safekeeping. In July 1942, Ernst Buchner of the Alte Pinokothek in Munich got the order to transport the complete painting to Neuschwanstein, normally an ERR (Einsatzstab Reichsleiter Rosenberg) depot. (Near the end of the war, the altarpiece was deposited in the salt mine of Alt Aussee, where it was discovered by American troops).⁵⁵

⁵⁴ Jacques Lust, "The Spoils of War Removed from Belgium During World War II," *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, 1995), 58.

⁵⁵ *Ibid.*, 59-60.

Lust's article, published in the proceedings of the 1995 symposium on the loss of cultural property during World War II, deals only with the loss of Western art. Nowhere does Lust mention the fate of sub-Saharan African artworks such as the Tervuren museum collection. Perhaps the preference for Western art worked in favor of African art owners. Many collectors were forced to "sell" their artworks for Hitler's Linz museum or for Goering's collection. For example, the Van Gelder family owned many Western artworks, including an entire room of Jacob Jordaens paintings. According to Lust, only part of the family's collection was ever recovered, having been last located in the Russian sector of Berlin before the war.⁵⁶

Little has been published regarding the loss of African Art as a result of World War II. The German holdings of African art located within the USSR-occupied zone, including the collection of Benin art in Berlin, went to the Soviet Union. While some Western artworks located in Germany before the war have yet to be returned, many African works have made their way back to the *Ethnologisches Museum*.⁵⁷ The National Socialists categorized art as "high" art and "degenerate" art. Degenerate art, which would have included pieces from Africa, was sold to help finance the war effort in Germany. This makes tracing the degenerate art very difficult as it could have changed hands more than once during World War II.

African art that was removed from Belgian collections during World War II has also been difficult to locate. During the war the Congo was still a Belgian colony.

⁵⁶ Ibid., 61.

⁵⁷ This information was passed to the author by the curator of the *Ethnologisches Museum* in June, 2004.

Belgium lost control of its colonies along with its country. After the war, the ORE or *Office de Récupération Economique* managed the restitution of artworks to Belgium. The ORE claims mentioned only identifiable art objects, and seventy-four percent of the art claims were European paintings. African art was not mentioned at all on the claims list, perhaps due to lack of markings such as a signature that would have made it easily identifiable for the ORE officers.⁵⁸

If the war had not ended when it did, “high” European art such as the Van Gelder family collection, mentioned earlier, would probably have ended up in Linz, where Hitler planned to build a supermuseum. The aim to create giant museums that would outdo the Louvre or the British Museum was shared by Hitler and Stalin. Art already in Soviet collections, together with art acquired during the war, were to be in a Museum of World Art in Moscow. Describing the Soviet plan, Akinsha and Kozlov write:

Merkurov thought ... that the Pushkin Museum could be enlarged by the addition of wings and absorbed into the Palace of Soviets complex. As part of the most impressive manifestation of Communist grandeur, it would be a suitable home for the Museum of World Art. In comparison to Merkurov’s vision, Hitler’s plan to build a huge museum in Linz seems like a provincial undertaking.⁵⁹

Of the striking similarity between the German and Russian ideas for a supermuseum, Akinsha and Kozlov write, “It is one more point of comparison between the two most monstrous totalitarian regimes of the twentieth century.”⁶⁰ They also write:

⁵⁸ Ibid., 62. Another possible explanation is that African art was not yet considered to be art but rather a “fetish” or a “curio”.

⁵⁹ Konstantin Akinsha and Grigorii Kozlov *Beautiful Loot: the Soviet Plunder of Europe’s Art Treasures*, (New York: Random House, 1995), 34.

⁶⁰ Konstantin Akinsha and Grigorii Kozlov, “The Discovery of the Secret Repositories,” *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, 1995), 165.

The idea of a supermuseum wasn't forgotten after the victory in 1945. What had been forgotten was the basic idea of collecting "equivalents" for Soviet losses. In a decree of the State Committee of Defense dated June 26, 1945, and signed by Stalin, the purpose of removing the Dresden Staatliche Gemäldegalerie collection was expressed very clearly: "Give the order to the Committee on Arts Affairs of the Council of People's Commissars of the USSR (Comrade Khrapchenko) to remove to the repositories of the committee in Moscow the most valuable artworks. . . from the trophy storages in Dresden for the enriching of state museums."⁶¹

The works stored in Dresden arrived in Moscow by August of 1945. In total, about 30,000 German works, including the Benin art, were removed to Moscow in 1945. The idea of the supermuseum was not abandoned until later, when the Cold War made Soviet administrators too busy with other matters.

As the colonial powers had done when they looted art from Africa, the warring powers in World War II justified taking each other's art and claiming it as their rightful property. They believed it was fitting to exhibit this art in museums and galleries. Although neither the Russians nor the Germans were able to build the huge museums they planned, they were very slow to return looted art and in some cases did not return it at all. In 1994 the Germans and the Russians exchanged lists of still-missing looted pieces (including 200,000 art objects and two million books from Germany, and 39,588 lots of artworks from Russia), but no agreements were reached.⁶² In 2008, German museums staged exhibitions to thank Russia for the 1.5 million works of art that had been returned, but requested that the remaining one million works also be returned.⁶³

⁶¹ Ibid., 164.

⁶² Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot* (New York: Random House, 1995), 251.

⁶³ Catherine Hickey, "Germany Thanks Russia for Returned Art, Asks For the Rest Back". Retrieved from <http://www.bloomberg.com/apps/news?sid=amgzbbR.cHMk&pid=20601088>

*UNESCO: The Beginning of
International Cooperation in Cultural Matters*

The Treaty of Versailles, which ended World War I, was still the legal document governing the treatment of cultural property at the end of World War II. The Germans and the Russians disregarded its terms. The Treaty of Versailles had limited success, due partly to its demands for excessive reparations. This led international leaders at the end of World War II to take a different and revolutionary stance: one where international law took measures to prevent further destruction and wartime pillaging of art. To create a better system for dealing with international cooperation in cultural matters, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) was founded in London on November 16, 1945. Article One of its constitution states:

The purpose of the Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the people of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.⁶⁴

The formation of UNESCO after World War II was a great step forward on the part of the law. It was intended to correct some of the problems with the Treaty of Versailles, which showed little respect or regard for art on the basis of its cultural importance. UNESCO was created with the international scientific, educational, and cultural community in mind. For better or worse, items of cultural property were to be treated with respect regardless of their ethnic identity. Article One continues:

To realize this purpose the organization will maintain, increase and diffuse knowledge by ... encouraging cooperation among the nations in all branches of intellectual activity, including the international exchange of persons active in the fields of education, science and culture and the

⁶⁴ <http://www.yale.edu/lawweb.avalon/decade/decad049.html>, 2.

exchange of publications, objects of artistic and scientific interest and other materials of information; by initiating methods of international cooperation calculated to give the people of all countries access to the printed and published materials produced by any of them.⁶⁵

UNESCO marks a sea change in the evolution of attitudes towards art. The late nineteenth-century view was hardly different from the view seen in images of the spoils of war on the column of Trajan in Rome, and the Treaty of Versailles was not much better. Even though it was formed somewhat idealistically, UNESCO aims to promote peace through trying to change people's thinking. It is voluntary, however. Only UNESCO member countries are bound by its constitution. One cannot make a nation join UNESCO or return cultural property that is believed to belong elsewhere. Only independent nations were involved with the formation of UNESCO, so the only African countries that participated were the independent countries Egypt and Liberia.⁶⁶

Colonized African countries had been involved in the development of the United Nations charter, and some feared that it would promote a colonial system. Ana Filipa Vrdoljak writes:

The concept of trusteeship over colonized peoples was central to the scale of civilization perpetuated by International Law. Its proposed inclusion in the 1945 UN Charter triggered a heated debate between anti-colonial and colonial states about the role of the 'civilising mission' within this sacred trust. Iraq had objected to the phrase 'peoples not yet able to stand by themselves' and reference to the 'sacred trust of civilization in Article 73.'⁶⁷

⁶⁵ Ibid.

⁶⁶ Retrieved on July 25, 2009 from <http://unesdoc.unesco.org/images/0007/000790/079049eb.pdf>

⁶⁷ Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge: Cambridge University Press, 2008), 133.

Belgium attempted to make Article 73 applicable not just to colonies and protectorates, but also to newly independent states; meaning that indigenous peoples in independent states would still be subject to a “civilizing mission” by Westerners. African, Asian, and American states objected, arguing that colonialism must give place to self-government.⁶⁸ The years immediately following World War II were thus uncertain for African countries in terms of international law.

The first half of the twentieth century saw great changes in both attitudes and laws concerning African art and artifacts. Western interest in African art grew, and with it came new issues of authenticity and forgery. The looting of art during and after World War II included African art that was housed in European collections, even though the Nazis did not consider it to be art. The exhaustive art plunder led to a shift in thinking about the legal protection for cultural works. As the preamble to the UNESCO constitution states, “since wars began in the minds of men, it is in the minds of men that the defenses of peace must be constructed.”⁶⁹ In 1945, the question remained whether the preventative measures that began with the formation of UNESCO were sufficient to achieve its goals.

⁶⁸ Ibid., 133.

⁶⁹ Ibid., 1.

CHAPTER IV: STRUGGLE FOR CULTURAL PROPERTY RIGHTS, 1950-1989

The years of European control in Africa came to a close after the end of World War II. In the aftermath of the war, the colonial powers were pressed to relinquish their territorial interests. As Robin Hallett writes:

The ferment of ideas produced by World War II in many parts of Africa was only one of the factors making for accelerated change. The war also had a profound effect on African economies, producing acute, if only temporary, hardships and at the same time providing new opportunities for development. Shortages of consumer goods, inflation, the compulsory production of raw materials needed for the war effort—to many African peoples such aspects of the wartime economy of their territories were the cause of bitter resentment, resentment that might serve to erode older feelings of loyalty to the colonial power.¹

Nigeria, Mali, Cameroon, Zaire (now the Democratic Republic of the Congo), the Republic of the Congo, and Cameroon all gained independence in 1960. The newly independent countries found themselves having to make “...the best of the difficult legacy which had been bequeathed by the departing colonial powers.”² As the African colonies gained independence, some of them created entities to honor and protect their cultural heritage.³ One example was Ghana. When Ghana became independent in March, 1957, the Ghana Museums and Monuments Board was created, and a national museum opened in Accra as a part of the independence celebration. As Benjamin W. Kankpeyeng and Christopher R. DeCorse note, the museum featured works from Ghana and other African cultures:

¹ Robin Hallett. *Africa Since 1875: A Modern History* (Ann Arbor: The University of Michigan Press, 1974), 66.

² Paul Nugent, *Africa Since Independence* (New York: Palgrave Macmillan, 2004), 58.

³ Peter R. Schmidt and Roderick J. McIntosh, “The African Past Endangered,” *Plundering Africa’s Past*, eds. Peter R. Schmidt and Roderick J. McIntosh (Bloomington, Indiana: Indiana University Press, 1996), 3.

. . . the exhibits of the National Museum were displayed thematically with objects from different ethnic groups illustrating Ghana's varied cultural heritage. Nkrumah also encouraged the National Museum to collect and display objects from African societies outside of Ghana, underscoring Nkrumah's pan-Africanist outlook. Casts of Benin bronzes, Egyptian antiquities and parts of mummies, Senufu masks from Cote d'Ivoire, Zulu wooden figures and beadwork from South Africa, Ife bronze heads from Nigeria, the Bushongo carvings from the Congo were acquired through exchange and included in the permanent exhibits and collections of the Ghana National Museum.⁴

While Ghana created museum exhibitions of African art, American museums, galleries, and collectors became increasingly interested in African art. Spurred to some extent by growing wealth in the United States, there was great interest in obtaining and viewing African art during the post-war period. To serve increasing demand in both the United States and Europe, some artworks arrived at galleries under questionable circumstances. Illicit trade in African art became a growing issue, not only for source countries but also for collectors and museums.

Two important international conventions were held during this time, the Hague Convention of 1954 and the UNESCO Convention of 1970. Sponsored by the United Nations, these conventions laid new legal foundations for the definition and protection of cultural property. Following the 1970 UNESCO Convention, which addressed issues of illicit art traffic, bilateral agreements began to be forged between the United States and art-rich nations such as those in sub-Saharan Africa.

This chapter examines the changing legal issues for African art in the period from 1954 to 1989. It starts with a view of Western collecting and display practices, and then considers the same period through the lens of changing legal thinking. The final section

⁴ Benjamin W. Kankpeyeng and Christopher R. DeCorse, "Ghana's Vanishing Past: Development, Antiquities, and the Destruction of the Archaeological Record," *African Archaeological Review* 21, 2 (June 2004): 95.

tells the story of a piece from Cameroon that illustrates the diverging interests of collectors, museums, the public, and the source country.

Post-War Changes in the African Art Market

While Europe and Japan focused on rebuilding and repairing their cities after the war, the 1950s were the start of a long economic boom in the United States. America was building new factories and consumer demand was high. The social climate was changing as well. Rosa Parks refused to give up her bus seat. Joseph McCarthy (fig. A66) began televising his anticommunist hearings. The Supreme Court ruled that racial segregation was unconstitutional. And as Harvard economist John Kenneth Galbraith wrote in *The Affluent Society*, wealth in the American private sector was increasing while the public sector was becoming more impoverished⁵. With these changes as background, there was new enthusiasm in the United States for collecting African art.

One factor in this new enthusiasm may have been that European museums already had important collections of African art, due to their countries' colonial presence in Africa. Unlike many African art collections in Europe, notably those in Germany, most of the African artworks in the United States were purchased by private individuals. One cannot help but wonder if some Americans' post-war collecting of African art was motivated by a desire to keep up with European museum collections.

Starting in the 1950s and 1960s, many art collectors acquired large collections of African artworks. As Merryman and Elsen point out, there are varied motivations for collecting art:

⁵ John Kenneth Galbraith, *The Affluent Society* (New York: Houghton Mifflin, 1998), 3.

Understanding, pleasure, and profit are motives for collecting that can fuse in the same breast. Many collectors hope that their collections will survive them intact and be destined for museums, where the long term rewards are not just of a financial, but of a less tangible kind—sharing the enjoyment of art.⁶

In the postwar period, Westerners increasingly began to purchase art as an investment, while they were also interested in the culture and aesthetics of the artwork.

One such collector of African art was Klaus G. Perls, an art dealer who moved from Paris to New York in 1935.⁷ Perls came from an art-loving family; his brother and both of his parents also owned galleries. Like Paul Guillaume (the dealer mentioned in Chapter Three), Perls dealt with modern art as well as non-Western Art; in fact, he was probably aware of Guillaume's interest in modern and African art. Perls concentrated on purchasing art from Benin. He donated his collection of Benin art, over one hundred brass and ivory objects, to the Metropolitan Museum of Art in 1990 and 1991 (fig. A67).⁸

Another great collection of African art began in Muscatine, Iowa. Maxwell Stanley, the founder of engineering firm Stanley Consultants, and his wife Elizabeth started purchasing art from Africa in 1960. In the 1950s the Stanleys had created the Stanley Foundation, which seeks to bring about peace in turbulent nations. The Stanleys' advocacy for peace and global compassion among nations was an appropriate context for the collecting of African art. Elizabeth M. Stanley Faculty Fellow of African Art History, Professor Christopher Roy writes:

⁶ John Henry Merryman and Albert E. Elsen, *Law, Ethics, and The Visual Arts*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 961.

⁷ Rita Reif, "Antiques; The Royal Sculpture of Benin: Beyond African Folk Art," *New York Times*, 26 January 1992.

⁸ Retrieved from http://www.metmuseum.org/press_room/full_release.asp?prid={51B9FD5C-2A01-48B2-B6D8-6C729332BB60} on March 3, 2008.

Max and Betty Stanley began to collect African art in 1960 when Betty flew to Ganta, Liberia, to visit Dr. and Mrs. George Harley. The Harleys were preparing to retire and were willing to sell some of the traditional objects they had collected over the past several decades. Betty purchased four objects including a gameboard that was displayed in the 1979 exhibition of the Stanley collection. In 1973, Ulfert Wilke, then Director of the University of Iowa Museum of Art, urged the Stanleys to collect more seriously, and they visited Merton Simpson's gallery in New York and purchased an ibeji figure.⁹

The Stanleys went on to purchase about three hundred and seventy-five works of African art.¹⁰ They donated these works to the University of Iowa, Max's alma mater. At the time of their donation, the Stanleys proposed that the University not only care for display of this collection, but also encourage the further collection and study of African art (fig. A68). In order to do this, the Stanley Foundation supports research, study and travel grants for students and faculty.¹¹ The University of Iowa became an important center of African art studies when Professor Roy was hired in 1978.¹²

Paul Tishman was another great collector of African art. Tishman and his wife Ruth purchased works throughout the 1960s and 1970s, predominantly from galleries in the United States and Europe.¹³ Like the Perls, the Tishmans began with the art of the Kingdom of Benin.¹⁴ Their interest also spread to other African cultures. Except for a

⁹ Christopher D. Roy, "African Folk Art from the Stanley Collection," *Society* 3,1 (November/December 1995): 59.

¹⁰ Ibid.

¹¹ Retrieved from <http://international.uiowa.edu/about/admin/stanley-foundation.asp>

¹² Christopher D. Roy, "African Folk Art from the Stanley Collection," *Society* 3,1 (November/December 1995): 60.

¹³ Elizabeth Olson, "A Trove's Long Road to the Smithsonian," *New York Times*, 28 March 2007 Section H, page 16.

¹⁴ Retrieved from <http://africa.si.edu/exhibits/africanvision/index2.html> on March 4, 2008

few works that were lent for shows, their collection in its entirety – five hundred and twenty-five works from twenty different countries¹⁵ – remained unseen by the public. In 1984, the Tishmans sold the collection to the Walt Disney Company for one million dollars.¹⁶ In 2005, The Walt Disney Company donated the entire collection that they had owned for over twenty years to the Smithsonian Institute. In February 2007, the Tishman collection was unveiled at its newest home: the Smithsonian Institute’s National Museum of African Art (fig. A69).¹⁷

Many private collectors, like the Tishmans, acquired art from American and European galleries rather than by going to Africa. Perhaps it was just considered safer and more comfortable to travel to Paris, New York, London, or Brussels. As Shelly Errington writes, there was also desire for authenticity:

Few dealers and almost no collectors (it is my impression) go to, say, Africa to find their authentic primitive art. They do not go to Africa to get their stock because what they want “is not being produced anymore.” And because fakery is rife. And last but not least, because the areas that formerly produced primitive art are no longer colonies of European powers but are within the territorial boundaries of nation-states that became independent around the mid-twentieth century.¹⁸

In the 1970s and 1980s, it became trendy to collect “authentic primitive art” from Africa and other locations. The Metropolitan Museum of Art in New York City opened its Michael C. Rockefeller Wing of Primitive Art in 1982. The wing was named for

¹⁵ Retrieved from: <http://usinfo.state.gov/scv/Archive/2005/Oct/03-896744.html> on March 4, 2008.

¹⁶ Now some single works in the collection are estimated to be worth more than that price.

¹⁷ Elizabeth Olson, “A Trove’s Long Road to the Smithsonian,” *New York Times* March 28, 2007 Section H, page 16. According to Olson’s article, the estimated value of the collection in 2007 was between twenty and fifty million dollars.

¹⁸ Shelly Errington, *The Death of Authentic Primitive Art and Other Tales of Progress* (Berkeley: University of California Press, 1998), 120.

Nelson Rockefeller's son, who had collected a great deal of Asmat and Indonesian art.¹⁹ One of the Malian works in the gallery is a thirteenth-century seated figure from Djenne, Mali, that was purchased by the museum in 1981 (fig. A70). Purchased before America or Belgium signed the UNESCO Convention of 1970 in 1983 and 2009, respectively; this magnificent work perhaps matches the splendor of the display of nine fifteen-foot-high Asmat *bis* poles that Michael Rockefeller had collected in 1961 (fig. A71).

Museums and galleries in the 1980s gave more and more attention to non-Western art, utilizing lighting and display tactics to provide a sense of mystery about the works. While the other galleries in The Metropolitan Museum of Art are brightly lit and have light walls, for example, the Michael C. Rockefeller wing has dark brown walls and a few spotlights (fig. A72). One gets the sense that the curatorial department uses this display approach to hint at magical properties, and to give the visitor a feeling of being a nineteenth-century colonial explorer discovering these works.

The Museum of Modern Art also took advantage of the craze for the primitive. It offered an exhibit in 1984 on "Primitivism in 20th Century Art", subtitled "Affinity of the Tribal and the Modern" (fig. A73).²⁰ Two new museums for African art opened in the United States as well, demonstrating the popularity of African art exhibitions. The Center for African Art opened in New York City in 1984. Its first show featured art from a French museum, the *Musée de l'Homme*.²¹ The National Museum for African Art was

¹⁹ Retrieved from http://www.metmuseum.org/works_of_art/introduction.asp?dep=5

²⁰ Shelly Errington, *The Death of Authentic Primitive Art and Other Tales of Progress* (Berkeley: The University of California Press, 1998), 70.

²¹ Grace Glueck, "Show from France Opens New Center for African Art," *New York Times*, 21 September 1984. The Center for African Art is now called the Museum for African Art and has a new home on Fifth Avenue.

added to the Smithsonian Institute in 1979. Located on the Mall in Washington D.C., it was earlier housed in a townhouse that was once owned by Frederick Douglass and called the Center for Cross Cultural Communication.²²

The desire for African art in museums was paralleled by the wishes of an increasing number of collectors. Interest in the historic art of Benin led to a growing number of Benin art works on the market. This is surprising, because scholars from the early days onward, starting with Felix von Luschan, have had a fairly accurate knowledge of the quantity and location of Benin art from before 1897. Now, however, previously unseen Benin works appeared on the market. Barbara W. Blackmun writes:

In the 1980s, ivories and bronzes misrepresented as Benin antiquities began to appear with regularity in the U.S. and Europe. The volume has steadily increased, so that duplicates and triplicates are now reaching the market. Various stories attempt to justify the introduction of these freshly aged to the established Benin corpus. One popular version is that a “modern” Benin chief has inherited his family’s shrines, and needing money, he is selling their furnishings. Whatever the accompanying explanation, the dealer will often attempt a price below the objects “true” value if he can complete the sale quickly.²³

In some cases, the presumed forgers looked for ways to manipulate the results of the laboratory testing used to confirm age by a microscopic analysis of the patina. For example, one forged Benin piece was in the more abstracted twentieth-century style, but the laboratory test of the portion submitted for testing revealed that it was four hundred years old.²⁴ Given the well-documented history of Benin art styles, this is not possible!

²² Brian Kaper, “National Museum of African Art Celebrates Silver Anniversary,” for the US Information Agency website at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2004&m=August&x=20040812181042mbrepak0.4025843> on August 12, 2004.

²³ Barbara W. Blackmun, “A Note on Benin’s Recent Antiquities,” *African Arts* 36, 2 (Spring 2003), 86.

²⁴ *Ibid.*

On other occasions, shards of old work ceramics were added to new works so that the thermoluminescence test would confirm an older age.²⁵

Illicit trading of art cannot be prevented completely when there are willing purchasers for it. The 1980s saw a growing demand for African art, and this naturally led to an increase in legal and ethical issues related to its acquisition, ranging from theft and illegal excavations to forgery and illegal exportations. How can these kinds of illegal activity be stopped? The needs of both source countries and buyers must be addressed. The art-rich African countries were not the only ones concerned with the issues of illicit trading. Because of this, the postwar period also saw new international agreements and laws that reflected the struggle for cultural property rights.

*Difficult Diplomacy: Opposing Opinions in
International Laws and Resolutions*

In the mid 1950s, World War II and the damaging impact of wars on art were still fresh in people's minds. As described in Chapter Two, the formation of UNESCO in 1945 had been a step forward in its attempt to protect cultural property. However, the initial UNESCO constitution did not provide a definition of cultural property, and it contained few specifics regarding art. At Italy's urging, an international conference was called by UNESCO at The Hague in May, 1954, to protect and prevent future damage of cultural property due to wars or military occupations. Eighty-six countries attended this conference, which produced the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

²⁵ Measuring the intensity of the luminescence of an object such as a ceramic work can be used to determine how much time has passed since the last time the object was heated. The light is proportional to the amount of radiation absorbed since the material was last heated. This test is not entirely accurate. By placing the shard of an old work in a new work, one could cheat the test into giving a much older date.

The Hague Convention gives a broad definition of the types of cultural property to which it applies. Not only does the convention define cultural property to include books or any object that would be of interest, archaeologically, artistically or historically; it also includes architecture of “historic or artistic interest.”²⁶

The articles of the Hague Convention provide specific requirements for the countries that sign it. For example, Article Four outlines that pillaging and vandalism will be prohibited. Article Five states that the occupiers of a territory must take necessary measures to preserve cultural property. Under these articles, the pillaging of Benin would have been clearly considered illegal if it had happened in 1957 instead of 1897. Article Twelve states that the transportation of cultural property should be protected.²⁷ This could apply whether the property is moved within a territory, or it is moved out of a territory for its protection. It also states that international supervision must protect the art while it is being moved.

Article Twelve is important because it states that cultural property cannot be damaged in transportation, even in times of military conflict. This article has the power to prevent military action where art may be located. This limitation prevented the United States government, at war in Southeast Asia at the time, from signing the Convention. Had a nuclear war broken out, adherence to the convention would have limited U.S. military options to counter a nuclear attack because of the damage to cultural property. The first nations to sign the convention include: Egypt, San Marino, Myanmar, Mexico,

²⁶ Retrieved on July 27, 2009 from http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

²⁷ Ibid.

Hungary, Poland, Bulgaria and Ecuador.²⁸ None of the “superpowers” signed right away. Sub-Saharan African countries didn’t sign because they were still colonies at this point.

One might expect the Hague Convention to specify that source countries should have their stolen art treasures returned to them; but this is not necessarily the case. The convention’s tone reflects what John Henry Merryman calls “cultural internationalism.”²⁹ To cultural internationalists, art is seen as the heritage of the world’s inhabitants, not just one individual source nation.³⁰ The preamble of the Hague Convention states, “that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world...”³¹ Because it voiced the argument of those who were not interested keeping cultural property in the source nation, the convention became a sort of legal manifesto that encouraged the international art trade to prosper. Its statement that art should be the cultural heritage of everyone, everywhere, was possibly the most important element of the Hague Convention.³²

²⁸ Retrieved on July 14, 2009 from <http://erc.unesco.org/cp/convention.asp?KO=13637&language=E>

²⁹ John Henry Merryman, *The Cultural Property Dialogue* (San José, Costa Rica: The Secretaría de la Corte Interamericana, 1998), 1055.

³⁰ According to Merryman, cultural internationalism began with the French Napoleonic-era lawyer, Quatremère de Quincy. See Chapter One for more discussion of Quatremère’s views.

³¹ Retrieved on July 27, 2009 from http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

³² For example, this argument is still being used to defend the Elgin Marbles' current housing in the British Museum.

By the late 1960s, illicit trade in art had become a growing concern. To address the problem of “illicit import, export and transfer of ownership of cultural property,”³³ the UNESCO Convention of 1970 met at Paris in October and November of 1970. At first glance, the UNESCO Convention of 1970 seems to be the legal descendant of the 1954 Hague Convention. One sees the cultural internationalist viewpoint in the convention’s preamble:

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations...³⁴

This language clearly states that the exchange and study of cultural property helps all mankind achieve mutual understanding. It also seems to imply that with knowledge, one’s prejudices about other cultures are necessarily abandoned. These are certainly inspiring statements. In fact, the conference was an attempt at diplomacy and compromise, designed to gain agreement from powerful art-buying nations while also appealing to source nations.

The convention has an eleven-part definition of cultural property that includes “rare collections and specimens of fauna, flora, minerals and anatomy and objects of palaeontological interest;”³⁵ as well as historical, archaeological, artistic, and ethnological objects; books; furniture more than one hundred years old; and musical instruments. This expanded definition covers some everyday objects that have been used in art displays.

³³ Retrieved from http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html#ENTRY on July 14, 2009

³⁴ Ibid.

³⁵ Ibid.

For example, ladders used in displays of African art (fig. A74) would fall under the jurisdiction of the 1970 UNESCO Convention.

Article Four of the convention declares that cultural heritage is owned by the country of origin, including “cultural property acquired by archaeological, ethnological or natural science missions with consent of the competent authorities of the country of origin of such property.”³⁶ This is important for African countries that have many active archaeological excavations; it clearly gives ownership of all the findings of such excavations to the country of origin.

Article Five, however, states that the signing nation must take responsibility for the care and retention of its important cultural property. It also states that each nation is responsible to augment the international laws with its own laws to address the problems of illegal trade of cultural property. Article Five lists seven obligations:

To ensure the protection of their cultural property against illicit import, export, and transfer of ownership, the State Parties to this Convention, undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

- (a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories . . .) required to ensure the preservation and presentation of cultural property;

³⁶ Ibid.

(d) organizing the supervision of archaeological excavations, ensuring the preservation 'in situ' of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.³⁷

This list of actions does seem to offer a thorough solution to the problems of illicit trade in cultural property. However, the 1970 UNESCO Convention does not take the economic situation of source nations into account. It assigns the financial obligation for the cost of returning cultural property to the source nation. Article Seven outlines the procedure for recovering cultural property that is illegally imported:

At the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return.³⁸

No country followed the dictates of the convention better than Italy. Italy set up a specialized police force, the *Commando Carabinieri Tutela Patrimonio Artistico*, in order

³⁷ Ibid.

³⁸ Ibid.

to protect their artistic patrimony.³⁹ Clearly Italy had the motivation and mandate to protect its cultural property.

Source countries were among the first to ratify or accept the 1970 UNESCO Convention. Ecuador and Bulgaria became signatories in 1971. Nigeria, Central African Republic, Cameroon, Kuwait, Cambodia, and Mexico signed in 1972.⁴⁰ At that time, newly independent countries such as Nigeria and Cameroon, were seeking to restore cultural property that had been lost from their borders. However, the cost of return and the need for documentation were challenges that competed with more pressing concerns involving stability and infrastructure.

Many other countries did not sign the convention. For example, the United States stated in 1970 that it was not willing to accept the requirement of controlling the flow of art from its borders. According to Merryman, “The reservation was that the United States does not control the export of cultural property and accepts no obligation to do so under the Convention.”⁴¹ Other art-buying nations also delayed signing. France signed the convention in 1997, as did the United Kingdom in 2002. Switzerland and Belgium, which are home to many African art galleries, did not sign until 2003 and 2009, respectively.

Before 1970, many museum directors acquired art and cultural objects from African countries to advance learning about these countries and consequently to

³⁹ Jeanette Greenfield, *The Return of Cultural Treasures*, 2nd ed. (Cambridge: Cambridge University Press, 1996), 206.

⁴⁰ Retrieved from <http://portal.unesco.org/la/convention.asp?KO=13039&language=E> on July 14, 2009.

⁴¹ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics, and the Visual Arts*, 5th ed. (Kluwer Law International: Alphen an den Rijn, The Netherlands, 2007), 186.

gradually correct existing biases about African cultures.⁴² Post-1970, however, it was no longer acceptable for a collector or a museum to purchase art with a questionable provenance. The International Council of Museums, ICOM, first published its *Ethics of Acquisition* in 1970, the same year as the UNESCO convention.⁴³ The ICOM code of ethical conduct outlines the need to document everything about the acquisition of art objects, and to make provenance records readily available to the public. Although the ICOM code of conduct doesn't have the force of law, museums take it seriously. For example, museums that adhere to the code tend to be more respected by fellow museums and consequently find it easier to borrow works of art from other museums.

A few years after the 1970 UNESCO Convention, legislation was proposed to the United Nations General Assembly that specifically aimed to protect the interests of developing nations. Ten African countries asked for help in recovering artworks and museum pieces that had been removed from their borders without payment. A draft resolution was written by Zaire and co-sponsored by Senegal, stating that culturally important pieces from a developing country should be returned free of charge to the source nation if they were housed in a developed country. The resolution was passed on the eighteenth of December, 1973; it is number 3187 of the twenty-eighth session of the United Nations General Assembly. It states in part:

Affirm that the prompt restitution to a developing country of its works of art, monuments and museum pieces by a developed country, without charge, "is calculated to strengthen international cooperation inasmuch as it constitutes just reparations for damages done";

⁴² See Chapters Two and Three for an outline of the history from colonial plunder and trophies of conquest to academic interest in African culture.

⁴³ Retrieved on July 28, 2009 from <http://www.nmafa.si.edu/exhibits/journey/>

Recognize the special obligations in this connection of those countries which had access to such objects only as a result of colonial occupation...⁴⁴

It seems that the resolution aimed to prevent future occurrences of colonized countries losing their cultural heritage to their colonizers. The final language cites an earlier United Nations resolution⁴⁵ that “calls upon all the States concerned to prohibit the expropriation of works of art from Territories still under colonial or alien domination.”⁴⁶ Further, it says that it is “deploring the wholesale removal, virtually without payment, of *objets d’art* from one country to another, frequently as a result of colonial or foreign occupation.”⁴⁷

The African nations were joined by Latin American, Asian and some European countries, including Spain, to get the resolution passed.⁴⁸ The United States abstained from the vote, with the explanation that “there had not been time to give the matter adequate attention in the rush to recess.”⁴⁹ In a *New York Times* article reporting the abstention, Kathleen Teltsch writes, “An American official suggested later that there were fears that the loosely drafted text could create difficulties for legitimate purchasers

⁴⁴ Fred Ferretti, *Afo-A-Kom: Sacred Art of Cameroon* (New York: The Third Press, 1975), 93.

⁴⁵The Declaration on the Granting of Independence to Colonial Countries and Peoples, resolution 1514 of the fifteenth session of the General assembly

⁴⁶ Resolution 3187 (XXVIII) Restitution of works of art to countries victims of expropriation. Retrieved from: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/282/59/IMG/NR028259.pdf?OpenElement>

⁴⁷ Ibid.

⁴⁸ Fred Ferretti, *Afo-A-Kom: Sacred Art of Cameroon* (New York: The Third Press, 1975): 93.

⁴⁹ Kathleen Teltsch, “UN Assembly Session Produces 150 Resolutions and a Treaty to Protect Diplomats,” *The New York Times*, 23 December 23 1973.

of art works. Such purchasers might be asked to give up the art works, the official explained, because governments wanting them back would belatedly describe them as treasures.”⁵⁰

The 1973 resolution requested a progress report, inviting the UN Secretary General to “submit a report to the General Assembly at its thirtieth session on the progress achieved.”⁵¹ After that report, the 1975 General Assembly of the UN passed another resolution. It reiterated the language of the 1973 request and also urged states to ratify the UNESCO 1970 Convention. Similar resolutions were also passed by the General Assembly in 1977 and 1979. The 1979 resolution added an invitation for “Member States to take all necessary steps for the return or restitution of cultural property through, *inter alia* bilateral arrangements.”⁵² In 1981, the General Assembly thanked the Member States who had signed the 1970 UNESCO convention and suggested provisionally that preventing illicit traffic be discussed again in the 1983 UN General Assembly. It was not discussed in 1983, perhaps because that is when United States finally signed the 1970 UNESCO Convention.

In 1983, the United States signed the UNESCO Convention of 1970 and enacted its national legislation, the *Convention of Cultural Property Implementation Act of 1983*, or CCPIA. Under this act the United States can restrict imports of certain archaeological or ethnological cultural property that is covered by bilateral treaties with other UNESCO signatories. One important element of CCPIA is that it is not retroactive; that is, it does

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² UN resolution 34/64 Return or restitution of cultural property to the countries of origin. Retrieved from <http://www.un.org/documents/ga/res/35/a35r129e.pdf>

not apply to cultural property that changed hands before 1970. As Maria Papageorge

Kouropas writes:

Protection under the act is prospective; US implementation of the convention emphasizes not the recovery of past losses but rather the protection of cultural property that remains in situ in the country of origin, the undocumented material that, stripped of its provenance, feeds a large clandestine trade bringing high yield with little risk to the participants in this trade.⁵³

The CCPIA legislation attempted to address the interests of both the art market as well as the archaeological community. Of course, there were differing opinions as to where art should best be located. One group wanted to be able to acquire artwork, and the other wanted to prevent the sale of cultural property so it could be studied in context.

Many archaeologists were quite happy with the specifics of the CCPIA. Susan Keech

McIntosh writes:

The benefits of the US implementing legislation extend far beyond seizures and repatriation of protected material, however . . . It is specifically oriented towards the deterrence of pillage and the accompanying destruction of archaeological context rather than towards repatriation of already excavated and exported material. Second, the legislation explicitly emphasizes the adoption and continuing development of self-help measures by the source country.⁵⁴

CCPIA allows UNESCO signatory nations to request emergency actions in order to restrict importation of their cultural property into the United States for a period of up to five years. Implementing such a restriction requires a Presidential action. CCPIA also requires the President to send the request to the Cultural Property Advisory Committee,

⁵³ Maria Papageorge Kouropas, "U.S. Efforts in Protecting Cultural Property," *Plundering Africa's Past*, eds. Peter R. Schmidt and Roderick J. McIntosh (Bloomington and Indianapolis: Indiana University Press, 1993), 87.

⁵⁴ Susan Keech McIntosh, "Reducing Incentives for Illicit Trade," *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London: Routledge, 2002), 243.

to get its recommendations. The United States Information Agency administered CCPIA until 1999 in a slow and bureaucratic manner. Many steps are needed for an emergency restriction to be put in place, so the process offers little hope for any emergency that requires immediate attention. Nevertheless, five countries have obtained emergency import restrictions through CCPIA: El Salvador in 1987, Bolivia in 1989, Peru in 1990, Guatemala in 1991, and Mali in 1993.

Although Mali and the United States didn't enter into an emergency agreement until 1993, the passage of CCPIA in 1983 did set the wheels in motion. Mali enacted the first of its national laws to protect its cultural heritage in 1985.⁵⁵ Between 1985 and 1986, Mali ratified four additional laws relating to illicit art trade.⁵⁶ However, the legislation of Mali and the US in 1983, 1985 and 1986 did little to curb the problem initially. As Kléna Sanogo writes, several factors made enforcing the laws challenging:

Unfortunately the practical implementation of these different statutes is difficult owing to their poor dissemination (there are only French texts available) and to the non-integration of their intention into the people's awareness and way of life. Even the administrative and legal authorities which are, theoretically, charged in the field with control and suppression are barely aware of the question; moreover, they lack technical competence in the matter (an officer of the law or customs official is incapable of distinguishing between an authentic piece and a copy). In fact, legislation allows the sale of ethnological material and copies of archaeological artifacts.⁵⁷

⁵⁵ Samuel Sidibé, "Malian Cultural Heritage and Illicit Exportation," in *Plundering Africa's Past* eds. Peter R. Schmidt and Roderick J. McIntosh (Bloomington, Indiana: Indiana University Press, 1996): 84.

⁵⁶ Ibid. These laws consisted of: 85-40/AN-RM of July 26, 1985 protecting and promoting national heritage, 275/PG-RM regulating archaeological excavations, 86-61/AN-RM relating to the profession of the traders in cultural possessions, and 999/PG-RM relating to the commercialization of cultural possessions.

⁵⁷ Kléna Sanogo, "The Looting of Cultural Material in Mali," *Culture without Context* 4 (Spring 1999) Retrieved on July 27, 2009 from <http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue4/sanogo.htm>

McIntosh asserts that the apex of the problem in Mali was in the late 1980s.⁵⁸

While the issue of abolishing illicit art trade is important to many Malians, some people, such as Patrick McNaughton, question whether Mali has the financial wherewithal to address these issues, given more pressing social problems.⁵⁹ According to McNaughton, poverty is one cause that contributes to the pillaging of antiquities:

Thus, as in so many parts of the world, including many parts of America, many Malians must deal with poverty that could be somewhat alleviated in exchange for these ancient resources. Does this mean that Malian citizens along the Middle Niger or the Bandiagara Escarpment should be able to dig up their patrimony and sell it for profit? The Malian government is equally in need, in terms of managing and improving its infrastructure.⁶⁰

But it's important to look beyond poverty for the root cause of the problem of illicit art trafficking. Is not the demand for such art the ultimate cause of illegally acquiring it to sell? Mali's situation offers an instructive example, because Mali was active in trying to prevent illicit art trade and despite this, was not able to prevent illegal exportations of art.

*Appealing to Ethics When the Legal System
Does Not Succeed: The Afo-A-Kom Case*

The 1970 UNESCO Convention affected public perceptions about ownership, truthful documentation, and financing of cultural property from Africa. A famous case

⁵⁸ Susan Keech McIntosh, "Reducing Incentives for Illicit Trade," *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London: Routledge, 2002), 244.

⁵⁹ Patrick R. McNaughton, "Malian Antiquities and Contemporary Desire," *African Arts* 28, 4 (Autumn 1995): 23.

⁶⁰ Patrick R. McNaughton, "Malian Antiquities and Contemporary Desire," *African Arts* 28, 4 (Autumn 1995): 23-25.

illustrates this. In October, 1973, a *New York Times* article described the unlikely find of a significant statue, the Afo-A-Kom (fig. A75), on display at Dartmouth College's Hood Museum (fig. A76). According to author Fred Ferretti, the Afo-A-Kom "embodies the spiritual, political and religious essence of the 35,000 people of the West African Kingdom of Kom in Cameroon."⁶¹ To the surprise of a shocked Cameroon, the statue was on loan from the Aaron Furman gallery in New York City where it had a sticker price of \$60,000. Cameroon clearly wanted such an important item back.

How did the piece come to be in the United States? Ferretti's article starts:

Just yesterday I came across what I think is a fascinating story. . . . Seven years ago, a magnificent piece of art was stolen from the town of Kom, in the Cameroon grasslands. It is a 64-inch high statue of a man, covered in colorful beads (totally covered in beads). The statue resides in the royal house. There is also a corresponding figure of a woman. Both pieces were revered by the Kom people. The man who stole the piece sold it in a town in East Cameroon for the sum of \$100. The Kom people mourned the loss of the statue for two years!⁶²

The gallery owner claimed that he had the legal right to the work, since he had purchased it through an intermediary who was an expert on Cameroon art and of impeccable integrity. As Ferretti writes:

Of the report of the theft, Furman said, "That's the classical African bit. A chief or councilor will sell a piece. If it's discovered and there's a fuss, they'll holler that it was stolen." He refused to tell me exactly what he had paid for the statue except to say that was 'in five figures' and that had taken "three trips to buy it." The eventual purchase had been made in 1966 through "an intermediary," Furman said.⁶³

⁶¹ Fred Ferretti, *Afo-A-Kom: Sacred Art of Cameroon* (New York: The Third Press, 1975), 43.

⁶² *Ibid.*, 41.

⁶³ *Ibid.*, 43.

How would an average American, walking into a New York City “primitive” art gallery, know the cultural importance of this statue? From his interview with Tamara Northern, the curator of the Dartmouth exhibit, Ferretti learned that Cameroon was little known by Americans, and that the Afo-A-Kom “. . . in its given context was one of the most important pieces in the field.”⁶⁴ In fact, the statue was not brought to public attention until seven years after it was taken from the royal palace. Evan Schneider, a young man who grew up in Cameroon as the son of a Peace Corps volunteer, had seen the Afo-A-Kom several times in its original setting. He recognized its picture in the catalog of the Dartmouth exhibition, *The Royal Art of Cameroon*. Schneider alerted Craig Kinzelman, another former Peace Corps volunteer, who contacted the regional police and later the U.S. Embassy. Getting no action, Kinzelman then contacted the press.

When it was first reported that Furman did not intend to sell the statue back or return it to Cameroon, there was an outcry from African art historians and writers on the subject.⁶⁵ Tamara Northern, the curator of the Dartmouth exhibit, countered the appeals with, “Stolen in whose eyes? A willing buyer connotes a willing seller. The fact that Mr. Furman has the statue does not exclude the fact that someone in authority, for whatever reason, for whatever amount of money, disposed of it.”⁶⁶

From a moral or ethical perspective it seems clear that such a spiritually potent work should be returned to the culture for which it was made. Yet, was the statue stolen, illegally exported, or both? So it appears that the statue did not leave under good faith as

⁶⁴ Ibid., 44.

⁶⁵ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics, and the Visual Arts*, 5th ed. (Kluwer Law International: Alphen an den Rijn, The Netherlands, 2007), 364.

⁶⁶ Ibid.

the curator expected. Still, Cameroon's legal structure did not support its claim to the work. While Cameroon was a UNESCO signatory in 1973, the United States was not.⁶⁷ And even if both countries had signed the 1970 UNESCO Convention, it was not retrospective and therefore would not have covered the 1966 theft of the Afo-A-Kom.

Patrick J. O'Keefe writes:

There is no provision for retroactivity in the 1970 Convention. The Special Committee in 1970 discussed the possibility of including a non-retroactivity clause to this effect but decided that it was unnecessary. The normal rule of international law as represented by custom and Article 28 of the *Vienna Convention of the Law of Treaties* is indeed that international agreements are not retroactive.⁶⁸

In addition, Cameroon could not come up with the money needed to buy the work back and ship it safely home. Instead, people and corporations volunteered their help to return the Afo-A-Kom. Lawrence Gussman (fig. A77), a New York businessman who was also a collector of African art, did not want his country to be seen in such an unfavorable light. He stated that he would buy the Afo-A-Kom back so that it could be returned to Cameroon. Gussman bought the Afo-A-Kom and had it flown to Cameroon. Gussman later received the Cameroon Medal of Honor for his help in returning the Afo-A-Kom.⁶⁹

Although the story of Afo-A-Kom in the United States has a happy ending with its return to Cameroon, one aspect of the history points out that the country's legal system

⁶⁷ Retrieved from http://www.unesco.org/culture/laws/1970/html_eng/page3.shtml

⁶⁸ Patrick J. O'Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (Leicester, U.K., Institute of Art and Law, 2000), 14.

⁶⁹ Fred Ferretti, *Afo-A-Kom; Sacred Art of Cameroon* (New York: The Third Press, 1975), 105. Gussman also flew with the Afo-A-Kom statue from Washington to Cameroon. The statue had its own seat. When it was returned, a party was held for it at the Sheraton Mont Febe Palace Hotel. The Fon or King of the Kom, then in his 70s, greeted the Afo-A-Kom there.

was not set up to protect its cultural property as well as other countries were. As Ferretti writes from his interview of Roy Sieber:

Sieber said that Africa lacks the sort of controls installed by Mexico in an attempt to stem the looting of its pre-Columbian art and shrines. The [Mexican] government controls all objects aboveground, including those unearthed in digs by archaeologists. Sieber said, “that it will only be the big pieces that will be located. You’re never going to catch up with the small ones, ninety percent of which go to private collectors, not to museums.”⁷⁰

Arguably, the Afo-A-Kom could have been protected under Cameroon Federal Act 63-22 which was enacted in June, 1963, to protect monuments, objects, and sites of historic or artistic interest. The Federal Republic of Cameroon had been formed in 1961 by the merging of Northern Cameroon, the former French colony that gained its independence from France in 1960, and Southern Cameroon, a British territory that gained its independence in 1961. In 1972, a year before the Afo-A-Kom case surfaced in the United States, The Federal Republic of Cameroon changed its name to the United Republic of Cameroon.

One much-publicized aspect of the Afo-A-Kom case is the fact that when the *New York Times* interviewed the President of Cameroon, he was not aware of Kom.⁷¹ This may seem shocking at first. However, Cameroon at the time was a newly created union of roughly two hundred different ethnic and linguistic groups that for many years had been split into the Northern and Southern colonies. So it is not surprising that someone from one part of Cameroon would not know all of its cultural groups.

⁷⁰ Fred Ferretti, *Afo-A-Kom; Sacred Art of Cameroon* (New York: The Third Press, 1975), 49.

⁷¹ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics, and the Visual Arts*, 5th ed. (Kluwer Law International: Alphen an den Rijn, The Netherlands, 2007), 365.

It is interesting to note that the Afo-A-Kom case did not start with colonial expropriation; instead it came from a theft from the royal compound and a sale to an American art dealer. Cameroon probably did what it could to ensure that stolen cultural property did not leave its borders, but it did not prevent the export of this culturally significant piece. And despite the fact that Cameroon was an early signatory of the 1970 UNESCO Convention,⁷² the convention did not help it regain the Afo-A-Kom. Even if the United States had been a signatory when the piece was imported, the convention was not retroactive so would not have applied in this case. Fortunately, ethics succeeded where the international legal system failed, and the Afo-A-Kom was returned to its source country.

The period after World War II was one of change in Africa as well as in the countries that were collecting African art. The postwar years saw a rise in forgeries and illicit trading of African art. As the twentieth century neared its end, there was heightened awareness of the need to protect cultural heritage, but the struggle for cultural property rights continued. The conventions of the 1970s represented a step forward for some legal issues in African art but left other concerns, such as the financial problems of source nations, unaddressed.

⁷² Cameroon was the fifth country to sign the 1970 Convention when it ratified the convention on May 24, 1972. Retrieved from <http://portal.unesco.org/la/convention.asp?KO=13039&language=E> on July 17, 2009.

CHAPTER V: NEW PERSPECTIVES AND CHALLENGES, 1990 to 2009

As the twentieth century drew to a close, there was continued growth in art markets and in collectors desiring African art. Despite the postwar legal protections for cultural property, plunder and illicit trafficking also continued. There were increasing problems with implementing the laws, especially since the UNESCO Convention still had few art-buying countries as signatories by 1990.

In 1993, Michel Brent, an investigative journalist from Belgium, wrote about illicit trade practices in Africa. His article discusses art plundering before and after the 1970 UNESCO Convention:

Twenty or thirty years ago dealers in ethnographic art would organize full-size expeditions into remote parts of Africa, and many of the people who were involved in the trade at that time recall light aircraft landing as close as possible to the sites and later leaving packed full.¹

Clearly the dealers had little, if any, worry about the UNESCO resolution of 1970 at that time. As Brent continues, the methods of acquiring African art have changed, but cultural artifacts are still being removed:

Nowadays, works of art are obtained by means that are less devious and more profitable. In Zaïre, for instance, entire groups comb the country in search of goods. They have well-defined territories and would not dare venture into a rival gang's for fear of reprisal. Woe betide the Western dealer who would try to acquire goods without employing their services!²

This chapter has five sections that address the different legal issues for African art at present. The first section outlines the ongoing challenges of illicit trade in African art since 1990. This section is illustrated with examples involving art from Mali. The

¹ Michel Brent, "A View Inside the Illicit Trade in African Antiquities," *Plundering Africa's Past*, eds. Peter R. Schmidt and Roderick J. McIntosh (Bloomington and Indianapolis: Indiana University Press, 1993), 67.

² *Ibid.*, 68.

following sections consider recent relevant national and international laws in three different areas. One of these sections describes a revolutionary United States law that addresses the rights of the Native American. It is examined in terms of whether such a law would be suitable for an African country like Mali, Nigeria, or the Democratic Republic of the Congo. The last section in the chapter addresses the continuing controversies about ownership and authenticity regarding African art.

*Continuing Challenges of Illicit Trade:
Examples from Mali*

As described in Chapter Four, the United States signed the UNESCO Convention in 1983 and created its accompanying national law, the Convention on Cultural Property Implementation Act of 1983 (CCPIA). With the CCPIA, the United States set up the framework to allow countries to request emergency bans on the importation of cultural property into the United States.

In 1993, the United States acted under the terms of the CCPIA to ban the import of certain Malian antiquities into the United States. Etienne Clément, of the Division of Cultural Heritage of UNESCO in Paris, discusses the historical significance of this ban:

The import ban on archaeological material from the region of the Niger River Valley in Mali is the fifth such ban adopted by the United States, but the first one concerning an African country. This makes it particularly important, since African countries are presently suffering a large-scale pillage of both archaeological and ethnological material.³

At the time of the emergency ban, Mali was eager to prevent the removal of cultural artifacts from Mali in general and from specific archaeological sites. Works of special interest included the Inland Niger Delta terra-cottas from the area around Djenne,

³ Etienne Clément, "A View from UNESCO," *African Arts* 28, 4 (Autumn 1995): 58.

Mali, as well as Bankoni style clay works (fig. A78).⁴ The terra-cottas from Djenne (figs. A79 and A80) had been discovered in the 1930s. Although no scientific excavations took place until the 1970s, an extensive trade network had grown up between dealers in Mopti and art-gallery dealers in Europe. The Bankoni terra-cottas from southern Mali have also been highly desired by illicit art traders.

Before 1993, Mali had two legal avenues to protect its cultural property. The first was through ownership. If Mali claimed ownership rights to its cultural property, it could then bring a lawsuit against the possessor of the property in the country where it now resided, claiming the goods to be stolen. However, lawsuits are costly and while Mali is rich in art, it is poor financially. So lawsuits have never been a viable option for Mali.

The other avenue was to control the exportation of its cultural property. Most countries have laws that restrict the exportation of their cultural property. Not all are as rigid as Italy and Egypt, but most countries have these restrictions in place, as Mali does. However, many countries do not enforce other countries' export laws. So in many cases, cultural property can be legally imported even if the objects have left the source country illegally.

The United States emergency ban of 1993 changed this. With the emergency restriction, all Malian archaeological goods were banned from entry into the United States for five years.⁵ According to Daniel Shapiro, emergency bans were not necessarily well-received:

⁴ Patrick R. McNaughton, "Malian Antiquities and Contemporary Desire," *African Arts* 28, 4 (Autumn 1995): 23.

⁵ Since 1993 the United States government has signed and renewed a Memorandum of Understanding to continue this import restriction every five years. It was extended in September 2007. Retrieved from <http://www.savingantiquities.org/Malimou.php>.

The “emergency” provisions were controversial. They prohibit the import of material into the United States without similar action being taken by other importing countries. This raises the possibility that the material excluded from the United States would simply go to museums and collectors in other countries, with little or no benefit in preventing pillage. This threatened archaeological or ethnological material might not be preserved for needed in situ scientific study or retained by the country of origin, and it would be lost to United States museums, collectors, and scholars.⁶

The United States ban on the importation of Malian antiquities has the effect of strengthening the Malian law that prohibits their export. This poses a dilemma for Malian farmers if their land has antiquities in it. When the weather does not permit a good harvest, they are faced with poverty and starvation. In order to feed their families, some farmers travel to nearby Senegal to work during the dry season, but others sell the objects to dealers as their livelihood. The ban on exportation from Mali and importation into the United States created an economic problem, not for the wealthy gallery owners or for the importers of Malian art, but for the impoverished farmers who sold the works for very little money. It is surprising that very little discussion of economic causes is found in the articles that protest the plundering of these sites. Still, one should not conclude that economic hardship is always the reason for the illicit trade in African art.

It is clear that the ban on import into the United States is a help to Mali in preserving its cultural heritage. In November, 1991, a shipment of art objects from Bamako, Mali, to New Orleans was seized by United States Customs. The shipment consisted of several eighteenth-century objects of great value, and it was a flagrant violation of the Malian exportation laws. The people involved were well-known, including Samba Kamissoko, a Malian dealer who was known for illegal trafficking in art

⁶ Daniel Shapiro, “The Ban on Mali’s Antiquities: A Matter of Law” *African Arts* 28, 4 (Autumn 1995): 44.

objects, and Charles Davis, the owner of a very important primitive art gallery in the United States.⁷

The customs officer sent a letter to the Malian ambassador in Washington, D.C., stating that, if Mali wanted the works back, it must take action itself since no United States law had been broken. No action was taken, and the works were handed over to Davis after a few weeks of seizure by customs officials.⁸ Had this shipment occurred after the import ban, it would have been illegal in the United States.

Even after the United States import ban was in place, however, further efforts were deemed necessary to prevent illicit trafficking. In October of 1994, the International Council of Museums (ICOM) held a regional workshop on the Illicit Traffic of Cultural Property in Bamako, Mali. Maria Papageorge Kouroupas, Executive Director of the United States Information Agency,⁹ states:

This Bamako workshop has been called to examine a problem that is epidemic in scope, seemingly immune to any remedy, and on a scale that many agree is second to trade in drugs: the illicit movement of cultural property across international borders. Perhaps, however, we should cast the problem differently. Our primary aim is not to curtail illicit trade but rather to protect the integrity of the object by finding ways to prevent its illicit and unscientific removal from its original context.¹⁰

What is left out in this statement is significant. According to Kouroupas, the workshop did not emphasize full implementation of the 1970 UNESCO Convention, which

⁷ Michel Brent, "A View Inside the Illicit Trade in African Antiquities," *Plundering Africa's Past*, eds. Peter R. Schmidt and Roderick J. McIntosh (Indiana University Press, Bloomington and Indianapolis, 1993), 71.

⁸ Ibid.

⁹ The United States Information Agency administered the United States implementation of the 1970 UNESCO Convention at the time of this conference. See Chapter Four.

¹⁰ Maria Papageorge Kouroupas, "U.S. Efforts to Protect the Cultural Property: Implementation of the 1970 UNESCO Convention," *African Arts* 28, 4 (Autumn 1995): 32.

prohibits all illicit movement of cultural property, but rather it focused on the protection of archaeological context. The president of the Republic of Mali, Dr. Alpha Oumar Konaré, insisted that his country's 1993 accord with the United States was not to punish good collectors or public trust museums, but rather to work with them to share the cultural heritage of Mali with the world.¹¹ Although its focus was narrow, this workshop did help to keep current the world awareness of the issues of plunder and illegal export.

Forgery also remains an issue in African art. In sub-Saharan Africa the absence of many known early artists helps foster the issue of authenticity. Christopher Steiner writes:

The concept of "authenticity" is among the most problematic and most difficult issues in the study of African art. Yet, despite its central relevance, and the frequent use in the literature of such terms as "real," "genuine," and "authentic," the subject of authenticity has received surprisingly little attention by scholars in either the fields of anthropology or art history.¹²

Not everyone adheres to Steiner's strict sense of authentic African art. For example, Frank Willet writes that authentic African artworks "are those made by an African for use by his own people and so used."¹³ Still, the anonymity of most of the traditional African artists seems to provide a unique opportunity for forgers to create their own works for sale on the African art market.

African art collectors are always looking for "old" art and the dealers of African art know this. The issues in African art trade are not just whether ancient African artworks are obtained illicitly, but also whether these works are actually as old as they are

¹¹ Alpha Oumar Konaré, "Toward More Efficient International Collaboration," *African Arts* 28, 4 (Autumn 1995): 27.

¹² Christopher Steiner, *African Art in Transit* (Cambridge University Press, Cambridge: 1994), 100.

¹³ Frank Willet, *African Art: an Introduction*. (New York: Praeger, 1971), 216.

claimed to be. One aspect of the illicit trade in African art is forgery that makes new works appear old. It might seem that forgery would be impossible in the age of thermoluminescence (TL) or radiocarbon (C14) tests. Yet according to one estimate, since the 1980s nearly eighty percent of all allegedly antique terra-cottas from Mali have been counterfeit.¹⁴

On November 20, 1991, a terra-cotta ram (fig. A81) from the Robert and Helen Kuhn collection was sold at Sotheby's auction house in New York City.¹⁵ The TL test showed that it was between 570 and 1,000 years old. The animal sold for \$275,000. In fact, the Kuhn ram was made after rains in 1986 that exposed several pieces of terra-cotta. The villagers hired people to excavate for the works but only three intact animals emerged from the hundreds of shards that were found. The front legs, chest and head of the ram were found, but the rest of it was missing. According to an interview with the forger, over one hundred forgeries were made from the three intact animals.¹⁶ This forgery fooled Mali as well. When the Sotheby's auction became publicized, Mali sought to get the ram back. The basis for its claim was Mali's 1985 law declaring that all artifacts excavated within its borders belonged to Mali. When the ram was found to be a forgery, Mali dropped the request for its return.¹⁷

¹⁴ Michel Brent, "Faking African Art," *Archaeology* 54, 1 (January/February 2001) retrieved on August 2, 2009 from <http://www.archaeology.org/0101/abstracts/africa.html>

¹⁵ William H. Honan, "Mali Seeking to Prevent Auction of Religious Statue," *New York Times*, 20 November 1991.

¹⁶ Michel Brent, "Faking African Art," *Archaeology* 54, 1 (January/February 2001) retrieved on August 2, 2009 from <http://www.archaeology.org/0101/abstracts/africa.html>

¹⁷ William H. Honan, "Mali Seeking to Prevent Auction of Religious Statue," *New York Times*, 20 November 1991.

How is this type of forgery done? The forger typically digs holes into the clay, where he buries fragments of authentic terra-cotta found at the sites. The Kuhn ram's forger was a master potter who fashioned the piece from the nose to the hindquarters, and put pieces of authentic clay into the two hind legs and the stomach. This method of bypassing the TL test is risky, because the test would have to be done in an area close to the authentic pieces in order to be considered authentic. The TL test cannot distinguish the ancient fragments from the new pottery.¹⁸

Other methods are also used for forgery. One way to age pottery artificially is to make sure the clay is primarily low-fired, so that it can be scraped and aged. Another method is to bury the objects in heaps for an extended period with a variety of corrosive substances. For example, the Kuhn ram was buried for ten months.¹⁹ Wooden sculptures have been artificially aged as well. One technique is spraying kola nuts on the sculptures so that chickens will peck at them and therefore age them.²⁰

The emergence of forged African art resulted from the need for more African antiquities in the art market. The supply of real antiquities could not keep up with the demand for them. Michel Brent, who first reported the forgery of the Kuhn ram, states:

The first doctored Malian terra cottas came from Sévaré, near Mopti in central Mali, where antiquities dealer Boubou Diarra has lived for more than 60 years. Since 1968, Diarra has sold looted terra cottas and exported them illegally to European colleagues such as the Belgian dealer Émile Deletaille and the French merchant Philippe Guimiot. As demand

¹⁸ Michel Brent, "Faking African Art," *Archaeology* 54, 1 (January/February 2001), retrieved on August 2, 2009 from <http://www.archaeology.org/0101/abstracts/africa.html>. See Chapter Four for a description of thermoluminescence testing.

¹⁹ Ibid.

²⁰ Ibid.

increased and fewer intact terra cottas were being recovered, Diarra started selling fakes. Naturally he wasn't the only dealer doing this for long.²¹

Ironically, the back page of the *African Arts* Autumn 1995 edition, which dedicated itself to protecting Mali's cultural heritage, is an advertisement for Philippe Guimiot's gallery.

*Growing Concerns and Legal Protections
for Intellectual Property*

With the continuing need to protect cultural heritage has come a new need to protect the intellectual property of working non-Western artists. Cultural leaders and advocacy groups are increasingly fighting to gain control over elements of non-Western culture that are thought to be a part of their patrimony, such as art, music, and landscapes. Michael Brown of Williams College writes about this phenomenon:

Growing disquiet about the unauthorized use of elements of native cultures implicitly challenges influential academic work that celebrates the creative mixing of cultures, a process referred to as "hybridity" or "creolization." Scholars interested in hybridity call attention to the ways in which people in the developing world grab ideas, objects, and technologies from the industrial West and reshape them to suit local needs. No longer is this mixing of traditions seen as evidence of cultural decline or acculturation. Ironically many of the peoples whose hybridity has been so enthusiastically documented become upset when it is their own culture that begins to flow elsewhere.²²

According to Brown, sometimes the objections to unauthorized use of cultural elements are economic: if a perceived intellectual copyright has been infringed, there is a desire for financial compensation for this occurrence. Other times, Brown states, the objections are "fueled by fear that elemental understandings are coming under the control of others, so that native people are no longer masters of their own traditions, their own

²¹ Ibid.

²² Michael F. Brown, *Who Owns Native Culture?* (Cambridge, Massachusetts: Harvard University Press, 2003), 5.

identities.”²³ One example Brown gives is the use of the sweat lodge by non-Native Americans who do not observe the proper rules of behavior. Many Native Americans consider this to be blasphemous.

This leads to the legal question of whether cultural practices can be considered the intellectual property of one group of people. Can there be a sort of collective property right? Would it be fair to protect the religious ideas of one group in such a manner, and to disregard them in another? These issues are complex. One such case in Africa involves botany. For centuries, the San people of the Kalahari Desert in South Africa, Namibia, and Botswana have had extensive knowledge of the Kalahari’s botany, and they have been using the Hoodia cactus to prevent hunger on long hunting excursions. A British company, Phytopharm, used the San’s knowledge of the Hoodia cactus to create an appetite suppressant designated P57 (fig. A82). Pusch Commey writes:

Phytopharm quickly patented *P57*, realizing the great potential it has as a big natural slimming aid—a revolution in the £6 billion a year Western slimming market. The share price of Phytopharm rocketed as a result, and in 1998 the company quickly sold on the right to license the drugs to Pfizer, the US pharmaceutical giant. The CSIR (South African Council for Scientific and Industrial Research) was also going to benefit.²⁴

The revenue potential was in the millions of dollars. Everyone involved was getting wealthy from the Hoodia cactus, except for the San whose knowledge made the entire project possible. The San hired lawyers who threatened lawsuits. Richard Dixey, CEO of Phytopharm claimed ignorance, saying “I honestly believed that these Bushmen [the San] had died out and I am sorry to hear that they feel hard done by.”²⁵

²³ Ibid.

²⁴ Pusch Commey, “The New Scramble for Africa,” *New African* 424 (December 2003): 14.

²⁵ Ibid., 15. Eight percent of all royalties from Phytopharm now go to a trust for the San.

Many sub-Saharan African countries have adopted national laws to protect the individual in terms of copyright. These laws reflect their roots in European civil law. Most art-market countries of Europe are members of the Berne Union, which consists of signatories to the Berne Convention of 1886. An important element of the Berne Convention is its use of the *droit d'auteur*, or moral right, which grants the creator of a work the right of attribution and the right of integrity. This is a nontransferable right. The creator can transfer the work but not the moral right to the work.²⁶

This approach differs from United States copyright law, which permits the authorship to be sold with the work. The United Kingdom, another common-law country, has also seen copyright as an economic right until relatively recently. It passed a moral right law and rewrote its copyright law when it ratified the Berne Convention in 1988.²⁷

Under the Berne Convention, any creative work, such as literature, art or music, is automatically copyrighted upon its creation.²⁸ The Berne Convention protects the copyright of authors living in the Union. For example, if an architect from a non-Berne-Union country designs and erects a building in a Berne-Union nation, it is protected under the convention.

The Democratic Republic of the Congo, Mali, Ghana, Kenya and Nigeria are signatories of the Berne Convention. In Nigeria, the Copyright Act was enacted in 1990

²⁶ Article 6*bis* of the Berne Convention Retrieved on August 6, 2009 from http://www.int/treaties/en/ip/berne/trtdocs_wo001.html#P123_20726

²⁷ Retrieved on April 7, 2009 from the British Officer of the Public Sector Information: http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm

²⁸ Retrieved on August 2, 2009 from http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P82_10336

and amended as recently as 1999.²⁹ There are many exceptions which permit limited use of copyrighted works, including (as in the United States) “educational purposes” and also including anything that could be considered to be “the doing of any of the aforesaid acts by way of parody, pastiche, or caricature” according to Nigerian law.³⁰

In 2007, photographer Peter Obe sued Grapevine Communications Limited in the Nigerian Federal High Court. Obe claimed that the defendant infringed his copyright by using a photograph he had taken and published in his 1971 book, *Nigeria; a Decade of Crises in Pictures*. The defendant used the photograph in an issue of *Grapevine* magazine. The defendant claimed that no copyright was infringed because it borrowed the photographs from Nigeria’s *Daily Times*. The case was ruled in favor of the plaintiff, because the newspaper did not have Obe’s permission to use the picture and could not have permitted Grapevine to do the same. The plaintiff was awarded a total of fifteen million Nigerian naira in damages.³¹

In Kenya, the Copyright Act of 2001 calls for the formation of an office where copyrights can be deposited and ownership disputes quickly solved, but the office was not staffed at the time the law went into effect.³² In 2004, a suit by Alternative Media Limited against Safaricom Limited raised the question of whether copyright protection

²⁹ Copyright Act, (Cap. 68, Laws of the Federation of Nigeria, 1990 as amended by the Copyright Amendment Decree No. 98 of 1992 and the Copyright (Amendment) Decree 1999) Retrieved on August 10, 2009 from http://www.wipo.int/tk/en/laws/pdf/nigeria_copyright.pdf

³⁰ Ibid.

³¹ The Honorable Justice Abdullahi Mustapha, “Enforcing IP Rights in Nigeria,” *World Intellectual Property Review* (2008). Retrieved on August 3, 2009 from <http://www.worldipreview.com/08article36.html>

³² Retrieved on 7 April 2009 from the UNESCO collection of copyright laws portal: http://portal.unesco.org/culture/en/files/30229/11416612103ke_copyright_2001_en.pdf/ke_copyright_2001_en.pdf

applies only to the original form of the work, or whether a significant difference in media or quality infringes the copyright. The plaintiff won, but the case was difficult to prove.³³ The Kenya Copyright Board was staffed in 2007, and this has made a major difference getting copyrights protected and reducing the number of copyright court cases.³⁴

Possible Legal Models to Protect African Cultures

It is not surprising that questions of ownership and cultural patrimony are important to Native Americans. They had been treated by the white colonizers as a primitive and inferior race, in much the same way that the colonizers regarded the native people of Africa. The United States enacted the Native American Graves Protection and Repatriation Act, known as NAGPRA, in November, 1990. In addition to being a cultural property law, NAGPRA is a human rights law that aims at offering equal treatment to all human remains.

NAGPRA has two purposes. The first purpose is to provide “a process for museums and Federal agencies to return certain Native American cultural items -- human remains, funerary objects, sacred objects, and objects of cultural patrimony -- to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.”³⁵ To do this, the act requires federally funded museums and galleries that have Native American property to inventory them and seek to repatriate items belonging to recognized tribes.

³³ Case Retrieved on August 3, 2009 from http://www.kenyalaw.org/CaseSearch/case_search_one.php?casParties=&casSubject=copyright&casNumber=&casCourt=&casJudges=&casType=&casAdvocates=&casCitation=&casYear=&check_submit=1&submit=Searching+.+.+.

³⁴ Retrieved on August 3, 2009 from <http://www.iipa.com/rbc/2006/2006SPEC301KENYA.pdf> and <http://allafrica.com/stories/200711262040.html>

³⁵ Retrieved from NAGPRA website: <http://www.nps.gov/history/nagpra/>

The second major purpose of NAGPRA is to prevent future grave robbing. To do this, it “requires that Indian tribes or Native Hawaiian organizations be consulted whenever archeological investigations encounter, or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on Federal or tribal lands.”³⁶

According to Merryman, Elsen and Urice, one result of NAGPRA has been the forging of new and better relationships between museums and Native American groups:

The potential for adversarial combativeness has, instead, been generally replaced by cooperation, improved mutual understanding, and as to Native American cultural works not affected by NAGPRA, more insightful exhibition and interpretation.³⁷

However, the law has created concerns regarding the expense of inventories and the loss of the objects for study and display. Merryman, Elsen and Urice continue:

Inventories are expensive to create, and few American museums (of any kind) have complete inventories of their collections. More significantly, there was a substantial concern over the loss of human remains for scientific research and of cultural objects for exhibition.³⁸

The loss of scientific record is an argument that is used by some American archaeologists who oppose the reburial required by NAGPRA.³⁹ Cherokee lawyer Steve Russell explains this “scientific” need to study Native American remains, however, as based on racist beliefs:

³⁶ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts*, 5th ed, (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 373.

³⁷ *Ibid.*, 370.

³⁸ *Ibid.*

³⁹ Janet Monge, “The Morton Collection and NAGPRA,” *Expedition* 50, 3 (Winter 2008): 37. This article tells the story of an early nineteenth-century collection of Native American remains that is housed at the University of Pennsylvania. As of December, 2008, about one hundred of the twelve hundred human crania in the collection have been returned to Native American groups.

The alleged scientific necessity for this disparate treatment apparently dates from the time when racial inequality was thought to have a scientific as well as theological basis. American investigators had become interested in the American aborigines perhaps before they began to think systematically about Africans, and in the cases of American Indians, Africans, and Australian aborigines, white investigators extrapolated from measurements of heads, jawbones, and skeletons to the moral and intellectual powers of the persons who possessed these attributes.⁴⁰

This "scientific" study is similar to the mindset which allowed indigenous people from Africa to be put on display in so-called human zoos earlier and allowed Europeans to collect skulls and skeletons from Africa (see Chapter Two).

Several restrictions limit the application of NAGPRA. For example, the act can apply to items excavated after November 16, 1990, as long as they are held by federal agencies, which includes any federally-funded museums. However, it, applies only to "Native American cultural items which are excavated or discovered on Federal or tribal lands."⁴¹ This means that NAGPRA has no jurisdiction over items that are excavated or discovered on private lands, even if they are Native American cultural items.

The Smithsonian Institution does not fall under NAGPRA law because it is specifically states in Article Four of the law that the Smithsonian Institution is not included.⁴² However, it is subject to similar laws under the National Museum of the American Indian Act of 1989, which established the National Museum of the American Indian (NMAI) as part of the Smithsonian Institution.⁴³ This act also required the

⁴⁰ Steve Russell, "Sacred Ground: Unmarked Graves Protection in Texas Law," *Texas Forum on Civil Liberties & Civil Rights* 4, 1 (Winter 1998): 7.

⁴¹ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 373.

⁴² *Ibid.*, 371.

⁴³ "Collections" from <http://www.nmai.si.edu/subpage.cfm?subpage=collections&second=collections>

Smithsonian to inventory and identify all NMAI items, and to consider an item for return if it was requested by a tribe or an individual.

Another restriction of NAGPRA is that it applies only to a group that is federally recognized as an "Indian Tribe" or "Native Hawaiian organization":

Any tribe, band, nation or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.⁴⁴

Groups which are not recognized federally as Indians, such as the Abenaki Nation of Vermont, could not make NAGPRA claims.

The case of the so-called "Kennewick Man" (fig. A83) illustrates this problem. In July, 1996, while boating on the Columbia River in Washington State near Kennewick, two young men discovered a skeleton. The remains were discovered on federal land that was being managed by the United States Army Corps of Engineers. They were removed as a part of the Archaeological Resources Protection Act, and they were initially believed to be European. The anthropologists who studied the remains discovered the point of a stone weapon embedded in the hipbone. This alerted the consulting archaeologist, Francis P. McManamon, who was immediately concerned about NAGPRA implications.

Based on a detailed examination that included radiocarbon dating, the skeleton turned out to be more than 7,000 years old.⁴⁵ A court case took place in 2004. An earlier

⁴⁴ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 371-372.

⁴⁵ Francis P. McManamon, "Determination That the Kennewick Human Skeletal Remains are 'Native American' for the Purposes of the Native American Graves Protection and Repatriation Act (NAGPRA) dated 1/11/2000, retrieved on February 28, 2009 from <http://www.nps.gov/archeology/kennewick/c14memo.htm>

decision that awarded the remains to a coalition of Indian tribes⁴⁶ was reversed, because Federal officials were unable to prove that the remains came from a recognized tribe. The remains are in the Burke Museum at the University of Washington.

Australia has laws that are comparable to NAGPRA. In Australia, the Commonwealth became responsible for Aboriginal issues in 1967. The first laws governing indigenous people were left to individual states until 1972, when the Archaeological and Aboriginal Relics Preservation Act was put into place. In 2007 the Aboriginal Heritage Act took its place. Like NAGPRA, the Aboriginal Heritage Act has given rise to debates over the definition of human remains. The Australian law provides clarification, stating that "Aboriginal Human Remains" means bodily remains, but it does not include objects made from hair or otherwise unrecognizable as human remains, tissue used for medical purposes or otherwise lawfully removed, or bodies lawfully interred in cemeteries.⁴⁷

The Aboriginal Heritage Act is more practical than NAGPRA in other ways as well. For example, the Australian law states that all pre-1770 remains are by definition Aboriginal. It also aims to protect areas of cultural sensitivity from being built upon, destroyed by some activity, or environmentally degraded. It does this through the formation of CHMPs, or Cultural Heritage Management Plans, which must determine the "nature of any Aboriginal cultural heritage present in the area."⁴⁸ Unlike NAGPRA,

⁴⁶ Jenna Musselman, "Ninth Circuit Limits NAGPRA to Remains Linked with Presently Existing Tribes," *Ecology Law Quarterly*, 32, 707 (2005): 708.

⁴⁷ "Aboriginal Heritage Act No. 16/2006" retrieved on March 9, 2009 from [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/481F4F0770858034CA257169001D1F4A/\\$FILE/06-016a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/481F4F0770858034CA257169001D1F4A/$FILE/06-016a.pdf), 3

⁴⁸ *Ibid.*, 37.

which does not cover privately owned land, in a CHMP the landowner is held responsible for the cultural heritage on his or her land.

Regardless of where the claims for repatriation are--whether in Australia, the United States or in other countries--there is a distinct difference between claims for returning human remains and claims for the cultural property goods that are associated with them. Generally, groups wanting repatriation agree that human remains should be reburied. What should be done with the cultural goods is disputed. Some people argue that these goods should be reinterred with the remains. Other people think that the items should be displayed in a museum or cultural center that belongs to the group of its origin, and that any admissions proceeds should be given to the group. What should be done if the origin is unclear? Jane Hubert and Cressida Fforde write:

Some Native American groups consider that unprovenanced or poorly provenanced material should be reburied in the general area of origin, whereas others would prefer that the remains are retained by the museum. This situation is also found in other countries.⁴⁹

American-based archaeologists generally want to keep Native American cultural artifacts in museums. They are concerned with saving the objects that are collected.⁵⁰

Anthropologist Kathleen Fine-Dare writes:

It is widely believed and felt—and feeling cannot and must not be left out of these discussions, because the issues are deeply emotional—that the objects that may leave the museums as a result of the new laws were initially rescued from oblivion and that the fate of our entire world depends on their being retained for the good of not only science but of the

⁴⁹ Jane Hubert and Cressida Fforde, “The Reburial Issue in the Twenty-First Century,” *The Dead and their Possessions: Repatriation in Principle, Policy, and Practice* (New York and London: Routledge, 2004), 7.

⁵⁰ This sentiment, the object-oriented argument, is often heard during Elgin or Parthenon Marble debates.

people who need scientists and curators to tell them what these objects mean and who can care for them properly.⁵¹

This view contrasts with that of African-based archaeologists such as Roderick McIntosh and Susan Keech, who try to prevent certain classes of terra-cottas from leaving Mali. Perhaps the American-based archaeologists are less concerned with removal because, within the United States, museums and archaeological sites fall under the same national laws.

NAGPRA, though national, is similar to international laws because the Native American tribes are like a nation within a nation. The two purposes of NAGPRA--to repatriate cultural property of Native Americans and to prevent future desecration of cultural sites--are also purposes of international legislation.

Could a law like NAGPRA work in a country like Ghana? Probably not. There is no discourse in the academic literature about laws in the countries of sub-Saharan Africa that are similar to NAGPRA or the Aboriginal Heritage Act. In these countries, the current legal focus is on repatriating cultural objects that have left their borders, rather than preventing further plundering or illegal exportation. While the art-rich sub-Saharan African countries would also like to prevent their cultural heritage from leaving, the problem addressed by NAGRA is not a high priority for their limited legal resources.

An essential difference in the legal issues of repatriating African art and repatriating Native American art comes from the fact that in the United States, the museums holding the desired objects are located in the same country as the people who are requesting their repatriation. Much African art, on the other hand, has wandered abroad. For example, ivory leopards which were given to Queen Victoria by the

⁵¹ Kathleen S. Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA*, (Lincoln and London: University of Nebraska Press, 2002), 5.

Commander of the Benin Punitive Expedition are a part of the Royal Collection that is on loan to the British Museum.⁵² They have become symbols of the British crown's power as well as Benin's history.

*Continuing Controversies and New
International Legislation*

Important exhibitions about African art were held in the 1990s, and they were affected by the issues of illegal import and export. For example, a traveling international exhibition, the “*Vallées du Nigers*” (fig. A84) opened at the *Musée des Arts d’Afrique et d’Océanie* in Paris in October, 1994. This exhibition coincided with the ICOM workshop on Illicit Traffic of Cultural Property in Bamako, Mali, that was described earlier in this chapter.⁵³

In 1995, the Royal Academy of Arts in London hosted an exhibition called “Africa: The Art of a Continent” (fig. A85). It was part of “Africa 95,” a series of exhibitions and events in England that celebrated the arts of Africa. According to the press release, the Royal Academy was “caught in a dilemma, not only over the issues that an exhibition of this nature raises but also over the considerations involved in the display of individual works.”⁵⁴ The dilemma was that the provenance of works from archaeological sites must be shown not to be a part of the illicit trade or plundering of the

⁵² Jonathan Jones, “1000 Artworks to See Before You Die: All about Benin,” *Guardian*, 25 October 2008, retrieved on August 2, 2009 from <http://www.guardian.co.uk/artanddesign/2008/oct/25/benin-art>

⁵³ Etienne Clément, “A View from UNESCO,” *African Arts* 28, 4 (Autumn 1995): 58.

⁵⁴ Press Release, Royal Academy of Arts, London, “‘Africa: the Art of a Continent’ The Dilemma of Display” *African Arts* 28, 4 (Autumn 1995): 59.

cultural heritage of Africa. The press release further stated the hope that the exhibition would help give publicity to these issues for the public at large.⁵⁵

In December of 1997, the Boston Museum of Fine Arts had opened a gallery dedicated to the arts of Africa, Oceania and the Americas. The next year, the museum encountered a storm of controversy over its acquisitions of art from Guatemala and Mali. Susan Diesenhouse describes the issue regarding two of the works:

The African collection of about 150 pieces includes 13 pieces that are on long-term loan from a museum overseer. The Malian Embassy in Washington has asked the United States to help it repatriate two of the African antiquities that are on loan. The Malian Government said the items were smuggled out of the country probably after 1993 despite Malian laws prohibiting their excavation or export and a United States law forbidding their import.⁵⁶

The United States law to which Diesenhouse refers is the emergency import ban that was enacted in 1993. The works in question were owned by William E. Teel, who refused to disclose how he got the figures.⁵⁷

This was not the only time that controversy arose regarding artwork at the MFA. In 2006 the museum returned thirteen artworks to Italy. One of the returned pieces was an amphora by the Darius Painter that dates from the fourth century B.C.E. Some of the works in question were bought through the dealer Robert Hecht, who was on trial at the time of the return, charged with dealing in illegally excavated works of art.⁵⁸

⁵⁵ Ibid.

⁵⁶ Susan Diesenhouse, "Arts in America: Looted or Legal? Objects Scrutinized at Boston Museum," *The New York Times*, July 30, 2007.

⁵⁷ Retrieved on August 7, 2009 from <http://www.museum-security.org/97/06121997.html>

⁵⁸ Elisabetta Povoledo, "Boston Museum Returns 13 Ancient Works to Italy," *New York Times*, 29 September 2006. Retrieved on August 3, 2009 from http://www.nytimes.com/2006/09/29/arts/design/29mfa.html?_r=1&scp=2&sq=2006%20Museum%20of%20Fine%20Arts%20Boston&st=cse

In June of 1995, UNIDROIT, the International Institute for the Unification of Private Law (*Institut International Pour l'Unification du Droit Privé*), held a convention in Rome that was concerned with the protection of cultural heritage. UNIDROIT is an independent intergovernmental organization that studies needs and methods for coordinating private, and particularly commercial, law between nations or groups of nations. It was set up as an auxiliary organ of the League of Nations in 1926, and was reestablished in 1940 when the League of Nations ended.⁵⁹ The African member countries of UNIDROIT are Egypt, Nigeria, South Africa, and Tunisia.⁶⁰

The UNIDROIT Convention attempted to address the issue that art-market nations were not participating in the fight against illicit art trade. The Explanatory Report states:

The countries most at risk for the theft or illegal export of their cultural heritage have defended themselves by taking drastic legal steps such as decreeing total export bans, granting “public property” status to certain cultural objects (implying, for example, no limitation period, expropriation in the event of illegal export, etc.). Internationally, however, such national measures can only be effective if the States to whose territory the cultural object in question has been removed co-operate: in fact, however, they have been inclined in the past to put the protection of their national art markets first and co-operation second, cooperating only on certain strict conditions (i.e. subject to the principles of free trade and equality before the law of public and private property, and to protect the rights of the good faith purchaser) – all principles which they were prepared to sacrifice only in exceptional circumstances.⁶¹

⁵⁹ It is not surprising that the seat of UNIDROIT is in Italy, a country that is very occupied with keeping its cultural property within its borders.

⁶⁰ Retrieved from <http://www.unidroit.org/english/members/main/htm>

⁶¹ Retrieved from <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-explanatoryreport-e.pdf> on March 7, 2008.

The 1970 UNESCO Convention had been influenced by source nations, many of them developing countries, which together held a voting majority.⁶² This was not the case with UNIDROIT, where art-market nations such as France, Italy, and Germany held the majority. The language of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects speaks to its concerns in commercial law. The convention aimed to accomplish two goals:

- a) the restitution of stolen cultural objects;
- b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purposes of protecting its cultural heritage.⁶³

According to Albert Elsen, the UNIDROIT Convention was written to “supplement, rather than replace, the 1970 UNESCO Convention.”⁶⁴ It tried to reconcile the opposing points of view regarding international cultural property laws. Generally speaking, the position of art-rich countries, such as Mali, was that national export laws should be honored internationally regardless of how tightly drawn the laws are. The position of art-importing countries, such as the United States, was that they should not be responsible for enforcing compliance with foreign export control laws.

Folarin Shyllon, Professor of Law at the University of Ibadan, Nigeria, wrote about the importance of the 1995 UNIDROIT Convention for African countries. Noting that the ability to settle claims, whether against theft or illegal exportation, through arbitration is important for African countries, Shyllon writes:

⁶² John Henry Merryman and Albert E. Elsen, *Law, Ethics, and the Visual Arts* (London: Kluwer Law International, 1998), 71.

⁶³ <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm>

⁶⁴ John Henry Merryman and Albert E. Elsen, *Law, Ethics, and the Visual Arts* (London: Kluwer Law International, 1998), 166.

The majority of African nations are among the world's poorest countries. Mali, for example, is one of the world's five poorest countries, and perhaps Africa's second in archaeological riches (after Egypt). The option for litigation is therefore not a practical proposition for most African countries. The option of arbitration under the UNIDROIT Convention is an avenue that African countries should seize upon.⁶⁵

A case involving Eritrea and Ethiopia offers an example of arbitration under the UNIDROIT Convention. Eritrea alleged that Ethiopian soldiers deliberately destroyed the Stela of Matara (fig. A86), an obelisk from the middle of the first millennium B.C.E., in May, 2000. It was estimated from the positioning of the shards that the Stela was blown up with explosives. Eritrea provided witnesses and expert opinions. Ethiopia denied any knowledge of the attack. In 2004, the arbitral tribunal found Ethiopia to be liable for the damage to the Stela.⁶⁶

Another workshop on the illicit traffic of cultural property was held in Kinshasa, Zaire, in 1996. The purpose of this Kinshasa workshop was to raise consciousness of the problem of the looting of cultural property, specifically in the Central African region. This workshop was sponsored by ICOM. Since ICOM is not a legislative body but rather one that establishes codes of conduct, the workshop did not enact any laws. It did produce a declaration, known as the Kinshasa Declaration.⁶⁷

In November 2003, UNESCO held a regional workshop in Abuja, Nigeria. The UNESCO Conventions Protecting Cultural Property workshop produced a list of

⁶⁵ Folarin Shyllon, "The Nigerian and African Experience on Looting and Trafficking in Cultural Objects," *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge: Cambridge University Press, 2006), 142.

⁶⁶ Brooks W. Daly, "Arbitration of International Cultural Property Disputes," *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge: Cambridge University Press, 2006): 465-475, 467-468.

⁶⁷ See declaration at: <http://icom.museum/kinshasa.html>

recommendations that, for the most part, were a call to action for African countries to take both international and national legislative measures to stop the loss of cultural property. African members of UNESCO were advised to become parties to the UNESCO conventions on protection of cultural heritage and the UNIDROIT Convention.⁶⁸

Addressing Ownership and Censorship

At the turn of the twenty-first century, international workshops and new laws all tried to address ongoing concerns for the protection of cultural and intellectual property. The question of ownership continued to be hotly debated as well. In the United States, museum ethics policies are set by a non-governmental body, the American Association of Museums. However, British museums are legislated through the Parliament. In the mid-1990s, the British Museum Act of 1963 was still in effect. This act was used as the explanation for not returning artifacts, because it states that an object can only be de-accessed if it is a duplicate, was made after 1850, or is deemed unfit for retention.⁶⁹ Changing the Museum Act was one aim of the Reparations Movement (UK), which had the objective to “use all lawful means to secure the return of African artefacts from whichever place they are currently held.”⁷⁰

The Africa Reparations Movement (UK) was formed in 1993 as the national committee of an international campaign to redress the wrongs done in the enslavement and colonization of African people.⁷¹ Another of its aims was to get British museums to

⁶⁸See recommendations at:
http://portal.unesco.org/culture/es/files/18025/10741845335Abuja_Final_Recommendation.doc/Abuja+Final+Recommendation.doc

⁶⁹ Retrieved on August 6, 2009, from <http://www.britishmuseum.org/PDF/BM1963ACT.pdf>

⁷⁰ <http://www.arm.arc.uk/about.html>.

⁷¹ <http://www.arm.arc.uk/FAQs.html#2>

return looted items to African countries willingly. Bernie Grant (fig. A87), a member of the British House of Commons, chaired the ARM (UK) Board of Trustees. In 1996, he requested that twenty-two bronze plaques from Benin, then in Glasgow's Art Gallery and Museum, be returned to Nigeria. Grant's letter to museum director Julian Spalding states:

I write on behalf of the Oba of Benin, Oma n'Oba, Uku Akpolokpolo, Oba Erediauwa, and on behalf of the African Reparations Movement (UK) of which I am the Chair. The subject of this letter is the Benin Bronzes, Ivories, and other cultural and religious objects contained in the Glasgow Art Gallery and Museum.⁷²

Grant explained that the items in the Glasgow collection were important for the Oba's coronation ceremony. The steps and details of the ceremony are not written down because the bronzes illustrate the details of the coronation. The ceremony could not be performed properly because the bronzes were missing, taken from the Benin Palace in 1897. Grant also drew the analogy that the Benin bronzes are just as important to the people of Benin as the Stone of Destiny is important to the people of Scotland.

Scottish law at the time allowed individual local authorities to make decisions on the local collections, and Spalding's reply to Grant was a refusal. Spalding writes:

Our reasons are entirely professional. Museums have a collective responsibility, both nationally and internationally to preserve the past so that people can enjoy it and learn from it. In the case of the Benin collection in Glasgow though it is small and not of the highest quality, it does display an important role in introducing our visitors to the culture, and religious beliefs of Benin, whose artistic achievements rank with the finest not just in Africa but in the whole world.⁷³

⁷² Retrieved on January 2, 2008, from <http://the.arc.co.uk/arm/CRBBletter1.html>.

⁷³ Retrieved on January 2, 2008, from <http://the.arc.co.uk/arm/CRBBletter3.html>.

Spalding reasoned was that the works were minor, yet also that it was important for them to remain in a public museum. He also argued that the Glasgow gallery displayed the history of British imperialism.

In addition to the plaques, the Benin pieces in the gallery include bronze heads that are displayed “in their original context” of an ancestor shrine (fig. A88).⁷⁴ The shrine pieces are located among displays from all over the world, such as Scottish pearl fishers and objects from the Murray Islands, in the Torres Strait. This hardly seems like the original context! Tragically, the true context of the Benin pieces cannot be accurately recreated, because their location and display were not scientifically recorded when Benin was pillaged in 1897.

If the plaques' depictions are all that the Oba of Benin requires to perform the coronation ceremony properly, then why did Grant not suggest that replicas or photos be made and sent to the palace? In addition to the ethical dilemma--whether these plaques should be returned to the palace so the enthronement ceremonies can be performed in an historically accurate manner--there is also the legal question of whether items gained from plunder should even be owned by anyone other than the Oba. In addition, there is the economic question of whether parties other than those who originally owned and made these works (or their descendents) should be gaining financially from the works.

Why did the Africa Reparations Movement focus on a museum with only twenty-two works of Benin art? Why did it not appeal to the British Museum as well? In a 1997 article about this case, the *Glasgow Herald* noted that the Scottish museum did have the authority to recommend returning the works to Benin, and that there had been

⁷⁴ Retrieved on August 3, 2009, from <http://www.glasgowmuseums.com/venue/building/gallery.cfm?venueid=4&fID=1&gID=5&id=2#image>

precedents of relics being returned.⁷⁵ This case offers a great example to show the persistence of issues between museums and source countries, and some notable change, such as the actions of British-based ARM (UK) aimed at returning African art. Given the many challenges to repatriation of cultural artifacts, it does seem appropriate to use all possible avenues, appealing to the morality of the museum trustees and administration as well as addressing the issue legally.

The question of where the art of Benin--or other historical works such as the Parthenon Marbles--should be located remains open. Opinions about the Benin works appear to be divided into three recommended actions: keep them in their current countries, move them to a museum in Nigeria, or put them back in the original context in the Benin City palace complex.

While the issues related to historical cultural works continue, new legal issues arise with the work of contemporary artists. One such artist is Chris Ofili, who is known for controversy involving the censorship of his portraits. Ofili won the Turner Prize in 1998 with works like *No Woman No Cry* (fig. A89), which incorporates pieces of dried elephant dung.⁷⁶ In 1999, Ofili's *The Holy Virgin Mary* (fig. A90) was on display in the Brooklyn Museum of Art's "Sensation" exhibition. It depicted an African Mary surrounded by images from blaxploitation movies and female genitalia from pornographic magazines. These were cut in shapes of cherubim and seraphim as one would see in images of the virgin of the Immaculate Conception. There is also a piece of elephant dung on the painting, located on the breast of the Virgin Mary.

⁷⁵ Alison Hardie, "Battle Royal for Benin relics," *Glasgow Herald*, 25 January 1997.

⁷⁶ The Turner prize, which started in 1985, is named for Joseph Mallard William Turner. It is awarded to an artist living in Great Britain under the age of fifty.

The “Sensation” exhibition consisted of art collected by London gallery owner Charles Saatchi. It was shown first in London, where another of its pieces received public outrage. That piece was a portrait of a convicted murderer, *Myra Hindley* by Marcus Harvey (fig. A91). As Anthony Julius writes, “for Hindley’s image to be constructed out of a child’s palm-prints is to enlist her victims in the creation of her image.”⁷⁷ The exhibition was picketed in London by the mother of one of the victims and her supporters. Myra Hindley even wrote a letter from prison demanding that her portrait be taken down. Aided by the resulting media frenzy, the exhibition attracted over 300,000 visitors in London. It then traveled to Germany. Attracting no controversy there, it was very popular, and its run was extended past the original closing date.

The exhibition next traveled to the Brooklyn Museum of Art. New York Mayor Rudy Giuliani insisted that the museum remove the *Holy Virgin Mary*, claiming that it was offensive to Catholics. According to journalist Margaret O’Brien Steinfels:

When the Brooklyn Museum director, Arnold Lehman, failed to oblige, the mayor withheld city subsidies. In March, the dispute between the city and the museum was finally settled in federal court. The city agreed to pay all it owed to the museum (\$3.5 million); in return, the museum dropped its First Amendment case against the city.⁷⁸

This controversy led O’fili to become one of the most famous artists of African descent and *The Holy Virgin Mary* to become one of the most famous works of art of African descent to date. Mayor Giuliani never went to see the exhibition. One wonders, how can

⁷⁷ Anthony Julius, “The Shock of the Not So New,” *New Statesman*, 126, 4325 (12/19/97-12/26/97): 40.

⁷⁸ Margaret O’Brien Steinfels, “Virgins No More: What Saatchi’s Sensation Really Exposed,” *Commonweal* 23, 10 (May 19, 2000): 23.

one judge something so completely visual as a painting without actually going to view it?

When asked to explain or defend his painting, Ofili is quoted as saying:

I don't feel as if I have to defend it. The people who are attacking this painting are attacking their own interpretation, not mine. You never know what's going to offend people, and I don't feel it's my place to say any more."⁷⁹

Ofili's heritage is from Nigeria, and his parents spoke Yoruba. According to Ofili, however, his use of dung came after a trip to Zimbabwe where he was impressed with the earthiness and perhaps the especially African earthiness of the material.⁸⁰ Perhaps Ofili was expressing connectedness to the earth when he placed his paintings on small dung pedestals as they leaned against the gallery wall. Olu Oguibe, a Nigerian artist, art critic and scholar, is skeptical about the motivations for Ofili's work, writing:

A more intellectually grounded artist with less smart-ass intentions would have little difficulty making his links (tenuous as they may be today since most of us Africans see elephants for the first time in European zoos, or in the rare case, on Safari in the reserves of East and Southern Africa). Incidentally, Ofili's knowledge of African art or cultures is rather minimal, and could not have led him to this wonderful revelation that many are dazzled by but cannot quite pinpoint.⁸¹

Regardless of the intentions of either Ofili or Giuliani, the legal battle at the Brooklyn Museum of Art increased public interest and caused viewers of the exhibition to confront their notions of free expression and free speech.

Ofili is not the only artist of African descent who has suffered censorship. Renee Cox, a Jamaican-American artist, is the creator of *Yo Mama's Last Supper* (fig. A92), a

⁷⁹ Donald J. Cosentino, "Hip hop assemblage: The Chris Ofili Affair," *African Arts* 33, 2 (Spring 2000): 43. From a 1999 Susan Vogel interview with the artist.

⁸⁰ Ibid.

⁸¹ H-AfrArts, October 6, 1999 Retrieved from <http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=vx&list=H-AfrArts&month=9910&week=a&msg=Wzq6otf/YB1MSl41RDhxA&user=&pw=>

photographic work that refers to the last supper of Leonardo da Vinci. It uses people of African descent as the twelve disciples and a nude self portrait in the role of Jesus. The Brooklyn Museum of Art included this work in a show of Contemporary Black Photographers titled *Committed to the Image*. Then mayor of New York, Rudy Giuliani was outraged and called Cox anti-Catholic. Renee Cox, who went to Catholic school, addressed the debate claiming that it was her first amendment right, and that in school she learned that “we were all made in the image of God.”⁸²

Censorship was not the only legal issue that Ofili encountered. In 2006, *The London Times* reported that there was a conflict of interest regarding the Tate museum’s purchase of his thirteen-painting work called *The Upper Room* (fig. A93).⁸³ It was controversial because Ofili was serving on the Tate’s Board of Trustees at the time. The Charity Commission, which governs charitable organizations in England and Wales, examined the museum. The Tate stated at the time of the examination that it was unaware of the conflict of interest law. In fact, the purchase of Ofili’s work was only the most recent of the museum’s purchases from artists when they were serving as trustees. As Alan Riding of the *New York Times* writes:

By law 3 of the Tate’s 12 trustees must be artists. Museum officials said that the Tate had been acquiring works from artist-trustees since 1959 and had been unaware of the requirement to seek permission for doing so until last year, when an independent group of British artists, known as the Stuckists, drew attention to the Ofili case and suggested a possible conflict of interest.⁸⁴

⁸² Katha Pollitt, “Subject to Debate,” *Nation*, 19 March 2001, retrieved from <http://www.thenation.com/doc/2001319>

⁸³ Dalya Alberge, “Tate’s Ofili Purchase Broke Charity Law,” *London Times*, 19 July 2006.

⁸⁴ Alan Riding, “Tate Faulted for Purchase from an Artist-Trustee,” *New York Times*, 20 July 2006.

Perhaps to the Stuckists' dismay, the Tate was allowed to keep all of the works purchased by artists who were trustees at the time their works were purchased. The Charity Commission decided that the works were of use to the collection as well as to the public at large. Sir Nicholas Serota, Director of the Tate, later stated, "We accept that our procedures need to be modified, and we have already made significant improvements to strengthen our governance in this area."⁸⁵ The Tate is currently allowed to purchase artworks from trustees so long as it seeks permission from the Charity Commission.⁸⁶

The workshops, court cases, and popular-press articles cited in this chapter show that there has been some progress in protecting African art and artists in recent times. Clearly, the art world is being scrutinized closely, perhaps more than it ever has been. In many ways, the turn of the twenty-first century was a time when a variety of interested parties became active against the variety of legal issues that have plagued the world of African art. The United States NAGPRA, while flawed, provides an important precedent in addressing the need to retain Native American remains and cultural artifacts. Intellectual property cases in Nigeria and Kenya demonstrated the need to protect the intellectual property rights of current artists, in addition to ancient African art. As shown in the case of the Kuhn ram, forgery has become so skilled that it can be difficult to detect, even with advanced tests. The UNIDROIT Convention provides another vehicle to persuade art-market nations to be more vigilant against importing art that might have been stolen or illegally exported from a source nation. As the attempted censorship of Ofili's art uncovered, however, misunderstanding and discrimination still exists.

⁸⁵ Ibid.

⁸⁶ Linda Sandler, "Tate Tightens Art-Buying Rules after Charity Commission Rebuke," 18 July 2006. Retrieved from: http://www.bloomberg.com/apps/news?pid=20601088&sid=adv_87CGqTC0&refer=home

CHAPTER VI: SUMMARY

Looking back on more than one hundred years of legal issues in African art, from the Punitive Expedition to Benin to the present day, one sees great change along with continuing challenges. Public perceptions have evolved since the time of colonialism in Africa. Where once African artworks were considered “savage fetishes” and put in ethnographic museums, they are now appreciated as worthy of being in major art museums. Some significant collections of African art in the West are today found in the Metropolitan Museum of Art in New York, the Art Institute of Chicago, the British Museum, and the *Musée du Quai Branly* in Paris.

The changing Western views on African art have been accompanied by shifts in legal and ethical opinions as well. Despite a growing body of international and national legislation to protect cultural property, however, African art is still seen by some as a commodity that can be stolen, illegally exported and imported, forged, destroyed or censored.

To help in reaching conclusions about the current legal issues in African art, it is appropriate to review the history. The first section of this chapter reviews the ways in which African art has been collected and displayed since the nineteenth century. The second section summarizes the legal systems in sub-Saharan Africa and recaps the major laws and legal agreements that have affected African art. The third section recaps the legal issues in African art, and what changes there have been in the last two centuries. The issues include plunder, illegal import and export, and forgery of African artworks. They also include challenges of ownership and intellectual property rights. The final section provides additional perspective and some options for solutions.

Evolution of Collection and Display Practices

Displays of African art have changed dramatically over time. They have travelled from the ethnographic museum to the art museum. At the turn of the twentieth century, African art was often shown as part of a mock village in a universal exhibition, such as the *Exposition Universelle* in Paris in 1900.

The interaction between non-Western art and Western consumerism began when people appeared with the art in ethnographic displays, as occurred in the Franco-British Exhibition of 1908.¹ This exhibition was as much about declaring the colonial strength of Great Britain as it was about displaying the art, architecture and people from British colonies. The displays of this time reflected the Victorian practice of collecting African artworks as trophies or curios.

In the nineteenth century, a lot of African art made its way into displays in museums through missionaries as well as traders and adventurers. Mary Kingsley, who travelled to Africa to study tropical biology and religion,² donated the artworks she collected to the Pitt Rivers Museum at Oxford University. Even though Kingsley was an outspoken advocate for African rights, in her book she still referred to the African art objects as “fetishes.”³

While turn-of-the-century displays purported to be ethnographic studies, aimed at getting a more in-depth understanding of “primitive” culture, collectors in the early

¹ Annie E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination in Late Victorian and Edwardian England* (New Haven and London: Yale University Press, 1994), 189.

² Katherine Frank, *A Voyager Out: The Life of Mary Kingsley* (Boston: Houghton Mifflin, 1986), 75.

³ Chapters twelve through sixteen of Kingsley’s book discuss the art objects she encountered and are titled “Fetish” (12) and “Fetish (continued)” (13-16). Mary Kingsley, *Travels in West Africa* (Washington, D.C.: National Geographic Society, 2002): 231-320.

twentieth century also began displaying African art for its aesthetic appeal. The aesthetic connection of African art to modern art was apparent in the 1914 display at Gallery 291 in New York City.⁴ The display of the Barnes Collection, opened in 1925, in Merion, Pennsylvania, showcases Barnes's interest in the aesthetic appeal of African figurative sculpture and its impact on twentieth century artists.⁵

By World War II, African art in the West was still predominantly in ethnographic museums. Both Hitler and Stalin had the idea of a supermuseum, much larger than even the Louvre,⁶ and their representatives relentlessly looted art during World War II for these museums. Stalin's museum of world art and Hitler's museum in Linz were never actually built, however. How African art would have been displayed will never be known. Perhaps the supermuseums would have retained the colonial attitudes of the earlier art displays.

African art collections continued to develop in the United States after the war. Instead of being placed in ethnographic or natural history museums, these collections were often donated to art museums. Max and Elizabeth Stanley gave their collection to the University of Iowa Museum of Art.⁷ The African art collected by Klaus G. Perls was

⁴ Marius de Zayas, "Statuary in Wood by African Savages: The Root of Modern Art," *Primitivism and Twentieth Century Art: A Documentary History*, eds. Jack D. Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 70.

⁵ Christa Clarke, "Recent exhibitions," *African Arts* 30, 1 (Winter 1997), retrieved from <http://web.ebscohost.com/ehost/detail?vid=8&hid=8&sid=16919708-5fed-488a-b253-ffe3d5c63044%40sessionmgr2&bdata=JkF1dGhUeXBIPWlwLHVybCxlYWQmc2l0ZT1laG9zdC1saXZl#db=aph&AN=1505219>

⁶ Konstantin Akinsha and Grigorii Kozlov. *Beautiful Loot: the Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995), 34.

⁷ Christopher D. Roy, "African Folk Art from the Stanley Collection," *Society* 3,1 (November/December 1995): 59.

donated to the Metropolitan Museum of Art.⁸ Another important collection, owned by Paul and Ruth Tishman, was donated to the Disney Company, which in turn donated it to the Smithsonian Institution to help create the National Museum of African Art.⁹

Today, the viewer can have an almost virtual tour of the history of African art displays by visiting two museums, one in England and one in France. The Pitt Rivers Museum, at Oxford University, has nearly one hundred works of Benin art. Thirty-nine of them, taken from Benin City by the British Chief of Staff of the Punitive Expedition, Captain George Leclerc Egerton, are on long-term loan from the Egerton family.¹⁰ The museum is organized by what its founder, Pitt Rivers, called a “typological” series or set of objects of the same type.¹¹ Objects are displayed in the same manner as they were at the end of the nineteenth century, when display cases of like items were placed extremely close together.

The Pitt Rivers Museum (figs. A94 and A95) offers a refreshing perspective for a Western museum that displays non-Western art, because it does not avoid the attitudes and means for which objects were collected. Through the groupings, one gets a sense of how the nineteenth-century scholar of African art and culture categorized items. This manner of display achieves what a reconstruction-oriented display cannot achieve: it acknowledges the dark history of the means of its collection. Seeing the burn marks on

⁸ Retrieved from http://www.metmuseum.org/press_room/full_release.asp?prid={51B9FD5C-2A01-48B2-B6D8-6C729332BB60} on March 3, 2008.

⁹ Elizabeth Olson, “A Trove’s Long Road to the Smithsonian,” *New York Times*, 28 March 2007, Section H, 16.

¹⁰ The reason for loaning the works is that the upkeep of these ancient works, including insurance cost and taxation, is high. The museum pays for the upkeep in return for the right to display the works in the museum.

¹¹ Pitt Rivers developed this idea by studying the evolution of the design of firearms.

one of the ivory tusks, one is reminded that people in Benin were killed, houses were burned and valuable art was taken, all in the name of revenge. Perhaps another museum, trying to display the works in original form as if they never had been taken, would decline to display the burnt tusk at all.

Displays at the new *Musée du Quai Branly* in Paris (fig. A96), arranged geographically, contrast with the historical manner of display at Oxford. Dedicated to the art and civilization of Africa, Oceania, Asia and America, the museum opened in 2006. Jacques Kerchache, a collector of non-Western art, is credited with giving President Jacques Chirac the idea for the new museum. It has attracted some criticism with respect to favoring traditional arts over contemporary artists:

More awkward, perhaps, is the symbolism of Quai Branly. The permanent collection's exclusive emphasis on traditional artifacts sits uncomfortably with efforts by younger curators these days, in cities such as Johannesburg, to confront such tribal clichés of Africa. They contest the way African art is ghettoized and exoticised. Contemporary artists deal in tin, metal, recycled industrial materials. They want to show that Africa too can be modern, gritty, and urban.¹²

The means by which the museum acquired its collection was also frowned upon by some. François Chaslin writes:

The proposed museum was denounced by ethnologists as the project of a lobby of collectors. Anthropologists were not sympathetic to removing objects from their cultural contexts or to categorizing them as art. There were also other reasons for opposition. The Musée de l'Homme and the Musée des Arts d'Afrique et d'Océanie were asked to give their collections to Quai Branly: 235,000 pieces from the former, and 22,750 from the latter.¹³

¹² "Gallic Grandeur," *Economist* 379, 8482, 17 June 2006, 6/17/2006, retrieved from http://www.economist.com/books/displaystory.cfm?story_id=E1_SDVVSSGG

¹³ François Chaslin, "Quai Branly: Jacques Chirac's Grand Projet," *Architectural Record*, 195, 2 (Feb. 2007): 28.

The destruction of two institutions to create another does seem unfortunate. Yet, the museum staff listened to the original criticism of the *Musée du Quai Branly*, that of ignoring contemporary artists in favor of traditional arts. Greg Semu, a New Zealand artist of Maori descent, was an artist in residence from July to October of 2007.¹⁴

The display of the museum is configured as a spiral, as one walks through sections that are devoted to Africa, Oceania, and the Americas. As in the display of the African gallery at the Metropolitan Museum of Art, the lighting in the entire museum is very dark indeed. While the museum does not have the overstuffed curio-cabinet feel of the Pitt Rivers Museum, it is so dark that one does not get a well-detailed view, even though the objects are nicely spaced apart.

Another innovation of the *Musée du Quai Branly* is that the storage is located in the center of the museum, locked away from the public but visible through metal grating. Through the grating it can be seen that the stored objects are crammed together with like items, not unlike the way they appear in the Pitt Rivers display cases.¹⁵

The manner of collecting African art has also undergone a huge change since the nineteenth century. Early “collectors” included the British when they plundered Benin City in 1897. They paid nothing for the artworks, because it was assumed that plundering during military operations had a benefit: taking trophies of war home. Museum officials, such as Felix von Luschan, then became interested in collecting Benin works. Von Luschan collected many works for the Ethnological Museum in Berlin, purchasing them from auction houses in England shortly after the Punitive Expedition.

¹⁴ Retrieved on January 20, 2008 from <http://www.quaibrantly.fr/en/programmation/exhibitions/last-exhibitions/artist-residence-greg-semu/index.html>

¹⁵ This review of the museum is a result of visiting it on January 12, 2009.

Von Luschan also expanded his search, writing collectors, traders, and the German consul in Lagos to find more artwork.¹⁶

By the early twentieth century most museums acquired works through donations and purchases. The Ethnological Museum in Berlin financed its purchasing expeditions through a grant of over two thousand pounds and the contributions of wealthy patrons.¹⁷ British museums also acquired African art through the donations of traders and others.¹⁸ The appearance of African art in museums led twentieth-century Western artists, such as Henri Matisse and Pablo Picasso, to collect African art because it held an aesthetic appeal to them.¹⁹ Alain Locke, another twentieth-century collector, purchased African art because he enjoyed the artistry and wanted to share African culture and heritage with other African-Americans.²⁰

World War II's impact on African art was similar to its impact on Western art. European countries looted each other's art collections, and this scattered African art as well as European art. Even before it was an independent nation, Nigeria managed to buy back some of its art for the National Museum in Lagos (figs. A97 and A98).²¹ Greenfield

¹⁶ Collection of letters and documents from the *Museum für Völkerkunde* relating to the acquisition of Benin art, located in the State Archives in Berlin.

¹⁷ Andrew Zimmerman, *Anthropology and Antihumanism in Imperial Germany* (Chicago and London: The University of Chicago Press, 2001), 153.

¹⁸ Annie E. Coombs, *Reinventing Africa* (London and New Haven: Yale University Press, 1994), 23. Examples are: Emile Torday, an agent for the Kasai Trading Company who provided art from the Congo to the British Museum and the Pitt Rivers Museum at Oxford University; and Arnold Ridyard, the chief engineer for the Elder Dempster Shipping Line who donated works to the Liverpool County Museum.

¹⁹ Patricia Leighton, "The White Peril and *L'Art nègre*: Picasso, Primitivism and Anticolonialism," *Art Bulletin* 72, 4 (Dec. 1990): 611.

²⁰ Alain Locke, "Note on African Art: 1924," *Primitivism and Twentieth-Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 187.

²¹ Jeannette Greenfield, *The Return of Cultural Treasures* (Cambridge: Cambridge University Press, 1995), 122-3.

writes, “However, the Nigerians hold only the third largest collection [of Benin art] after Berlin and the British Museum. That is to say it has only a minority of its own art.”²²

After 1960, newly-independent African countries formed museums and sought to create their own collections of African art. For example, Ghana collected art from Ghana, Benin art from Nigeria, and Zulu art from South Africa for its National Museum.²³

Since the 1970s, collecting African art has become widespread all over the world. This is true despite concerns regarding the authenticity of the art and the complications of complying with international laws intended to protect cultural property. International conventions have only been partially effective in preventing illicit art traffic, and as a consequence, the collection of African art with less than pure provenance. With contemporary African art there are often additional or different legal concerns to consider. These include censorship and copyright problems.

Review of Legal Practices, Agreements and Legislation

African laws are pluralistic, drawing on traditional means of settling disputes as well as the colonial laws imposed on them.²⁴ African countries inherited colonial frameworks for many aspects of government and culture, including the legal system itself. Former British colonies such as Nigeria and Kenya inherited British common law. The British colonial judicial system appointed regional experts to assist British

²² Ibid.

²³ Benjamin W. Kankpeyeng and Christopher R. DeCorse, “Ghana’s Vanishing Past: Development, Antiquities, and the Destruction of the Archaeological Record,” *African Archaeological Review* 21, 2 (June 2004): 95.

²⁴ Werner F. Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), 85.

administrators in finding applicable local laws.²⁵ As long as the British did not specifically banish them, the pre-colonial laws were marginalized but were still in existence in colonial times. They are carried forth today in a multicultural legal system. European civil-law countries such as France, Germany, and Belgium passed their legal systems on to colonies such as Mali and the Democratic Republic of the Congo.²⁶

After decolonization, African countries inherited not just the old colonial boundaries, but also the legal policies and governmental practices that would help to mold the new independent nations. On the whole, European legal systems remain in place today. Werner Menski writes:

Few steps have been taken to reduce the influence of European legal domination over African laws. The prevailing impression is that African laws have become the clones of European models; there are many non-legal reasons for wishing to keep matters that way but these are not explained in standard legal textbooks.²⁷

One area where African countries have adopted European practice is copyright law, which protects an artist's rights to his or her work. The Berne Convention for the Protection of Literary and Artistic works was first accepted in 1886. It was influenced by the French concept of *droit d'auteur*, or right of the author, by which copyright is established automatically when a creative work is completed. African signatories of the Berne Convention include Cameroon, the Democratic Republic of the Congo, Ghana, Kenya, Mali and Nigeria.²⁸ Under the Berne Convention, any nation that has signed it is

²⁵ Ibid., 455.

²⁶ Ibid.

²⁷ Ibid., 465.

²⁸ Retrieved on August 4, 2009, from http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

a member of the Berne Union, and a copyright is valid in any Berne Union country.

Several international conferences and laws have been significant for Africa, from the early nineteenth century to the end of the twentieth century. These conferences have established an increasing level of protection for cultural property. The Vienna Conference of European Ambassadors, held from November, 1814, to June, 1815, redrew the map of Europe and settled disputes from recent events such as the French Revolution, the Napoleonic Wars and the dissolution of the Holy Roman Empire. The Vienna Conference set the precedent of people from many countries meeting directly, instead of sending ambassadors or couriers to each other. This set the stage for future international peace-negotiating organizations such as the League of Nations and the United Nations.

The Congo Conference, held in Berlin from 1884 to 1885, affected Africa directly. The conference declared Africa to be a free trade area and divided Africa into approximately fifty colonial territories. This conference regulated the European scramble for Africa.²⁹

In 1919, the Treaty of Versailles brought about the formal end to World War I. Its importance to Africa was its attempt not just to restore spoils of war, but also to prevent future loss during wars--in effect, to stop the vicious cycle of looting and retaliation between the French and the Germans. The treaty's approach to art reparation was only financial. Whether money was enough to pay for loss of art treasures was one lingering question. The Treaty of Versailles also left a practical issue: how could a defeated, bankrupt nation pay financial reparations?

²⁹ John D. Hargreaves, "The Berlin West Africa Conference: A Timely Centenary," *History Today* 34, 11 (Nov. 1984): 17.

The ineffectiveness of this treaty, plus the horrible plunder during World War II, led post-war leaders to seek a new approach to international cooperation in matters concerning art. Formation of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 1945 was a significant step. Its constitution demonstrated a greater concern that all cultural property should be treated equally regardless of ethnic identity. UNESCO member countries agreed to adhere to the regulations stated in its constitution. There were few independent African countries at that time, however.

The enormity of the loss of art objects as a result of World War II was still fresh in people's minds in the early 1950s. A sense of stewardship for the world's cultural heritage gave rise to the Hague Convention in 1954. This UNESCO conference at The Hague met to discuss the protection and prevention of future damage of cultural property due to military events. It resulted in a wider definition of cultural property. Another important mandate was the protection of art during transportation. The Hague Convention did not necessarily require the repatriation of works to source nations, and this was seen as a sort of encouragement for the international art trade to flourish.

Legal trade in art thrived after World War II. However, so did the illicit art trade. The 1970 UNESCO Convention declared cultural property to be owned by the country of origin. For the first time in modern history, this gave African countries legal grounds to assert ownership of the art created in their countries and the archaeological objects found in their countries. Several newly independent African countries, including Nigeria, Cameroon, and the Central African Republic, signed the convention.

The UNESCO 1970 Convention did not have the effect of multilateral international law: each signatory nation was responsible to set up its own laws to address

the illicit trade of cultural property. While this convention was a positive step for the restitution of artwork to African countries, it had two key limitations. Major art-buying nations such as the United States, France, Switzerland, and Belgium all delayed signing the Convention. Also, there was a heavy financial burden on the source countries seeking return of their cultural works.

In 1983, the United States signed the 1970 UNESCO Convention and enacted the Cultural Property Implementation Act of 1983 (CCPIA), its national legislation to protect cultural property. The CCPIA allowed the United States to restrict the importation of certain cultural property through bilateral treaties with other UNESCO signatories. Mali, one of the most archaeologically rich countries in Africa, entered into such a bilateral agreement with the United States in 1993. The CCPIA was not retroactive, however; so art that was already in the United States could not be returned under the CCPIA terms.

The United States is both an art-buying nation as well as art-rich nation. In 1990, it signed into action the Native American Graves Protection and Repatriation Act (NAGPRA) to address the loss of Native American cultural items, from human remains to objects of cultural patrimony. The act requires federally-funded museums and galleries to inventory all Native American property so that they could be repatriated. NAGPRA, while very helpful, has a few limitations making it not completely helpful to all repatriation claims. It is not retroactive, and it has no jurisdiction over items found on private lands. Also, only a federally-recognized Native American tribe can request a return of property.

The terms of NAGPRA would not be suited to be translated and adopted as law by an African country such as Nigeria or Mali. This is because so much of African

countries' cultural patrimony is outside their borders. For example, a national law would not help get the Benin art back to Nigeria.

In 1995, UNIDROIT, the International Institute for the Unification of Private Law, held a convention in Rome. The UNIDROIT Convention attempted to reconcile the views of art-rich nations with those of art-market nations, in the hopes that more art-market nations would become proactive in the prevention of illicit trade. One improvement of the UNIDROIT Convention is that it distinguishes between theft and illegal exportation, allowing nations to pursue either or both types of claim in a case. This is helpful for African countries such as Mali and Nigeria, which deal with both theft and illegal exportation.

Another valuable aspect of the UNIDROIT Convention is that convention signatories can settle claims through arbitration. This is a more cost-efficient manner of settling disputes than litigation. Arbitration is a practical option for countries, like many in Africa, that do not have the financial means for an expensive litigation process.³⁰

Legal Issues in African Art

Wartime looting of art is not unique to African art; it has been happening since the time of the Ancient Greeks as a means of showing domination and power over another country. The looted objects then have two layers of meaning associated with them: their original intended meaning, and the added meaning as a symbol of domination by one nation over another nation.

³⁰ Folarin Shyllon, "The Nigerian and African Experience on Looting and Trafficking in Cultural Objects," *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge: Cambridge University Press, 2006), 142.

The strength of this effect was illustrated when Nigeria tried to get some of its art back during the Benin Centenary in 1997. Some museum officials involved justified their lack of cooperation by claiming that the works in question were now symbols of the British Colonial Empire. Indeed, art from the Kingdom of Benin does make the viewer think of the history of the Punitive Expedition of 1897. In a similar way, art from the former “Congo Free State” does invoke the idea of King Leopold’s criminal domination over the Congo. Wartime looting, therefore, does not only appropriate the art objects but alters their symbolic meaning as well.

Just as African art objects can have many layers of meaning in post-colonial society, many have equally complicated provenances. For example, many Benin works experienced two removals in their life history: first from Africa, and then from collections in Europe during World War II. Thousands of objects were taken first by the British in order to “pay” the widows of nine British men killed on their way to the City of Benin. Then they were offered at auction sales, where Felix von Luschan purchased them for the Ethnological Museum in Berlin. Many Benin objects remained in the museum until 1945, when the works were taken by the Russian army along with many works of Western art.

War trials have attempted to make restitution for past thefts of art. The World War II experience offers an excellent example of the problems of such an endeavor. In the decades that have followed the war, it has been a task of Herculean proportions to track down all the artworks that were the victims of wartime theft. Unlike the Western art taken from Germany, however, many African artworks were returned, still in the original

crates.³¹ It is ironic that The National Socialists' attitude about African art--that it wasn't "good art" in generally embodying classical or neoclassical values--is what led to its recovery.

Locating looted artworks, if they have not been destroyed, is not the only issue. Once found, the works are subject to the laws of the country where they are found. Over time, legal opinion has increasingly favored source countries' interest. Many international laws have attempted to prevent wartime looting. They have not stopped war theft completely, but may offer a deterrent. This represents some progress. A recent example is the United States ban on the importation of Iraqi Cultural Property, which was proposed in 2003 and ratified in 2004. In addition to banning the importation, it also proposes to "take all reasonable measures to avoid damage to the cultural antiquities in Iraq until all hostilities have ceased."³² As the war in Iraq has demonstrated, people have continued to use war as an opportunity to steal art from private collectors and museums, despite legal agreements and the efforts of institutions like the United Nations or the International Council of Museums.

The UNESCO and UNIDROIT conventions attempt to deal with illicit trade more broadly, not only the wartime theft of art or cultural works. The issue of archaeological plunder or theft from African source countries continues, however. Illegal artwork continues to show up in galleries or auctions. These works often have either unknown provenance or a constructed provenance that is clearly false.

³¹ Information received in June 2004 from the curator at the Ethnological Museum in Berlin.

³² H.Con.Res. 113, 108th Congress (2003). The resolution was referred to the House Committee on International Relations.

Where Solutions Are Needed

Can plundering of archaeological sites be prevented? Perhaps the real need is to end the poverty that leads to plundering. How else might farmers dealing with drought feed their families? Perhaps archaeologists, in addition to speaking out against plunder, could also create solutions. For example, they might get their granting institutions to offer financial benefits for information about fresh archaeological sites that have not been excavated. Certainly ending hunger and poverty is a monumental task, but that should not prevent anyone from trying to contribute to a solution.

Solutions are also needed in the area of cultural repatriation. What is the appropriate location for culturally important African art? There is no one right answer. One view is that a cultural or art object should be respected above all; its location should be where the object can best be taken care of and studied. Political upheaval is often used as a reason to keep the objects safe somewhere else. For example, violence in the Congo has been cited as justification for keeping Congolese art in Belgium.

Another justification to keep art in its present location is the argument that we are all in a global village, and that artworks belong to all of us equally so it does not matter where they are. This internationalist argument is usually countered by the argument that the source nation is the most important place for the cultural or art object, because it is a part of the soul of the nation. The latter argument was made effectively to restore the Afo-A-Kom to Cameroon.³³ The right place for art objects should be negotiated on a case by case basis.

³³ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics, and the Visual Arts*, 5th ed. (Kluwer Law International: Alphen an den Rijn, The Netherlands, 2007), 364.

Forgery has been an increasing problem for African art throughout the twentieth century and into the twenty-first century. This issue is fed by the high prices that authentic works receive in auction and at galleries. In 1991, Sotheby's sold a forged terra-cotta ram from the Kuhn collection for more than a quarter of a million dollars. Thermoluminescence testing showed it to be between 570 and 1,000 years old, but the work was made using pieces of ancient terra-cotta shards coupled with new terra-cotta.³⁴

Other forgeries are caught because the style does not match the purported age. One example is a forged Benin work that tested to be four hundred years old but was in a twentieth-century style.³⁵ These examples demonstrate why a major new discovery in the art world--not only African art--needs to be examined in more than one way before confirming its date and origin. Careful examination can be a step towards solving this problem.

Recently, art dealer Mamadou Keita remarked that everyone has been tricked by a forged work.³⁶ One might ask: how important is authenticity? Should a piece that is made for the Western market be dismissed as inauthentic? Does that make the creator of the work less of an artist? Art historian Frank Herreman claims that the notion of authenticity should not matter.³⁷

³⁴ Michel Brent, "Faking African Art," *Archaeology* 54, 1 (January/February 2001) retrieved on August 2, 2009 from <http://www.archaeology.org/0101/abstracts/africa.html>

³⁵ Barbara W. Blackmun, "A Note on Benin's Recent Antiquities," *African Arts* 36, 2 (Spring 2003): 86.

³⁶ Raymond Corbey, *Tribal Art Traffic: A Chronicle of Taste, Trade and Desire in Colonial and Post-Colonial Times* (Amsterdam: Royal Tropical Institute, 2000), 161.

³⁷ *Ibid.*, 219.

Since the economic demand for African artworks is larger than the supply, perhaps one solution is to be more open to other, less traditional kinds of art. This would help create a larger pool of “authentic” African art from which to acquire works. For example, objects such as ladders and doors, not originally considered to be art, have aesthetic beauty that adds to the interesting cultural context.

It is important to remember that African art is a product of its dramatic history, which includes centuries of interactions with European traders. Artworks such as the *asipim* chair of the Asante reflect both European style and Asante visual traits and cultural meaning. For this reason, discerning authenticity does not necessarily mean divorcing any seemingly European appearance from African art.

In what may be a growing issue, there seems to be a disparity between the act of collecting African art and the reception of the contemporary African artist. One wonders: would Chris Ofili’s *The Holy Virgin Mary* have been more welcomed by people such as Mayor Giuliani or the Cardinal Archbishop of New York if the painting were of, say, a Yoruba deity instead of a Christian saint? It seems as if some people want African artists to create art that reflects pre-colonial culture, untouched by Europeans, instead of making art that is true to themselves. Yet multiculturalism naturally occurs when one operates as a contemporary international artist.

The African art market must cater to its clients, the purchasers. Another issue can be the fabrication of an interesting anecdotal history of an object. This story becomes part of the investment in the artwork. A possible explanation for the appeal of the story is that a work of African art with an exciting provenance indicates that the owner is adventurous and interesting.

In addition to cultural property, the field of intellectual property has now entered the discussion of legal issues in African art. Most of the problems regarding intellectual property are essentially issues of ownership. The words “ownership” and “possession” are frequently used interchangeably in other contexts, but in the field of copyright it is important to distinguish between the two. Possession means that the person physically has the work. With the *droit d’auteur*, ownership of the copyright means that the person owns the integrity of the work. For African countries that are members of the Berne Union, the art patron may possess the work of art, but the ownership belongs to the artist.

Conclusions

Today’s attitudes and laws concerning African art reflect a complex interplay of historical events and legal changes over time. This dissertation has surveyed the legal issues arising from the journey of artworks from Africa to Europe and the United States, beginning with events of the nineteenth century and continuing to the present. It has reviewed the challenges of ethical collection and display, plunder and illegal import/export, authenticity and forgery, and current practices regarding ownership and copyright. From the nineteenth century to current times, some progress has been made. African art has become appreciated for its aesthetic appeal (as well as cultural significance) and is now displayed in major art museums. Laws such as UNESCO and UNIDROIT offer an increasing amount of protection, and attempts are being made to prevent wartime looting and recover lost art. Key issues remain from colonial times, however, despite a growing body of international law that affects African art along with art from other regions. Legislation alone *cannot be* effective.

What is winning out: racism and greed, or equality with Western art? Can these issues be resolved when older conflicts over such objects as the Parthenon Marbles or the Nefertiti bust seem to have reached a political standstill? When asked if the fights for repatriation of art can be settled, Professor John Merryman replied that in order for that to happen, both parties involved must be more flexible, compromising and creative with problem-solving skills.³⁸

Few solutions have been proposed to solve the issue of plunder. In an interview with the author, James Cuno, Director of the Art Institute of Chicago, discussed his idea of reintroducing the practice of *partage*, or the sharing of archaeological finds between the excavator and the host country. Cuno states:

[Partage] was widely practiced at the end of the 19th century and through the first half of the 20th. It seems to me to be a reasonable way to encourage scientific excavation of antiquities, share them widely, distribute risk to their survival, and build study collections around the world, including in the host nations.³⁹

Partage would also necessitate the sort of flexibility and mutual understanding that Merryman prescribes in his answer. I agree that these are critical. The commitment to fairness and compromise has led to important international agreements for the legal protection of artworks. And flexibility is needed to expand the opportunities for modern as well as traditional African art. Why should former colonizing countries hold on to issues of a colonial identity? Should the old masks of racism, economic miserliness, and violent behavior associated with some of the colonizing of Africa not be changed? An

³⁸ The author asked this question after Professor Merryman's talk at Washington University's School of Law Conference on March 26, 2004 at Washington University in St Louis, Missouri.

³⁹ James Cuno (Director of the Art Institute of Chicago) in discussion with the author, November 2008. See Appendix D for the transcription of the complete interview.

example of progress may be the Tervuren Museum's allowing of Boris Wastiau, a Congolese man, to curate his exhibit from the Exit Congo Museum that dealt with the issues of King Leopold in the Congo in a truthful and unedited manner. International Conventions, while not producing completely successful legislation, have created more dialogue which is needed for positive change.

In my opinion, exhibitions that clarify past cultural and political issues are valuable. Colonialism in Africa should always be remembered. In a similar way, people should be aware of the United States Civil Rights movement. It is important that people keep the fight over civil rights and other fights for freedom in their memories, to prevent recurrence and to sustain the progress that has been made. Not only but especially for the African art world, the laws that protect art should reflect an attitude that embraces multiculturalism and mutual respect among cultures.

APPENDIX A: FIGURES

This Appendix contains the figures to which reference is made in this dissertation. Figures A1 through A21 are cited in Chapter I, and Figures A22 through A42 are cited in Chapter II. Figures A43 through A65 are cited in Chapter III, and Figures A66 through A77 are cited in Chapter IV. Figures A78 through A93 are cited in Chapter V, and Figures A94 through A98 are cited in Chapter VI. Figures A99 through A104 are cited in Appendix B.

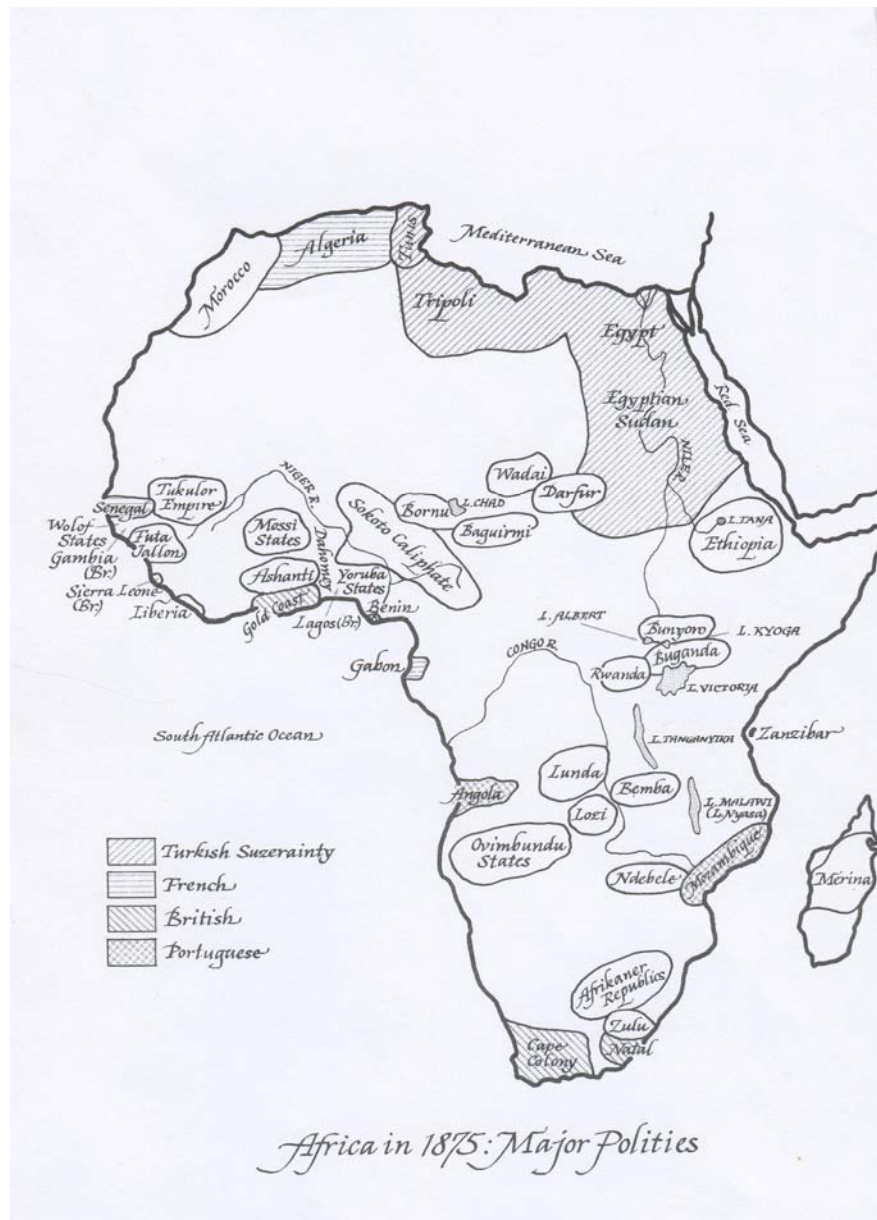


Figure A1: Africa in 1875

Source: Robin Hallet, *Africa Since 1875* (Ann Arbor: University of Michigan Press, 1974) 28.

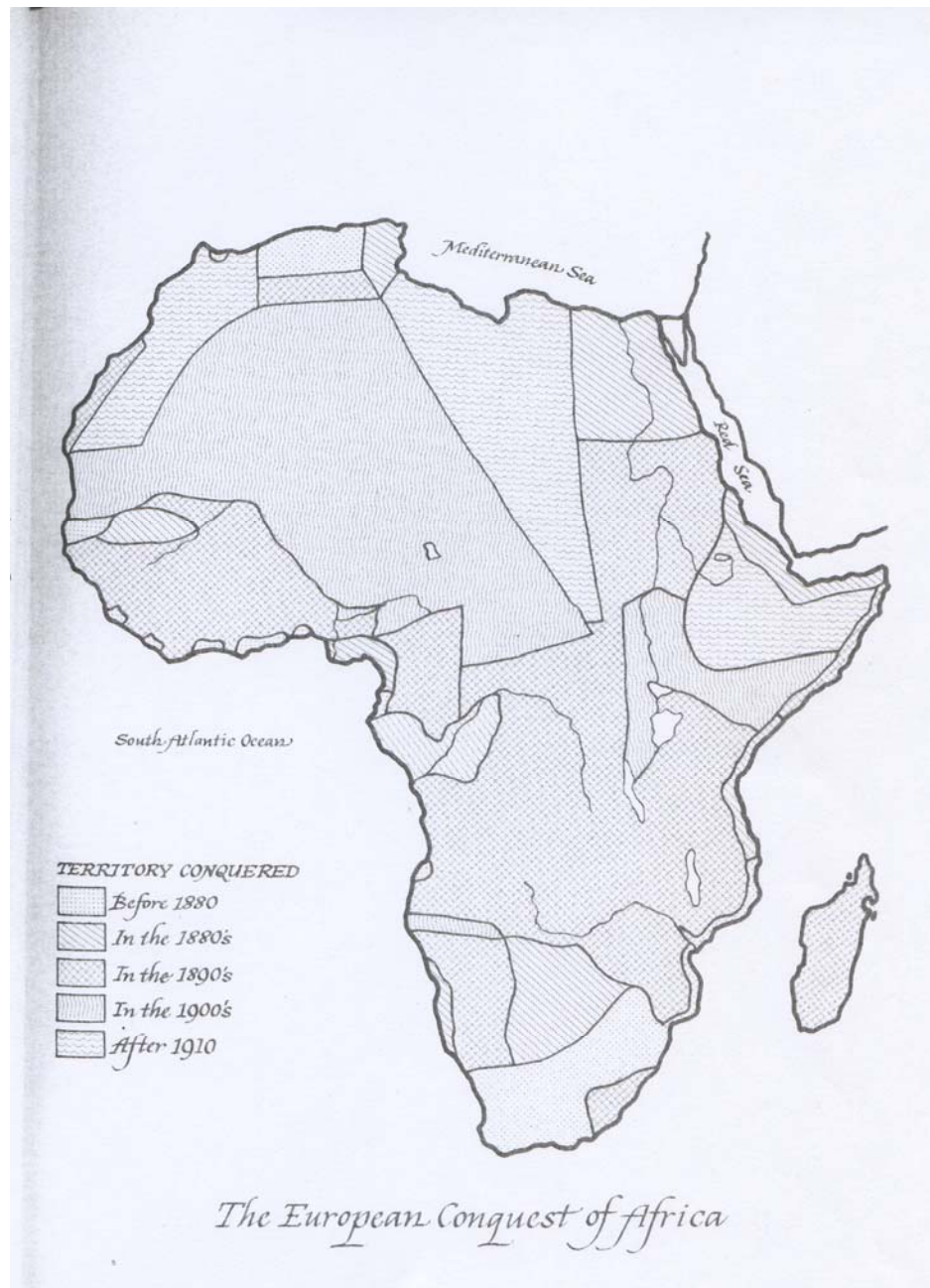


Figure A2: European Conquest of Africa

Source: Robin Hallet, *Africa Since 1875* (Ann Arbor: University of Michigan Press, 1974) 29.

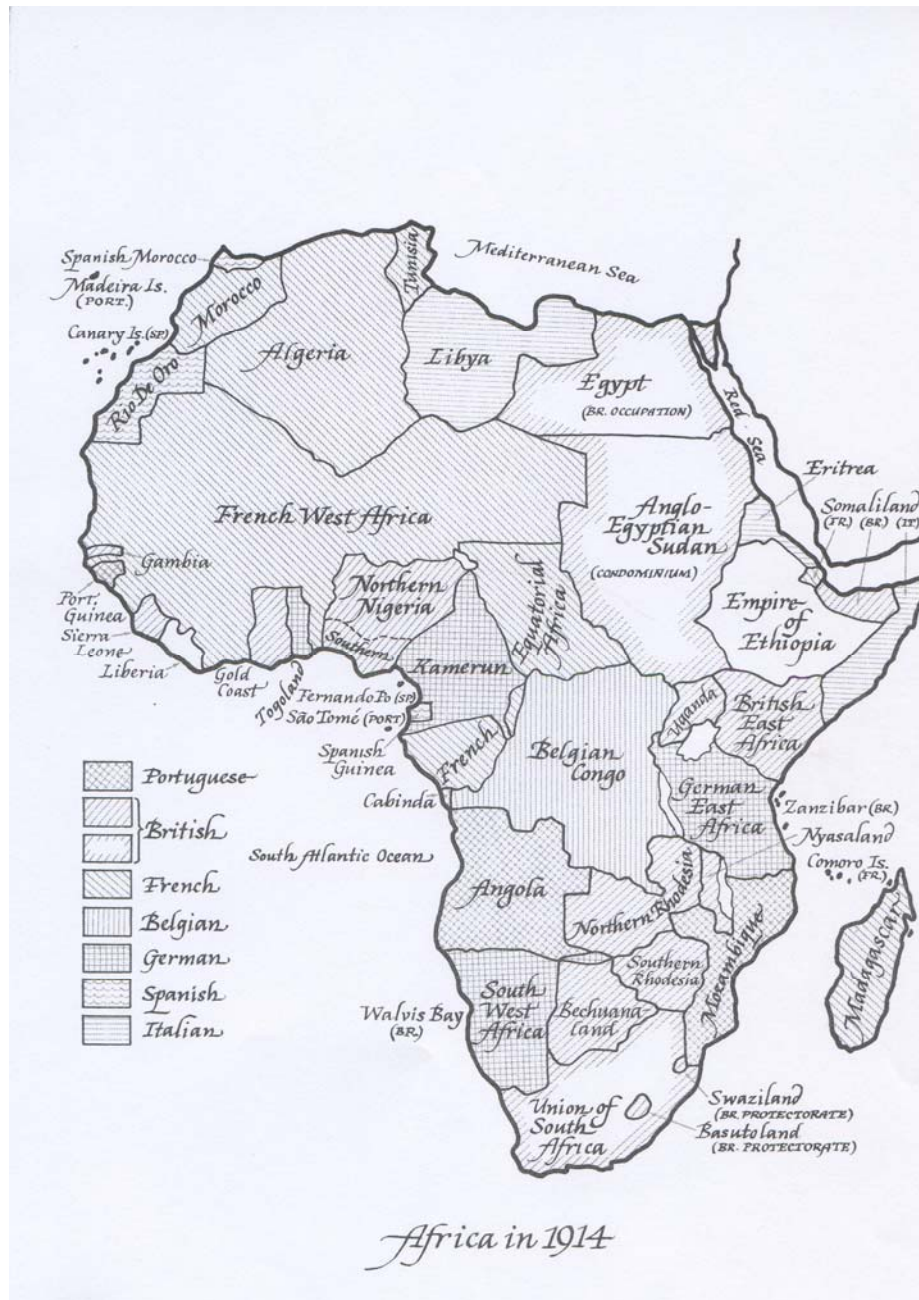


Figure A3: Africa in 1914

Source: Robin Hallet, *Africa Since 1875* (Ann Arbor: University of Michigan Press, 1974) 30.

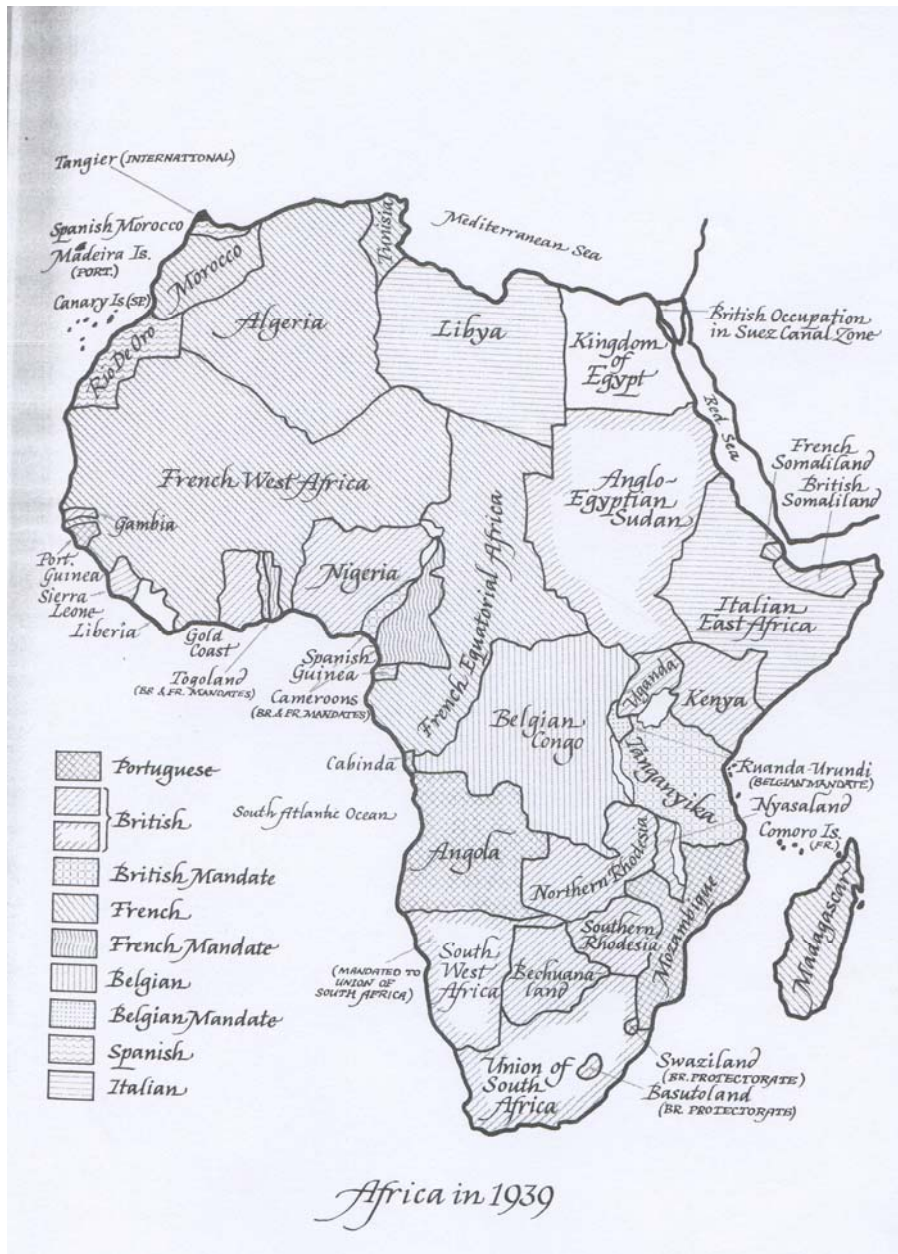


Figure A4: Africa in 1939

Source: Robin Hallet, *Africa Since 1875* (Ann Arbor: University of Michigan Press, 1974) 31.

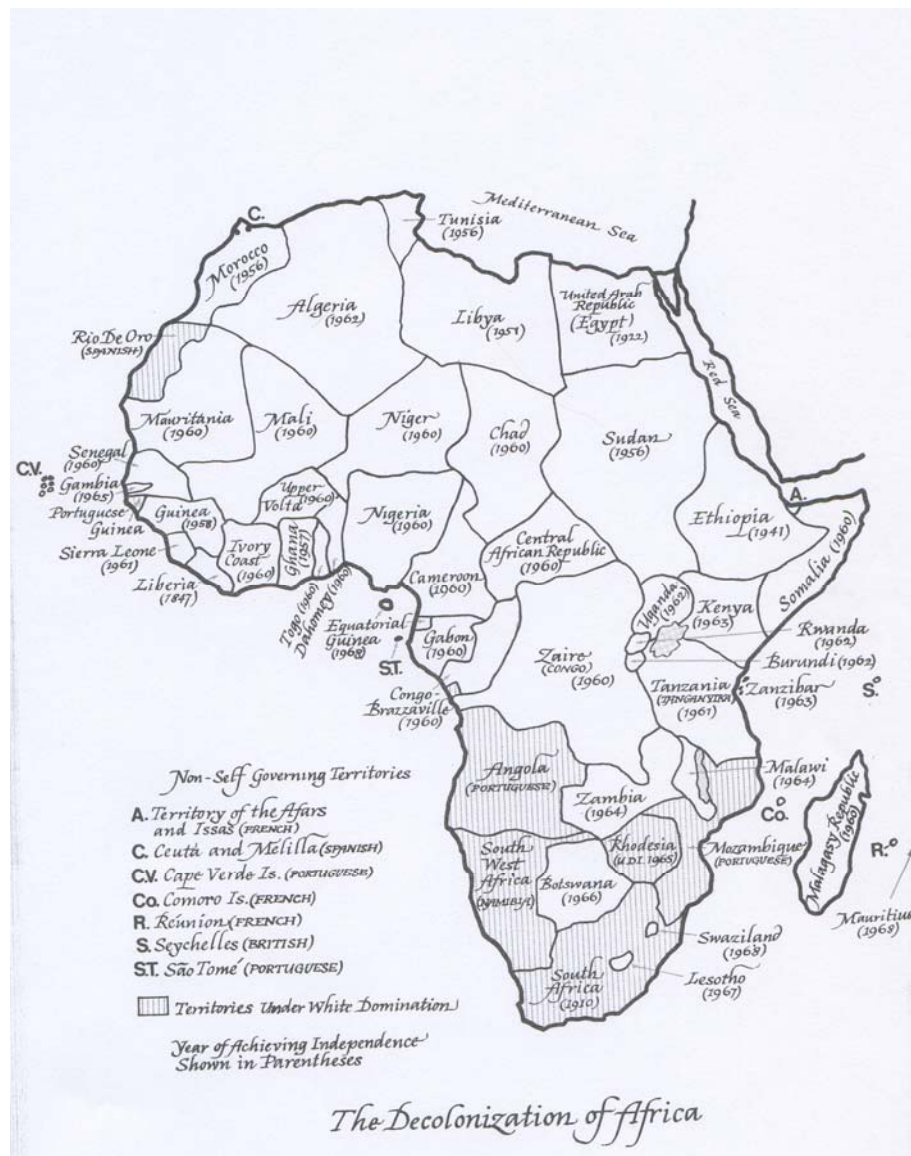


Figure A5: Decolonization of Africa as of 1974

Source: Robin Hallet, *Africa Since 1875* (Ann Arbor: University of Michigan Press, 1974) 32.



Figure A6: Map of Nigeria

Source: http://www.lib.utexas.edu/maps/africa/nigeria_pol93.jpg.



Figure A7: Map of Mali

Source: http://www.lib.utexas.edu/maps/africa/mali_rel94.jpg.

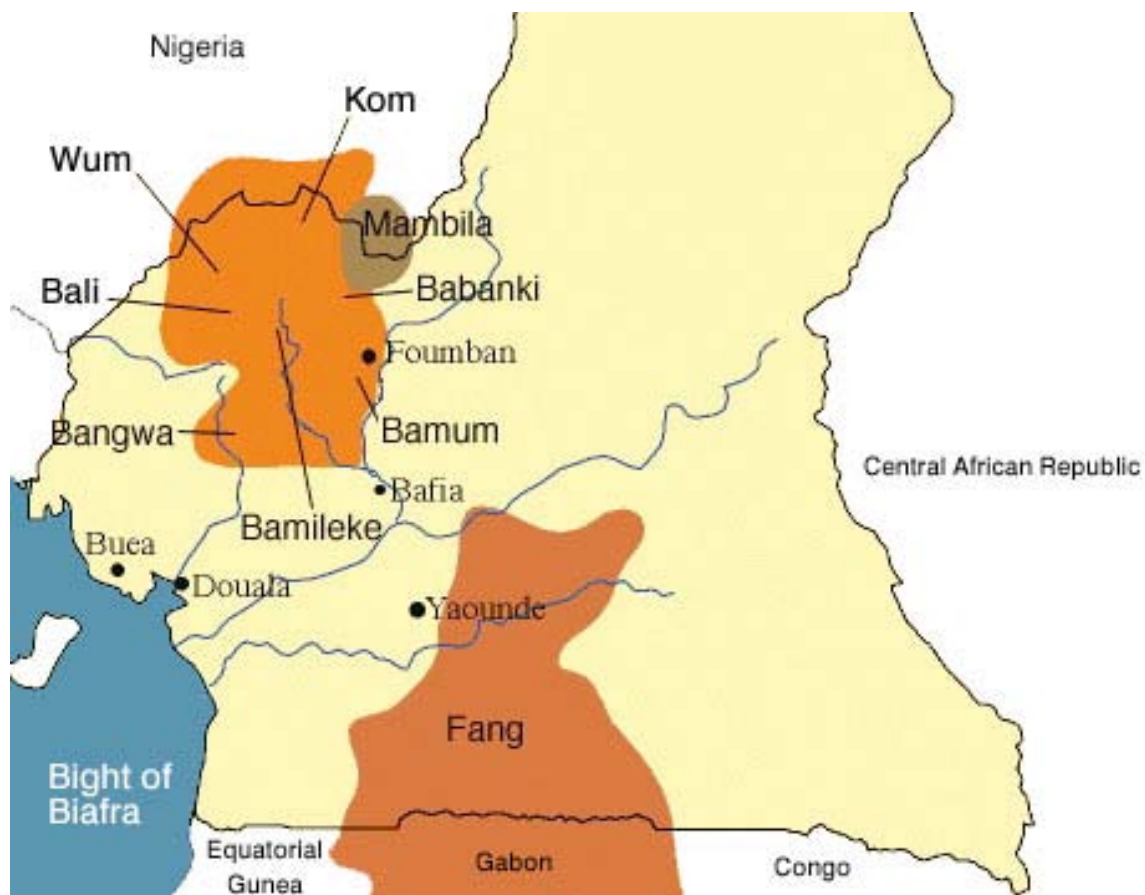


Figure A8: Partial Map of Cameroon with Kingdom of Kom noted

Source: <http://www.grasslanders.org/uploads/pics/map.jpg>.



Figure A9: Map of Cameroon

Source: http://www.lib.utexas.edu/maps/africa/cameroon_pol98.jpg.

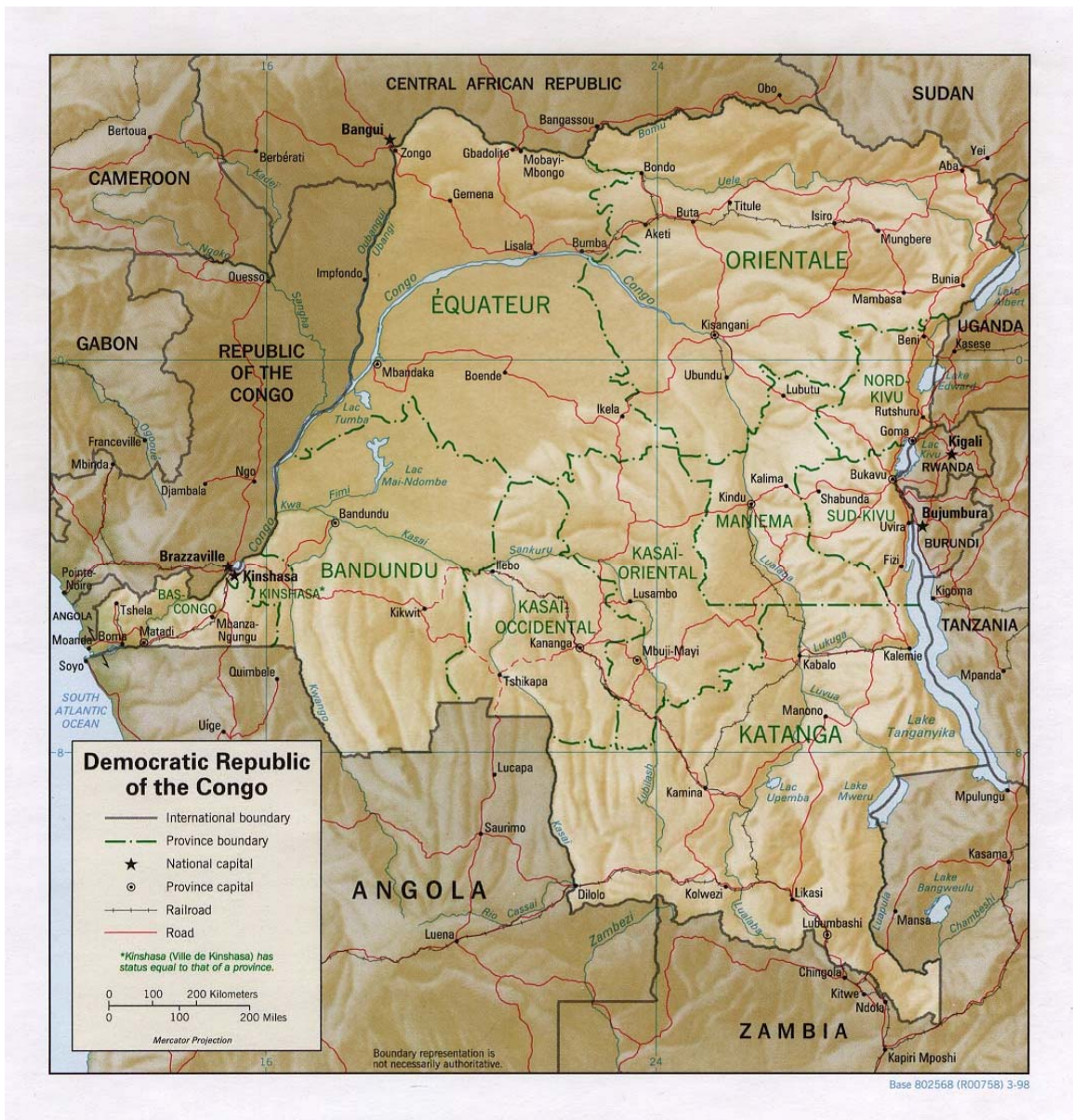


Figure A10: Map of the Democratic Republic of the Congo

Source: http://www.intute.ac.uk/sciences/worldguide/maps2/865_a.jpg.

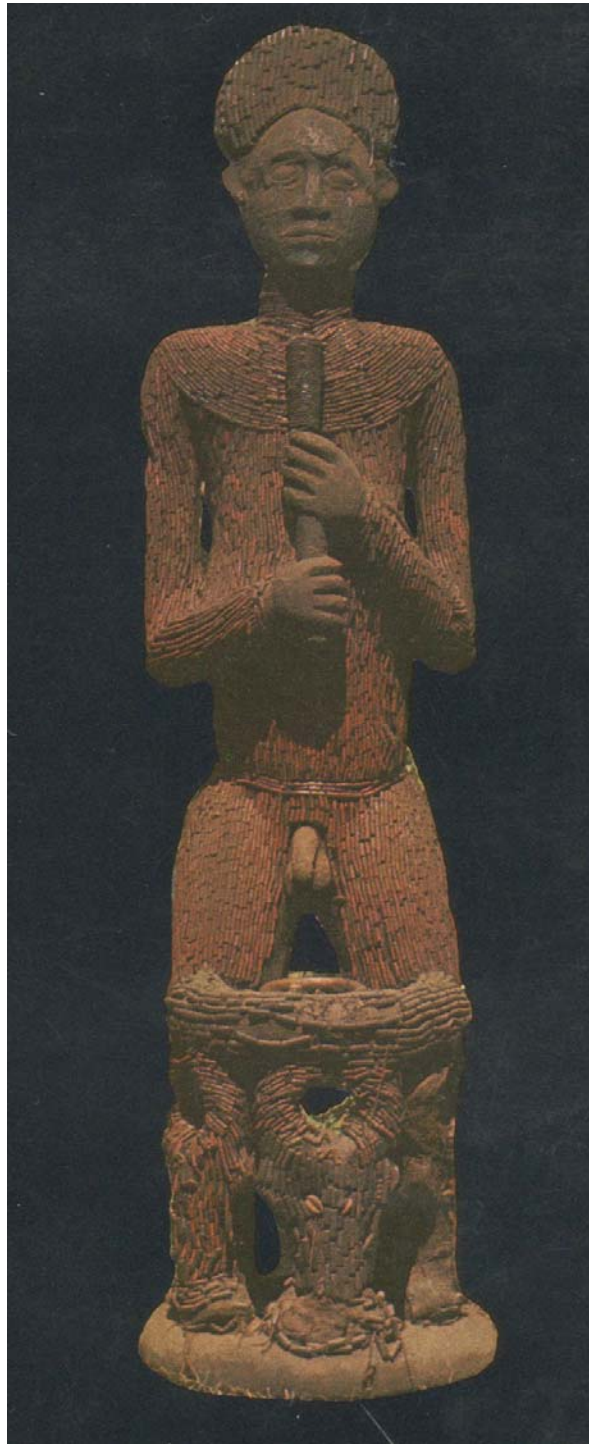


Figure A11: The Afo-A-Kom, from the Kingdom of Kom, in Cameroon

Source: Fred Feretti, *Afo-A-Kom*, (New York: The Third Press, 1975) cover photo.



Figure A12: The Bust of Nefertiti, originally attributed to Thutmose dating from c. 1350 BCE, has been suggested by Swiss art historian Henri Stierlin to be a fake from 1912. Further suggestions from German radiology tests show that there is an additional face in limestone beneath the visible face.

Source: <http://www.cbc.ca/gfx/images/arts/photos/2009/03/31/nefertiti-cp-250-2873060.jpg>.



Figure A13: Kongo cross, Democratic Republic of the Congo, Kongo peoples, early 17th century

Source: http://www.metmuseum.org/toah/images/h2/h2_1999.295.4.jpg.



Figure A14: Asipim (Throne Chair), Akan peoples, Ghana

Source: <http://www.marshall.edu/akanart/images/ASIPIM.JPG>.



Figure A15: Chris Ofili, *The Holy Virgin Mary*, 1996, (96" X 72") Acrylic, oil, resin, paper collage, glitter, map pins, and elephant dung on canvas

Source: <http://www.abc.net.au/rn/artworks/galleries/2008/2321585/image1.htm>.



Figure A16: Mary Kingsley, studio photograph taken in 1897 at the time of the publication of *Travels in West Africa*

Source: Katherine Frank, *A Voyager Out: The Life of Mary Kingsley* (Boston: Houghton Mifflin, 1986).



OMO N'Oba N'Edo Uku Akpolokpolo, Oba Ovonramwen
(Ovonramwen N'Ogbaisi) Oba of Benin (1888 - 1914)

Figure A17: Oba Ovonramwen seated in state, before the Punitive Expedition of Benin in 1897

Source: <http://www.edostate.org/file/style/konsort/oba-ovonramwen.jpg>.



Figure A18: J.A. Green (photographer), Oba Ovonramwen, 1897. This photograph was taken after the Oba was deposed. He is with guards on a ship on his way to exile in Calabar. The unusual clothing he is wearing hides the shackles he was forced to wear.

Source:

<http://www.liverpoolmuseums.org.uk/wml/humanworld/worldcultures/africa/graphics/large/obaovonramwen.jpg>.



Figure A19: Dr. Felix von Luschan, the Austrian anthropologist, archaeologist, and ethnographer who worked at the *Ethnologisches Museum* in Berlin

Source: http://klass-archaeologie.univie.ac.at/uploads/RTEmagicC_Plakat.jpg.jpg.



Figure A20: Paul Guillaume seated with a Modigliani sculpture

Source:

http://www.findagrave.com/photo/Thumbnails/photos/2008/122/13707220_120977747503.jpg.



Figure A21: Lucien Clerque, Pablo Picasso beside a figure from the Marquesas Islands, 1955. The statue was one of many pieces in his personal art collection.

Source: http://qag.qld.gov.au/exhibitions/past/2008/picasso_and_his_collection.



Figure A22: Map of Colonial Africa, 1914, as determined by the *Kongokonferenz*

Source:

http://wpcontent.answers.com/wikipedia/commons/9/99/ColonialAfrica_1914.png.

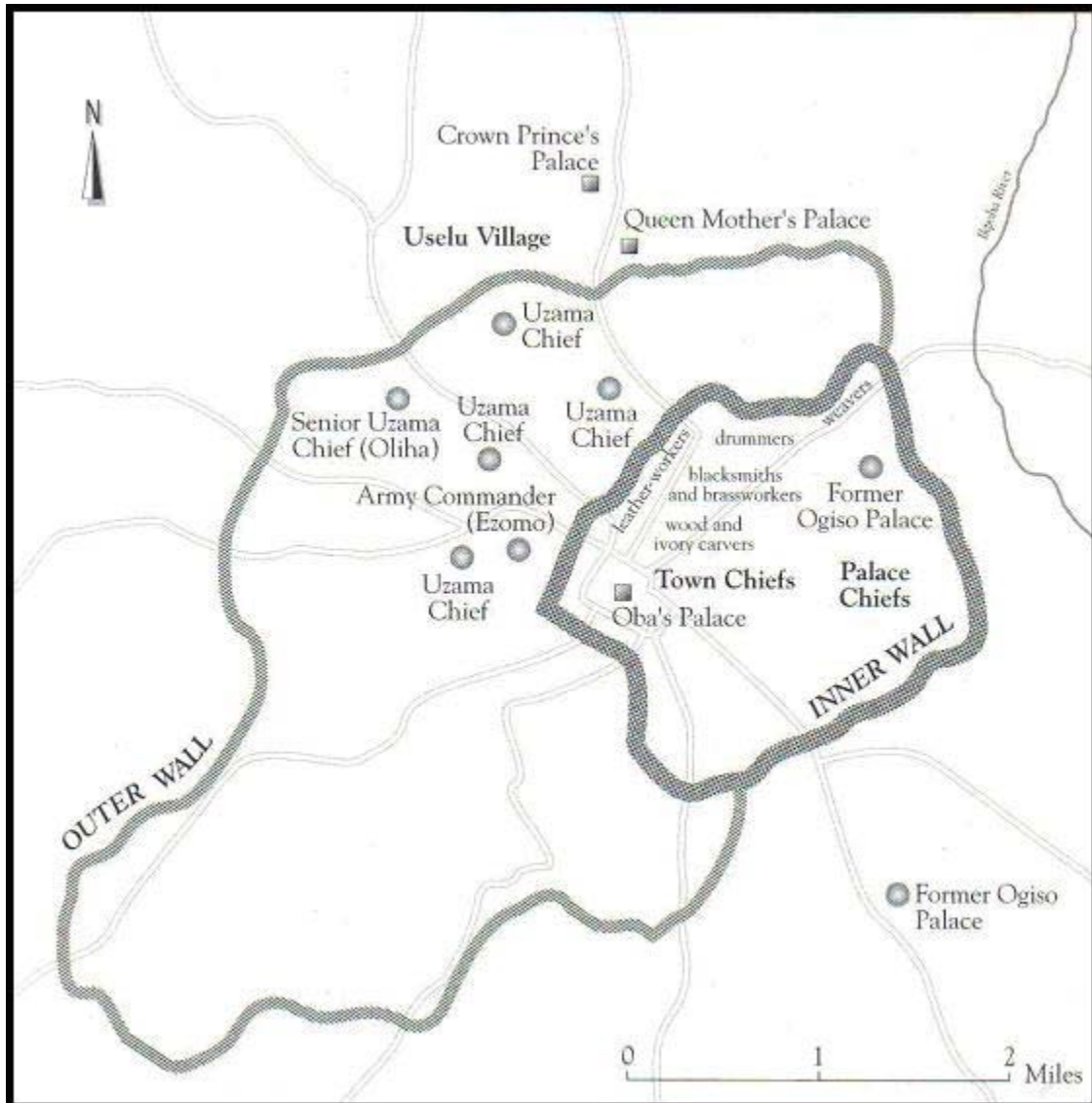


Figure A23: Map of the Kingdom of Benin

Source: <http://www.edoartsandculture.org/map2.JPG>.



Figure A24: The Royal Ancestor Altars, Benin City, Nigeria. They are dedicated (right to left) to: Oba Adolo (d. 1888), and Oba Eweka II (d. 1914). Benin City, 1964. Photo: John Picton.

Source: John Picton, "Edo Art, Dynastic Myth, and Intellectual Aporia" *African Arts* volume 30, 4 (Autumn 1997): 19.



Figure A25: Captain George LeClerc Egerton, “King’s Palace, Benin,” 1897 (?), watercolor on paper, image 5.9” x 12.8”. Dumas Egerton Trust, Benin Collection, Pitt Rivers Museum, University of Oxford, PRM: 1991.13.29. Acquired on long term loan in 1991.

Source: Jeremy Coote and Elizabeth Edwards, “Images of Benin at the Pitt Rivers Museum,” *African Arts* volume 30, 4 (Autumn 1997): 26.



Figure A26: Captain George LeClerc Egerton, "Sacrificial Altar, Benin," 1897 (?) watercolor on paper, image 4.9" x 7.7". Dumas Egerton Trust, Benin Collection, Pitt Rivers Museum, PRM: 1991.13.31. Acquired on long-term loan in 1991.

Source: Jeremy Coote and Elizabeth Edwards, "Images of Benin at the Pitt Rivers Museum," *African Arts* volume 30, 4 (Autumn 1997): 27.



Figure A27: Unidentified Photographer, "Interior of King's Compound Burnt During Fire, Bronzes on Ground. Captain C.H. P. Carter 42ND, E.P. Hill, _____" (Caption on Back). Silver gelatin print from a copy negative, between 1897 and 1900, 4.7" X 6.5" Pitt Rivers Museum, PRM: B8.15k. Possibly acquired from Hugh Nevins in 1968.

Source: Jeremy Coote and Elizabeth Edwards, "Images of Benin at the Pitt Rivers Museum," *African Arts* volume 30, 4 (Autumn 1997): 29.

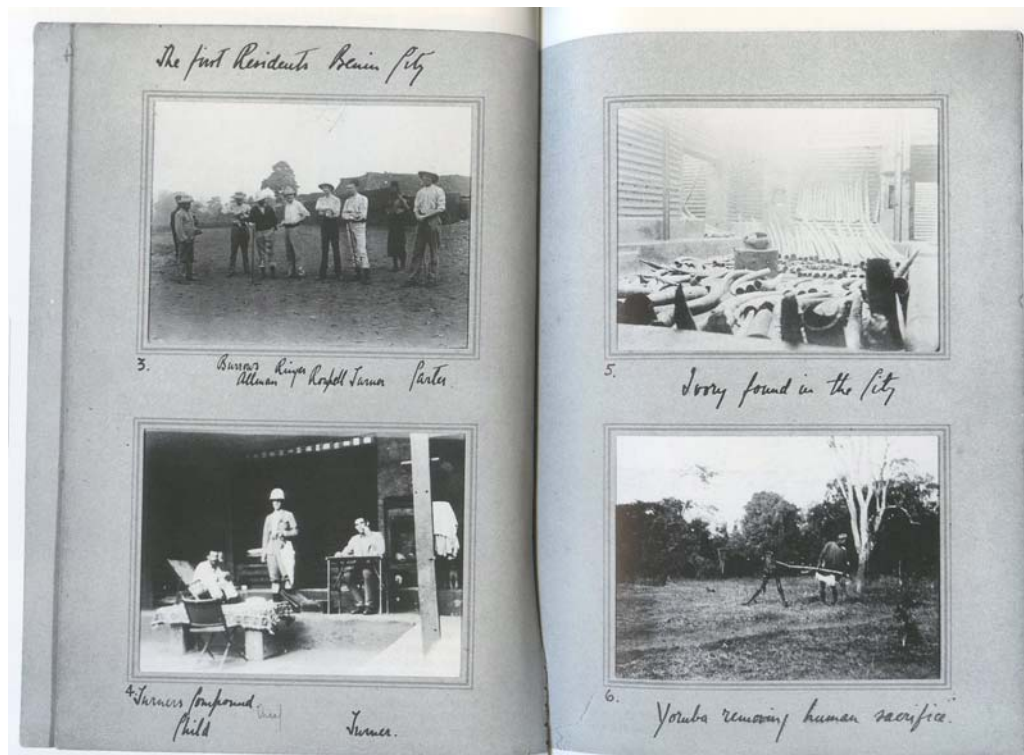


Figure A28: R.K. Granville's Photographic Album (dated 1897) showing Photographs 3-6. The open album measures 8.5" X 11.6". Pitt Rivers Museum, PRM: AL64. Probably acquired from Hugh Nevins in 1968.

Source: Jeremy Coote and Elizabeth Edwards, "Images of Benin at the Pitt Rivers Museum," *African Arts* volume 30, 4 (Autumn 1997): 30-31.

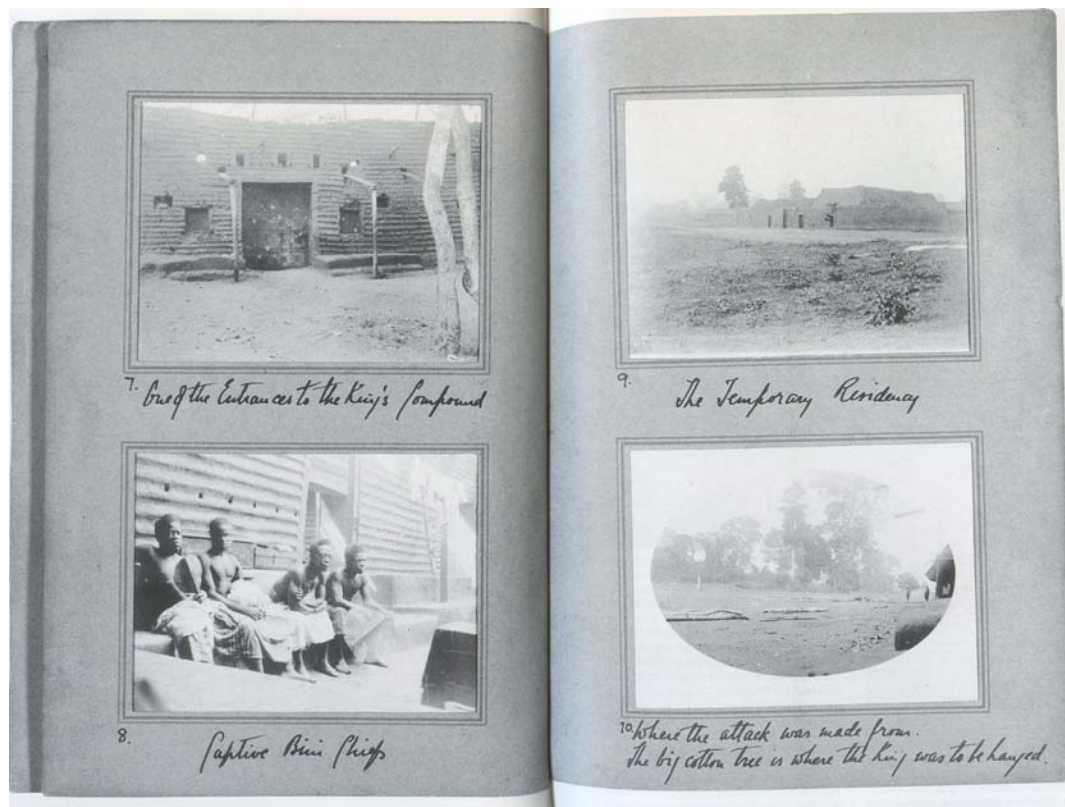
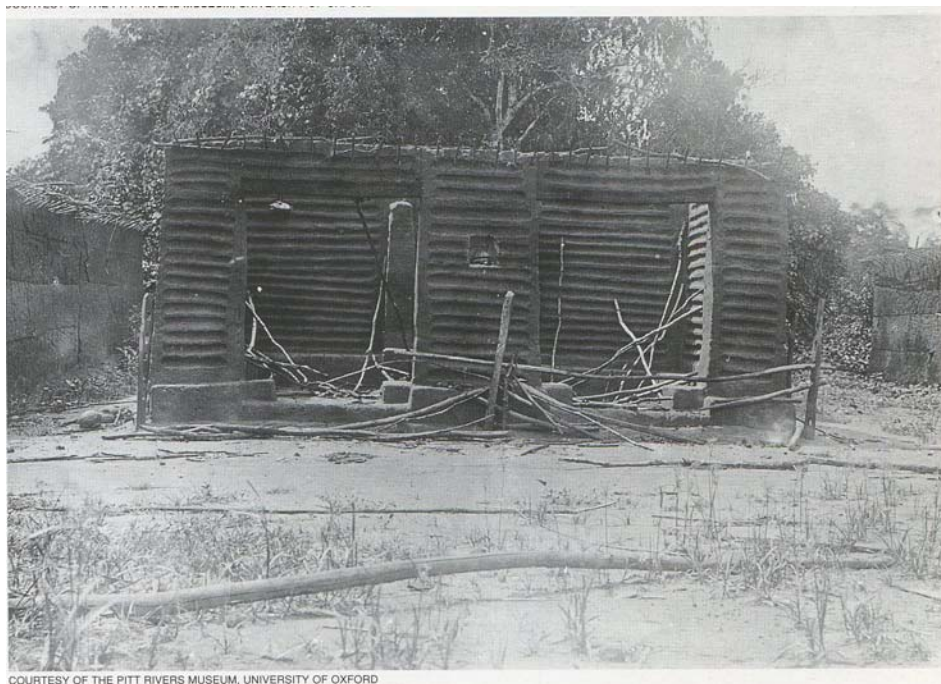


Figure A29: R.K. Granville's Photographic Album, photographs 7-10. Caption 8 reads, "Captive Bini Chiefs." Caption 9 reads, "The Temporary Residency." Caption 10 reads, "Where the attack was made from. The big cotton tree was where the King was to be hanged"

Source: Jeremy Coote and Elizabeth Edwards, "Images of Benin at the Pitt Rivers Museum," *African Arts* volume 30, 4 (Autumn 1997): 33-34.



COURTESY OF THE PITT RIVERS MUSEUM, UNIVERSITY OF OXFORD

Figure A30: Unidentified Photographer, "Ruined House, Benin, 1897" (Caption on back). Silver gelatin print from a copy negative, between 1897 and circa 1900, 4.7" x 6.5." Pitt Rivers Museum, PRM: B8.15d. Possibly acquired from Hugh Nevins in 1968.

Source: Jeremy Coote and Elizabeth Edwards, "Images of Benin at the Pitt Rivers Museum," *African Arts* volume 30, 4 (Autumn 1997): 35.

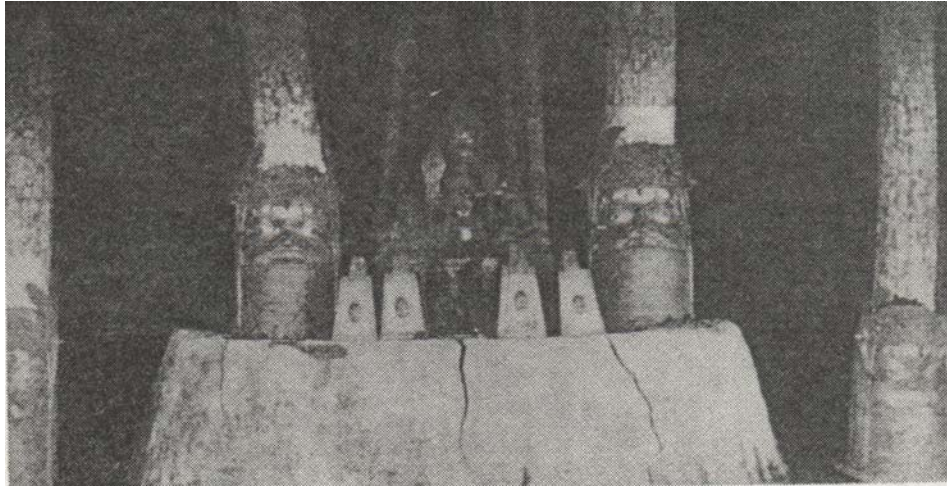


Figure A32: Cyril Punch, “Jujù altar” taken May 1891. The photograph is a rare pre-1897 image of an altar in the Oba’s palace.

Source: Henry Ling Roth, *Great Benin: Its Customs, Art and Horrors* (Halifax: King and Son, 1903), 79.



Figure A33: Carved Ivory Tusk, Collected by George LeClerc Egerton during the Punitive Expedition, 1897. This is one of the surviving tusks carved before 1897. It would have protruded from a brass head to represent the *ede*, a protrusion out of the top of the head to connect the human and spirit world. It was dated to around 1850 by Barbara Blackmun. Pitt Rivers Museum: PRM: 1991.13.2.

Sources: Information from Pitt Rivers Collection Database, retrieved from:
<http://pittweb7.prm.ox.ac.uk:16080/fmi/iwp/cgi?-db=Objects%20PRM&-loadframes>.
Image retrieved from: <http://www.prm.ox.ac.uk/benin.html>.



Figure A34: Twin Figure collected by Joseph Gomer in Rotufunk in 1877. Current location unknown. Drawing from Flickinger's 1882 publication.

Source: William Hart, "Trophies of Grace? The 'Art' Collecting Activities of the United Brethren in Christ Missionaries in Nineteenth Century Sierra Leone," *African Arts* 39, 3 (Summer 2006): 18.



Figure A35: Photographer: Mary Martin, June 2004, Pitt Rivers Museum. Brass Casket with Cover and Suspending Chain. The work was donated to the Pitt Rivers Museum in 1900 after Mary Kingsley's death. It was brought by Dr. Felix Roth from the Punitive Expedition of Benin in 1897. In an email to Jeremy Coote, Paula Girshick Ben-Amos tentatively dates this to the 18th century, based on the iconography of the snakes.

Source: Object viewed from Pitt Rivers Collection archives June 2004. It can also be traced online from <http://pittweb7.prm.ox.ac.uk:16080/fmi/iwp/cgi?-db=Objects%20PRM&-loadframes> Snakes are thought to be related to the god Osun. Snakes coming out of the nostrils are a sign that the person is magically powerful and can send the snakes out of his body to destroy his enemies.



Figure A36: Advertisement for the Berlin iron case. The photo shows Benin work collected by Felix von Luschan for the *Museum für Völkerkunde* in Berlin. One can see that the works are well-lit and can be seen from any side.

Source: Andrew Zimmerman, *Anthropology and Antihumanism in Imperial Germany* (Chicago: University of Chicago Press, 2001), 180.

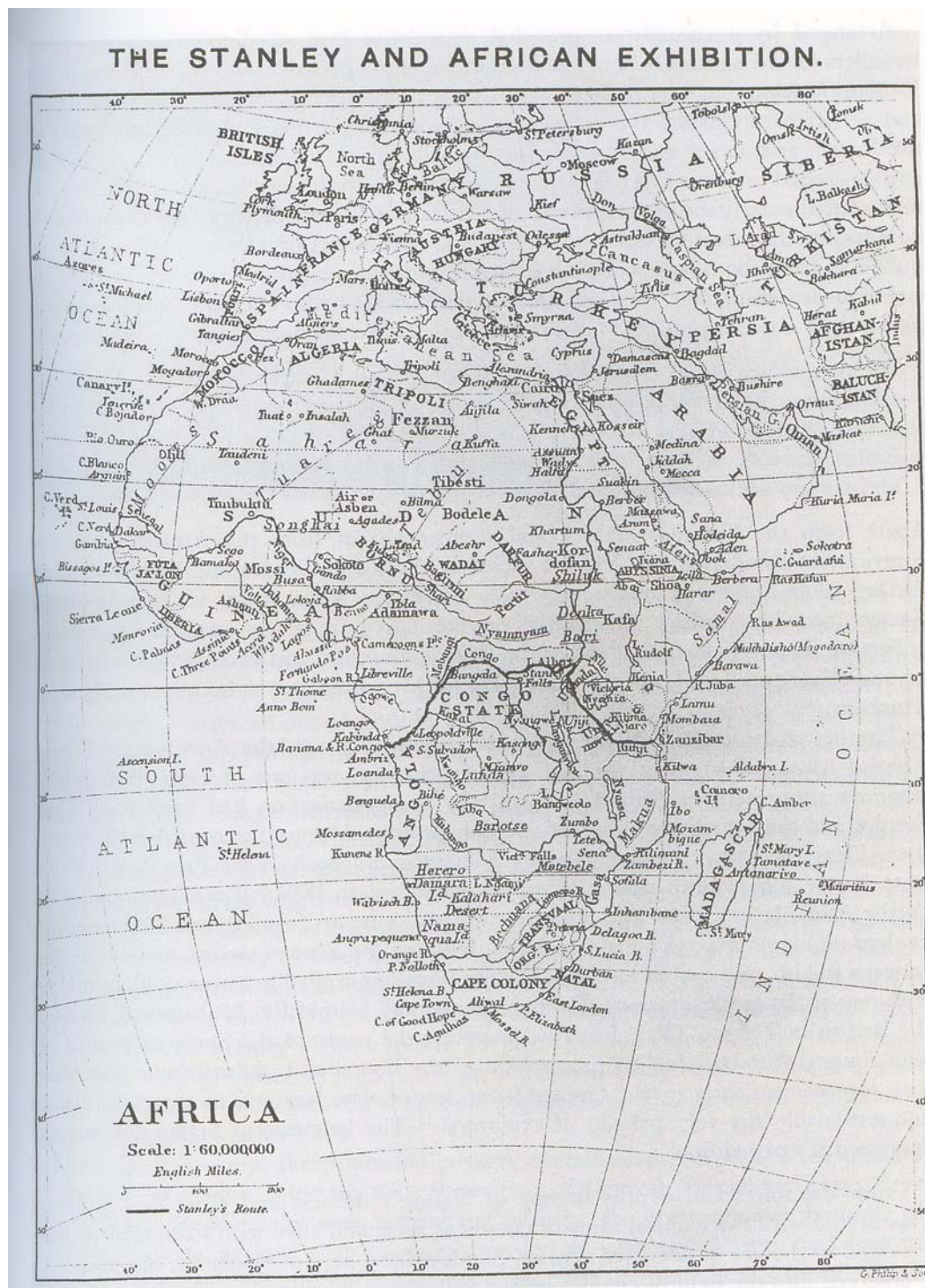


Figure A37: Map showing Henry M. Stanley's route across the Congo (in the bold line) for the Stanley and African Exhibition at the Victoria Gallery in London, 1890.

Source: Annie E. Coombs, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven and London: Yale University Press, 1994), 67.

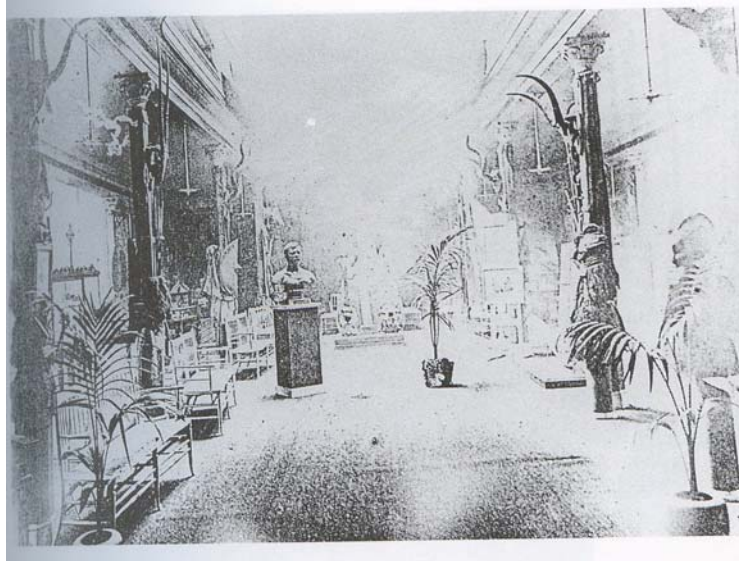


Figure A38: View of the Stanley and African Exhibition at the Victoria Gallery in London, 1890. Note the bust of Henry M. Stanley figuring prominently on the pedestal in the central left middle ground.

Source: Annie E. Coombs, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven and London: Yale University Press, 1994), 69.

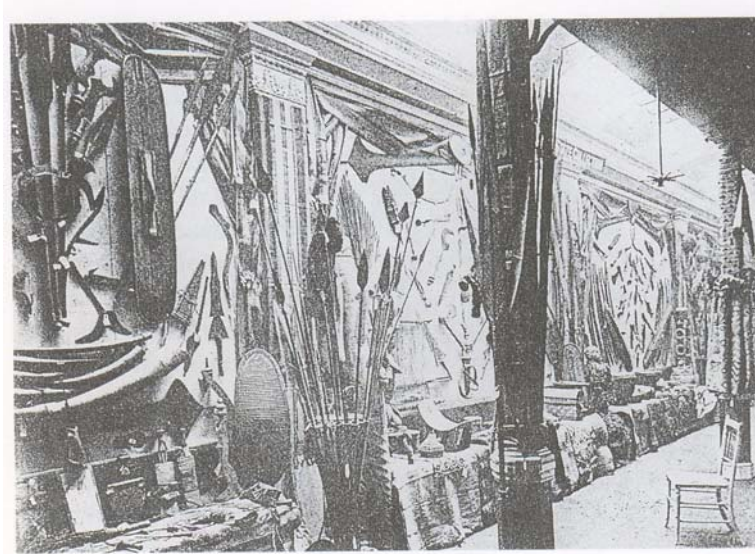


Figure A39: View of exhibits at the Stanley and African Exhibition at the Victoria Gallery in London, 1890.

Source: Annie E. Coombs, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven and London: Yale University Press, 1994), 70.



Figure A40: A postcard of Gootoo and Inyokwana, two reportedly orphaned boys who appeared at the Stanley and African Exhibition at the Victoria Gallery in London, 1890.

Source: Annie E. Coombs, *Reinventing Africa: Museums, Material Culture and Popular Imagination* (New Haven and London: Yale University Press, 1994), 78.



Figure A41: Photograph of “Priam’s Treasure” taken before the collection was divided in 1880. Most of these items are now lost, last seen in a bunker under the Berlin Zoo in 1945.

Source:

http://www.detecting.org.uk/html/Priams_Treasure_Troy_Heinrich_Schliemann.html.



Figure A42: Sophia Engastromenos Schliemann wearing Trojan treasures found by her husband Heinrich Schliemann.

Source: http://www.dillum.ch/html/schliemann_priamos_schatz.htm.



Figure A43: The Skull of Sultan Mkwawa in a museum in Kalenga, Tanzania.

Source: <http://www.mkwawa.com/skull.jpg>.



Figure A44: Dahomean village advertisement for the Paris Universal Exposition of 1900

Source: http://www.maisons-champagne.com/bonal/pages/Expo/images/dahomey_expo_1900.jpg.



Figure A45: Senegal and Sudan village at the Paris Universal Exposition of 1900

Source: <http://www.maisons-champagne.com/bonal/pages/Expo/Senegal.html>.



Figure A46: Dahomey Village at the Paris Universal Exposition of 1900

Source: <http://www.maisons-champagne.com/bonal/pages/Expo/Senegal.html>.



Figure A47: *Palais Trocadéro*, where the *Musée d'Ethnographie* was founded in conjunction with the International Exposition of 1878

Source: http://www.raphaeldaguet.fr/wp-content/uploads/2009/04/the_trocadero_exposition_universal_1900_paris_france-560x410.jpgyu.

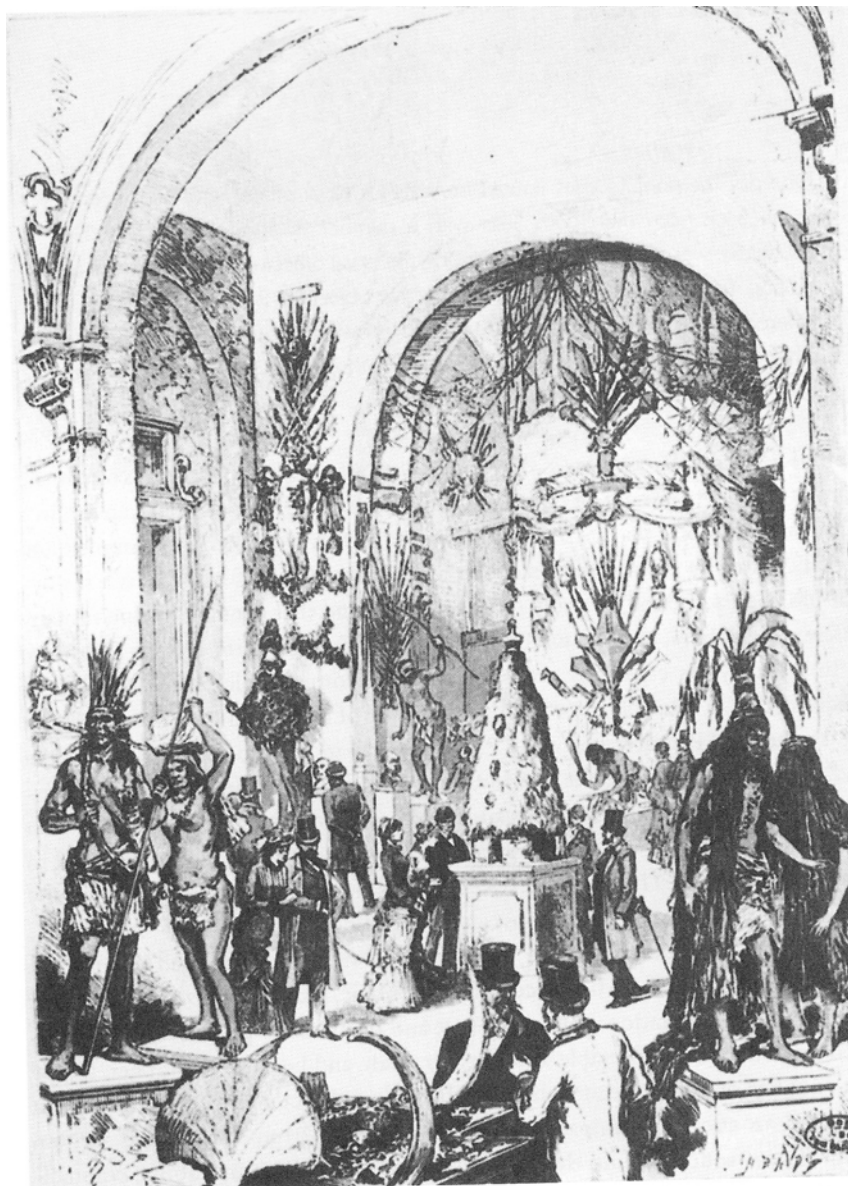


Figure A48: Entrance Hall of the *Musée d'Ethnographie, Palais du Trocadéro*, Paris, 1882, Engraving after a drawing by de Haenon. From *Le Monde illustré* (May 16, 1882).
Bibliothèque Nationale, Paris.

Source: Jack Flam, "Introduction," *Primitivism and Twentieth Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 2.



Figure A49: Pablo Picasso, *Bust of a Woman*, 1949

Source:

http://www.tate.org.uk/modern/tatetracks/images_yourtrack/works/N05915_272.jpg.



Figure A50: George Braques in his Studio in Paris in 1911

Source: "Coda," *Primitivism and Twentieth Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 428.



Figure A51: Picasso in His Studio in the Bateau-Lavoir, 1908

Source: Pablo Picasso, "Discovery of African Art," *Primitivism and Twentieth Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 34.

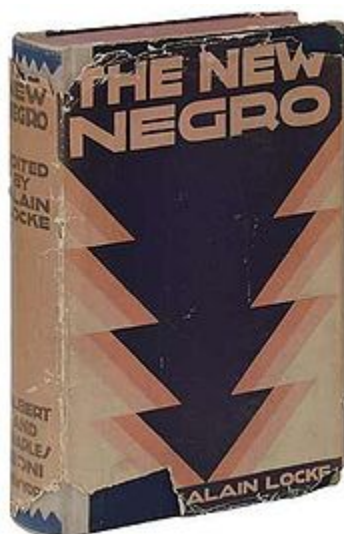


Figure A52: Alain Locke, editor. *The New Negro*, 1925, first edition.

Source: <http://upload.wikimedia.org/wikipedia/en/thumb/9/93/NewNegro.JPG/180px-NewNegro.JPG>.

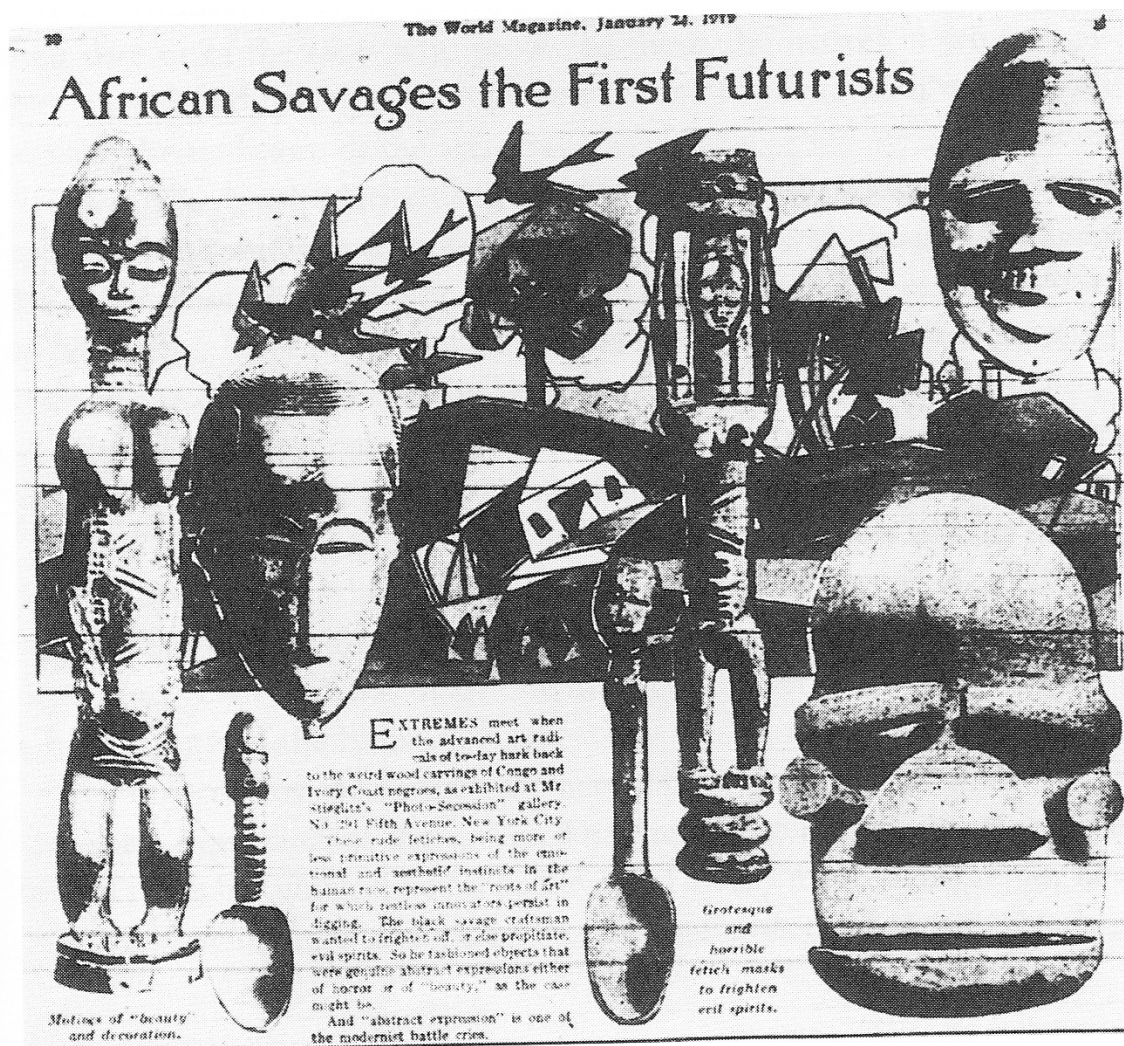


Figure A53: Magazine Notice for the African Sculpture exhibition at Alfred Stieglitz's "291" Gallery

Source: Marius de Zayas, "Statuary in Wood by African Savages: The Root of Modern Art," *Primitivism and Twentieth Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 71.



Figure A54: African Sculpture Exhibition at Alfred Stieglitz's "291" Gallery

Source: Marius de Zayas, "Statuary in Wood by African Savages: The Root of Modern Art," *Primitivism and Twentieth Century Art*, eds. Jack Flam and Miriam Deutch (Berkeley: University of California Press, 2003), 71.



Figure A55: Ngongo ya Chintu of the Luba or Hamba people (the Buli Master), *Female Caryatid Stool*, 1850-1900, originally from the village of Buli, Democratic Republic of the Congo. It was collected by Han Coray in 1910 and displayed in his gallery in Switzerland in 1917.

Source: <http://www.un.org/documents/ga/res/35/a35r129e.pdf>.



Figure A56: Kongo culture, *Nkisi nkondi kozo*, late 19th century. This work is in the Liverpool World Museum and was donated by Arnold Ridyard.

Source:

<http://www.liverpoolmuseums.org.uk/wml/humanworld/worldcultures/africa/spiritualworld.aspx>.

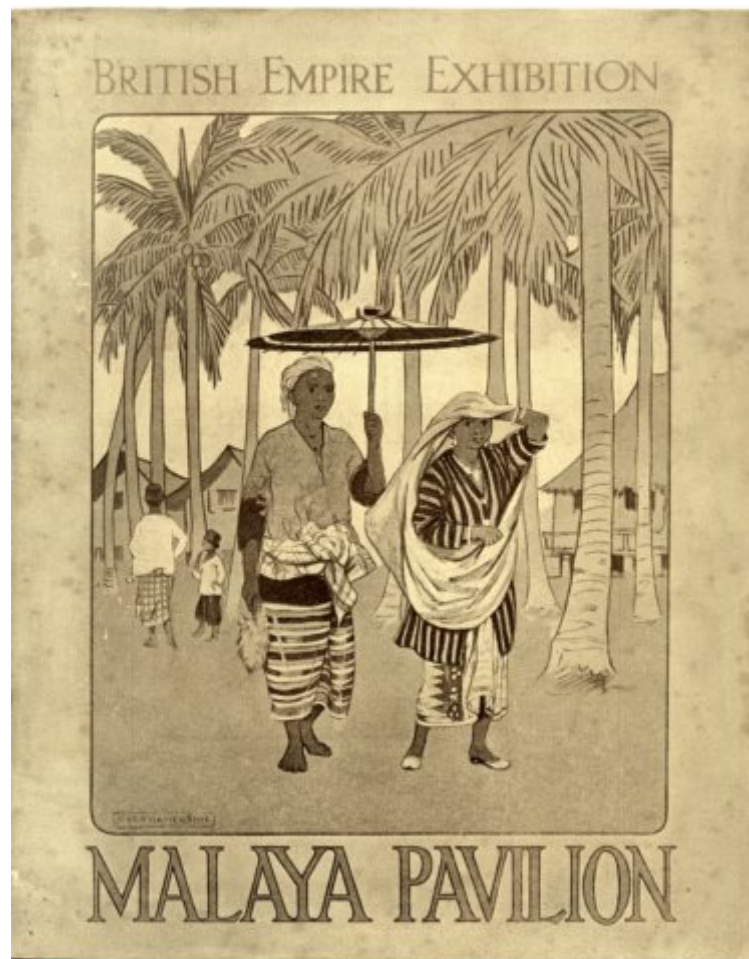


Figure A57: Malaya Pavilion, illustration 1924 from *Illustrated Guide to British Malaya* (Singapore: Printed by Fraser & Neave, 1924).

Source: <http://www.lib.monash.edu.au/exhibitions/recent-acquisitions4/virtual/photos/photo3.html>.



Figure A58: South African Pavilion, 1924 British Empire Exhibition in Wembley, England.

Source: <http://members.lycos.co.uk/bee1924/southafr.html>.



Figure A59: Gold Coast Pavilion, 1924 British Empire Exhibition, Wembley, England.

Source: <http://members.lycos.co.uk/bee1924/goldcoas.html>.



Figure A60: Generals Bradley, Patton, and Eisenhower examining works of art stored by the Nazis in a mine at Merkers, Germany, April 1945.

Source: Jeannette Greenfield, "The Spoils of War," *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, 1997), 44.



Figure A61: Bangwa Artist, *Figure with Bowl for Kola Nuts*, 19th century, Cameroon. This figure, collected in 1906, was one of the figures taken to Leipzig in former East Germany. It was returned to Berlin damaged.

Source: Paola Ivanov, "African Art in the Ethnologisches Museum in Berlin," *African Arts* 33, 3 (Autumn 2000), 22.



Figure A62: Objects from Treasures A and B, Troy, Third Millennium, B.C. E., from the Schliemann excavations. Formerly in the *Museum für Vor- und Frühgeschichte*, Berlin, now in the Pushkin State Museum of Fine Arts, Moscow.

Source: Elizabeth Simpson, editor. *The Spoils of War*, (New York: Harry N. Abrams, 1997), 30.



Figure A63: Berlin Zoo Tower, 1945. This is where Schliemann's treasure was stored until the Soviet army removed it. The tower is called a *Flakturm* in German which refers to it as an anti-aircraft bunker. The zoo tower was one of the last locations in Berlin occupied by Germans.

Source: [http://www.german-architecture.info/GERMANY/TEN/FLAK\(2\).jpg](http://www.german-architecture.info/GERMANY/TEN/FLAK(2).jpg).



Figure A64: The Amber Room (a reproduction from 2003), Catherine Palace, Pushkin, Russia.

Source: <http://media.smithsonianmag.com/images/brief-amber.jpg>.



Figure A65: Jan van Eyck, *The Ghent Altarpiece (open)*, 1432, oil on wood, St. Bavo, Ghent.

Source:

<http://www.cartage.org.lb/en/themes/Arts/painting/paintings/bigphotos/E/1open.jpg>.

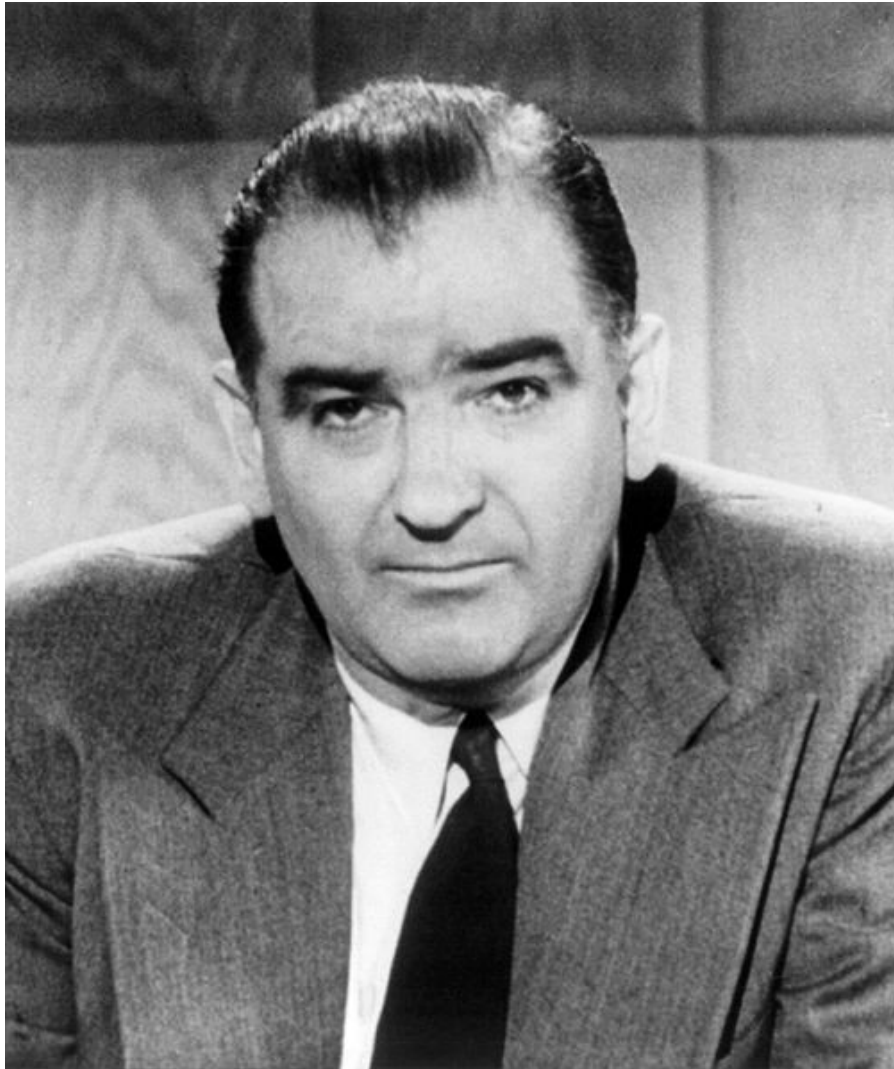


Figure A66: Senator Joseph McCarthy (1908-1957) a United States Senator from Wisconsin who served from 1947 to 1957. He was noted for claims that Soviet and Communist spies were hiding in the United States Government and among celebrities.

Source: http://en.wikipedia.org/wiki/File:Joseph_McCarthy.jpg. Retrieved July 28, 2009.



Figure A67: Kingdom of Benin, *Warrior with Attendants Plaque*, 16th -17th centuries CE, Metropolitan Museum of Art Accession Number 1990.332, Donated by Mr. and Mrs. Klaus G. Perls

Source:

http://www.metmuseum.org/works_of_art/collection_database/arts_of_africa_oceania_and_the_americas/plaque_warrior_and_attendants/objectview_enlarge.aspx?page=3&sort=5&sortdir=asc&keyword=&fp=1&dd1=5&dd2=26&vw=1&collID=26&OID=50009060&vT=2. Retrieved July 28, 2009.



Figure A68: Luba People, Democratic Republic of the Congo, Royal Stool, In the University of Iowa Stanley Collection, originally collected by Cecil Rhodes, Accession Number X1986.457

Source: http://www.uiowa.edu/uima/collections/img/african/x1986_457.html. Retrieved July 28, 2009.



Figure A69: Kingdom of Benin, Nigeria, *Mask for Odudua Ceremony*, 18th century, National Museum of African Art, Gift of the Walt Disney World Company (part of the Disney Tishman Collection), Accession Number 2005-6-2

Source: <http://africa.si.edu/exhibits/africanvision/masks/index.html>. Retrieved July 28, 2009.



Figure A70: Djenne, Mali: Seated Figure, 13th Century, Purchased by the Metropolitan Museum of Art in 1981 from Philippe Guimiot of Belgium, Accession Number 1981.218

Source:

http://www.metmuseum.org/works_of_art/collection_database/arts_of_africa_oceania_and_the_americas/seated_figure/objectview_enlarge.aspx?page=18&sort=0&sortdir=asc&keyword=&fp=1&dd1=5&dd2=0&vw=1&collID=5&OID=50007027&vT=1. Retrieved July 28, 2009.



Figure A71: Asmat, New Guinea (Irian Jaya), *Bis Poles*, late 1950s, Part of the Michael C. Rockefeller Memorial Collection, Metropolitan Museum of Art, Accession Number 1979.206.1611

Source: http://www.metmuseum.org/toah/ho/11/ocm/ho_1979.206.1611.htm. Retrieved July 28, 2009.



Figure A72: Installation shot of African Gallery at the Metropolitan Museum of Art, Note the dark brown walls and spotlights on the works to add a sense of mystery in contrast to the other galleries at the Metropolitan Museum of Art.

Source: http://www.randafricanart.com/Met_Museum_virtual_tour_1.html. Retrieved July 28, 2009.



Figure A74: Dogon Ladder at the Hamill Gallery, Dogon, Mali

Source: <http://www.hamillgallery.com/DOGON/DogonLadders/DogonLadder03.JPG>.
Retrieved July 28, 2009.

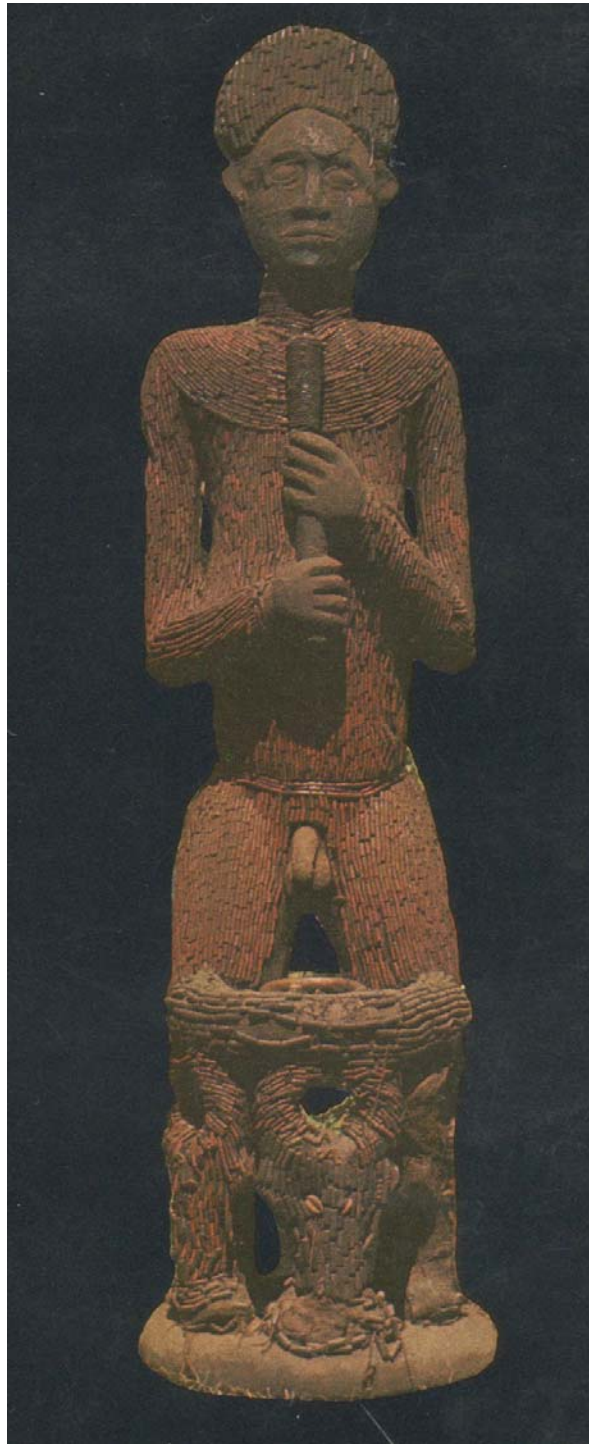


Figure A75: The Afo-A-Kom, from the Kingdom of Kom, in Cameroon

Source: Fred Feretti, *Afo A Kom*, (New York: The Third Press, 1975) cover photo.



Figure A76: Hood Museum of Art, Dartmouth, New Hampshire

Source: http://activerain.com/image_store/uploads/2/3/4/5/3/ar124465730335432.jpg.
Retrieved July 28, 2009.



Figure A77: Lawrence Gussman, (on the left) African art collector and business man, shown in 1957 with Dr Albert Schweitzer (on the right) in Gabon

Source: <http://www.nmfa.si.edu/exhibits/journey/>. Retrieved July 28, 2009.



Figure A78: Bankoni culture, Horsemen with four attendants, Mali, late 14th to early 15th century, 27.6" at tallest, The Art Institute of Chicago, Ada Turnbull Hertle Endowment, 1987.314.1-5

Source: Daniel Shapiro, "The Ban on Mali's Antiquities: A Matter of Law," *African Arts* 28, 4 (Autumn 1995), 48.

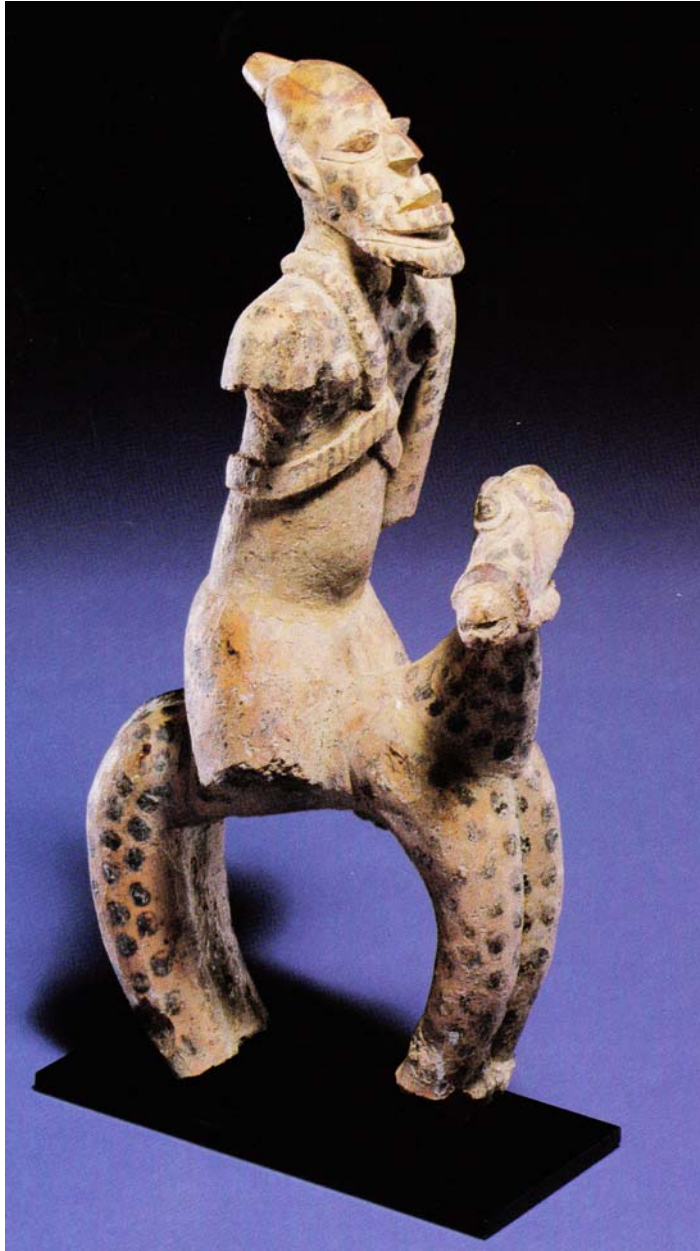


Figure A79: Djenne culture, Equestrian Figure, Inland Niger Delta, Mali, 1645 +/- 165 years (thermoluminescence dating) clay, pigment, 9.6", Indiana University Art Museum, Bloomington, Indiana, 76.98.1

Source: Daniel Shapiro, "The Ban on Mali's Antiquities: A Matter of Law," *African Arts* 28, 4 (Autumn 1995), 50.



Figure A80: Djenne Culture, Maternity Scene, Mali, Terracotta, 8.3", The Saint Louis Art Museum, museum purchase, funds given in honor of Morton D. May and Friends Fund, 1668:1983

Source: Daniel Shapiro, "The Ban on Mali's Antiquities: A Matter of Law," *African Arts* 28, 4 (Autumn 1995), 51.



Figure A81: Kuhn Ram. A forger named Amadou added a body and hind legs to the authentic front part of the ram (shown in white) which sold at Sotheby's for \$275,000 in 1991. Photographer Michel Brent.

Source: <http://www.coupdefoudre.com/CurrentArticle/TerracottaForgeries.html>. Retrieved August 6, 2009.



Figure A82: Advertisement for Hoodia showing San Hunter with Hoodia Cactus

Source: <http://www.uniquehoodia.com/images/graphic-tribal.jpg>. Retrieved August 6, 2009.



Figure A83: Reconstruction of Face of Kennewick Man done by Jim Chatters and Tom McClelland

Source: <http://www.pbs.org/wgbh/nova/first/images/meetkman6.jpg>. Retrieved August 6, 2009.

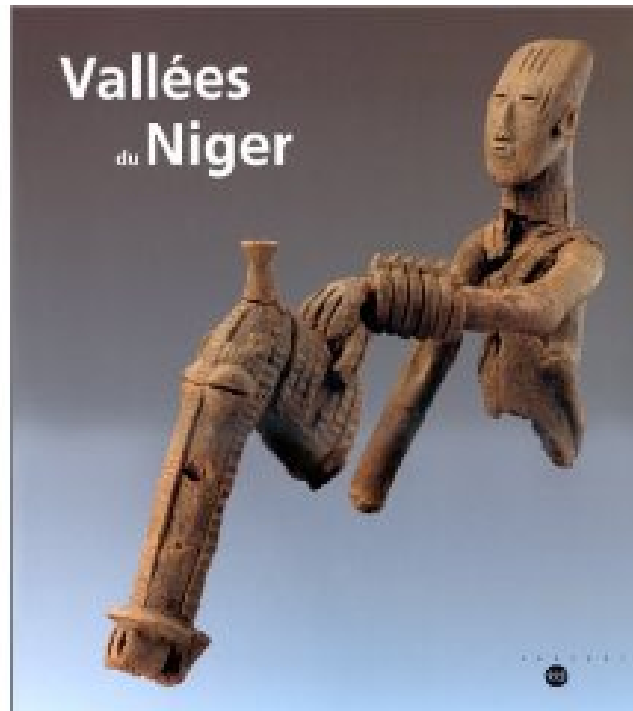


Figure A84: Cover of Exhibition Catalogue for *Vallées du Nigers* (published in 1993 by Réunion des Musées Nationaux in Paris), which travelled to Europe, Africa and America

Source: [http://ecx.images
amazon.com/images/I/4107JEGSZZL._SL500_AA240_.jpg](http://ecx.images.amazon.com/images/I/4107JEGSZZL._SL500_AA240_.jpg). Retrieved August 6, 2009.

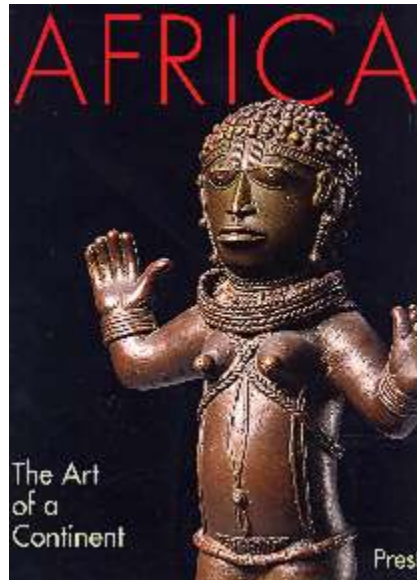


Figure A85: Exhibition Catalogue for *Africa: The Art of A Continent* (edited by Tom Phillips and the Royal Academy of Arts, published by Prestel in 1999)

Source: http://www.africabookcentre.com/acatalog/Africa_art_of_a_continent.jpg.
Retrieved August 6, 2009.

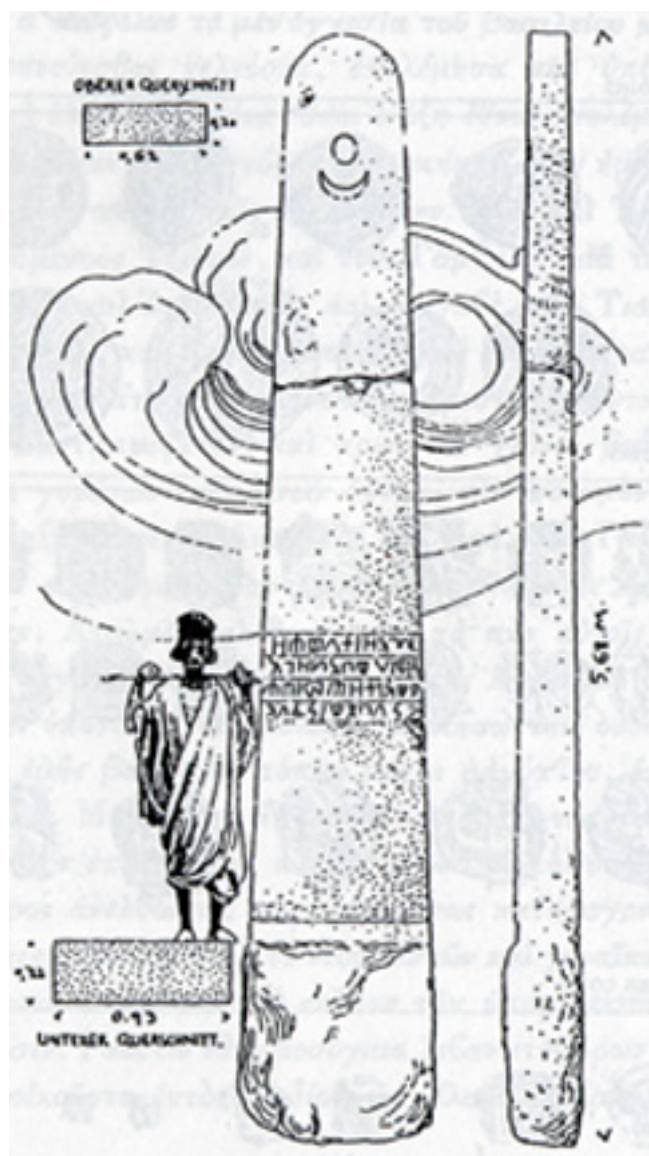


Figure A86: Drawing of Stele of Matara, Eritrea

Source: <http://upload.wikimedia.org/wikipedia/commons/4/40/HawultiLittman.jpeg>. Retrieved August 6, 2009.



Figure A87: Bernie Grant wearing a daishiki on his first day of Parliament as an MP.
Photograph: Sharron Wallace.

Source: <http://www.berniegrantarchive.org.uk/gallery/loveandhate.asp>. Retrieved August 6, 2009.



Figure A88: Kelvingrove Art Gallery, Reproduction of Benin Altar display

Source:

<http://www.glasgowmuseums.com/venue/building/gallery.cfm?venueid=4&fID=1&gID=5&id=2#image>. Retrieved August 6, 2009.



Figure A89: Chris Ofili, *No Woman, No Cry*, 1998, acrylic, oil, polyester resin, paper collage, map pins and elephant dung on canvas, Tate Modern, purchased 1999

Source:

http://www.tate.org.uk/britain/exhibitions/turnerprizeretrospective/images/works/ofili_no_womannocry.jpg. Retrieved August 6, 2009.



Figure A90: Chris Ofili, *The Holy Virgin Mary*, 1996, Paint, Elephant Dung, Collage

Source:

http://www.maround.com/mablog/tyler_askew/1996%20The%20Holy%20Virgin%20Mary.200.jpg. Retrieved August 7, 2009.



Figure A91: Marcus Garvey, *Myra Hindley*, 1995, acrylic on canvas, owned by Frank Gallipoli, a commodities trader based in Connecticut

Sources: Image:

http://www.maround.com/mablog/tyler_askew/1996%20The%20Holy%20Virgin%20Mary.200.jpg. Ownership information:

<http://newsgrist.typepad.com/underbelly/2006/09/index.html>. Retrieved August 6, 2009.



Figure A92: Renee Cox, *Yo Mama's Last Supper*, 1996

Source: http://www.reneecox.net/series04/series04_1.html. Retrieved August 6, 2009.



Figure A93: Chris Ofili, *The Upper Room*, 1999-2002, shown here from its display at the Tate Britain from September 2005 to January 2007

Source: <http://www.tate.org.uk/britain/exhibitions/Ofili/upperroom1.htm>. Retrieved August 6, 2009.



Figure A94: Pitt Rivers Museum, Oxford University, Gallery View, c. 1901

Source: <http://www.prm.ox.ac.uk/hlf.html>. Retrieved August 6, 2009.



Figure A95: Pitt Rivers Museum, Oxford University, Gallery View, 2009

Source: <http://www.prm.ox.ac.uk/hlf.html>. Retrieved August 6, 2009.



Figure A96: Musée du Quai Branly, Paris, Gallery View, 2009

Source: <http://www.quaibrantly.fr/en/>. Retrieved August 6, 2009.



Figure A97: Benin, Plaque depicting tattooed boys with necklaces, one of the plaques bought back by Nigeria in 1951 for the National Museum in Lagos

Source: Jeannette Greenfield, *The Return of Cultural Treasures* (Cambridge: Cambridge University Press, 1995), 125.



Figure A98: Benin, Two plaques, showing a crocodile with a fish in its mouth and a warrior brandishing a sword, two more plaques bought back by Nigeria for the National Museum in Lagos in 1951

Source: Jeannette Greenfield, *The Return of Cultural Treasures* (Cambridge: Cambridge University Press, 1995), 126.



Figure A99: *Nkisi Nkondi* Kongo people, Democratic Republic of the Congo

Source: *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 8.



Figure A100: *Nkisi Nkondi* Kongo people, Democratic Republic of the Congo

Source: *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 7.



Figure A101: *Nkisi* female figure, Central Luba, Democratic Republic of the Congo

Source: *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 95.



Figure A102: *Ofika* figure, Mbole People, Democratic Republic of the Congo.

Source: *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 111.

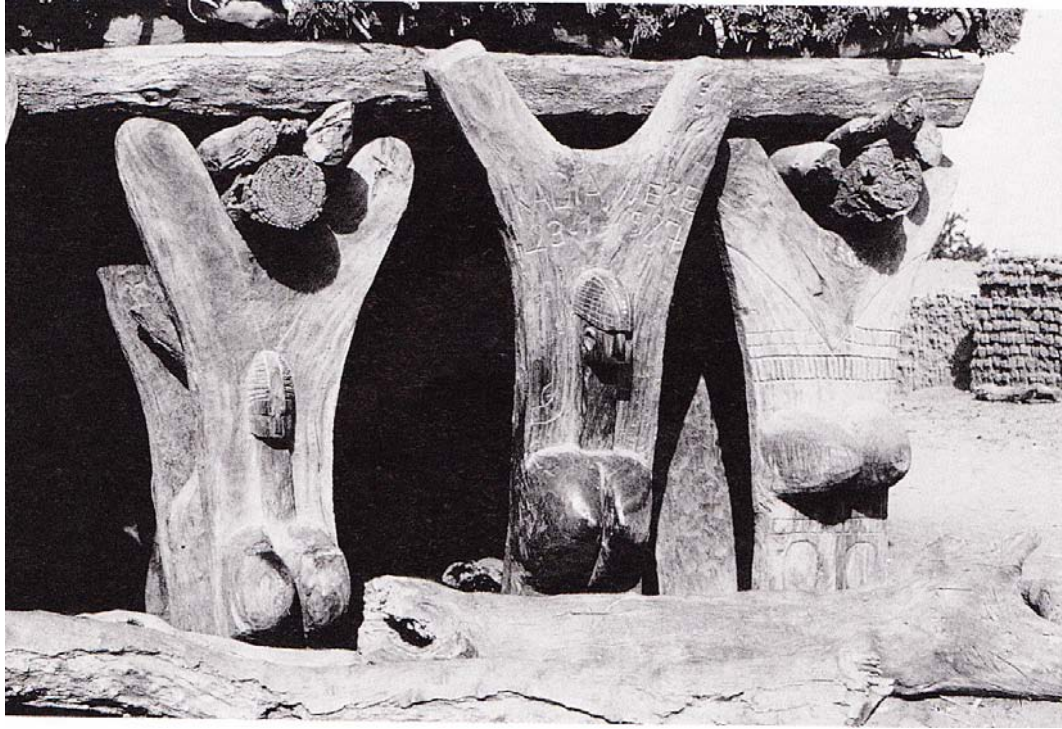


Figure A103: *Togu na*, Dogon people, Mali, photographed in 1989

Source: Herbert M. Cole, "The Western Sudan," *A History of the Art in Africa*, (New York: Harry N. Abrams, 2001), 139.



Figure A104: Face Mask, Salampasu People, Democratic Republic of the Congo

Source: *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 58.

APPENDIX B: 2004 SUMMER RESEARCH GRANT

Having received a Summer Research Grant from the University of Iowa, I went to the Pitt Rivers Museum at Oxford University and the *Ethnologisches Museum* in Berlin in 2004. I went there with the purpose of studying how the art from Benin got to these two institutions. This trip to England and Germany contributed to my interest in the topic of legal issues on African art. A description of that experience follows.

At Oxford, after walking past the famous dodo bird in the Natural History museum every morning, I studied Benin artworks housed in the Pitt Rivers Museum. Curator Jeremy Coote answered questions I had and allowed me to examine and handle the works. They included items owned by Mary Kingsley as well as the Dumas Egerton collection, which consists of works on loan to the Pitt Rivers Museum for one hundred years from the family of Captain George Le Clerc Egerton, chief of staff on the 1897 Punitive Expedition of Benin. At Oxford I photographed the work mentioned in Chapter Two. I researched both the Dumas Egerton collection and the collection of Mary Kingsley. Kingsley's story interested me because there was something about the works in her collection that expressed a desire to really understand the Benin religion and culture.

After the time at Oxford, I travelled to the *Ethnologisches Museum* in Berlin where curator Peter Junge showed me the storage facility. The number of works was amazing and there was excitement in the air from having the works returned from Russia in the 1990s, only a few years before I was there. In Berlin, it was interesting to hear that it was the former curator Felix von Luschan, whose fervor for Benin art led to such an enormous collection.

In Berlin, I also copied and read through von Luschan's business letters and documents that were housed in the State Archives located farther towards the center of the city in the *Museum Insel*. (The *Ethnologisches Museum* is located in *Dahlem* in the southwest corner of Berlin). The letters, written in late 19th century German script, demonstrated the thorough nature of von Luschan's search, as he left no possible avenue unexplored for obtaining more works of Benin art.

From this research the overall sense I got was how fascinating the Benin works are, and why Westerners desired to possess them. I found myself enthralled by the trips these works had taken from Benin City, Nigeria, to England and, then in the case of the Berlin collections, to Berlin, where they were taken in World War II by the Russians and then returned at the turn of the twenty-first century. For the most part the harsh trip they took was not evident in the works themselves, although one of the ivory tusks at the Pitt Rivers Museum showed the results of scorching, reminding me that Egerton took the object as Benin City was being torched and leveled to the ground.

The trip was extremely helpful in pointing me in the direction needed for this dissertation. I could see that the scramble for Africa, spoken about in the nineteenth century, was still happening in the form of scrambling for its art.

APPENDIX C: AFRICAN ART AS LAW

When I worked as a research assistant in the University of Iowa Museum of Art I gave tours of the African works in their collection that could be seen as implements of law. The body of this dissertation concerns the legal issues surrounding African art, including theft, looting, censorship, copyright, illegal excavation, illicit exportation and importation, and forging provenance. In contrast, this Appendix discusses the idea of African artworks as legal instruments. It concerns sub-Saharan African art that has legal powers, addressing two questions: What aspects of African art have served as a legislative or judicial aid? Can such things as contracts, peace-encouraging rooms, and items that discourage illegal activities exist in African art?

Kongo *minkisi*¹ are objects designed to solve problems. Because they have the ability to do things, which is a notion foreign to Western art, they were considered to be fetish objects by nineteenth-century collectors. While some *minkisi* do things such as curing disease, many of them ensure a good business deal or settle a dispute. *Minkisi* have been described as beneficial objects as well as spirits of the wilderness. It is best, perhaps, to see them as both.

A *nkisi nkondi* (fig. A99) is a type of *minkisi*. Its spirit will ensure that the contract will succeed by hunting out the wrongful party (*nkondi* means hunter).² The appearance of the object is designed so that no one would ever consider crossing it.

Wyatt MacGaffey writes:

¹ *Minkisi* is the plural form of the word and *nkisi* is the singular form of the word.

² Wyatt MacGaffey, "Fetishism Revisited: Kongo *Nkisi* in Sociological Perspective," *Africa* 47, 2 (1977): 175.

The charm itself is thus both avenger and victim; its appearance reflects this ambivalence. Its knees are bent, as in all Kongo sculptures, to show that it represents an animate being and not a corpse. Nkondi figures to be seen in museums (listed in catalogues as ‘nail fetishes’) usually have a protruding tongue, which suggest the verb *venda* ‘to lick’ or specifically ‘to lick or activate medicines to bewitch another’; the figure thus asserts its power. According to an indigenous description, the statue (*teki*) is given a threatening appearance (*nkadulu ya nsisi*) so that people will think it has a damaging effect, and it is hung about with weapons such as hollow stalks filled with gunpowder, and nets in which to catch its prey.³

MacGaffey goes on to describe that the sculpture is made to represent the appearance of the wronged party in the case of a dispute with a clearly delineated wronged party. Here “go and sin no more” has the added impact of a *nkisi nkondi* hunting down the evildoer as a sort of haunting image of the person who was harmed.

The statue has a medicine bundle of materials such as ash, bones, or dirt from graves attached to it. The power of the medicine bundle, though, is not tapped into until the nail or blade activates it. Looking at the *nkisi nkondi*, one sees a series of contracts represented by nails and blades inserted into the wood. The sculpture is then like a tireless lawyer whose case load is often enormous, each blade being a different case the spirit must deal with for as long as the dispute is around.

While it may be difficult for people with Western sensibilities to perceive the interaction or overlapping of the spiritual and material realms, it is this very idea that allows the spirits to act as invisible police, judge, jury and lawyer. A *nkisi nkondi* defends the sick and the injured parties. It metes out justice. It ensures that the crime will not occur again.

³ Wyatt MacGaffey, “Fetishism Revisited: Kongo *Nkisi* in Sociological Perspective,” *Africa* 47, 2 (1977): 175.

Minkisi also acted as special helpers to Kongo kings; aiding them in their reigns. Suzanne Preston Blier writes, “At royal investitures *minkisi* not only safeguarded the new ruler but also helped to assure that the ancestral laws were followed.”⁴ Poses and placement of medicine packets and mirrors were all important. The medicine packet was placed in the stomach because the stomach is associated with “both well being and sorcery (since sorcery is said to swell the intestines.”⁵ Just as water, crystals, and mirrors are spiritual activators in a lot of shamanism worldwide, the mirrors in the stomachs of the *minkisi* are said to allow the viewer to enter the world of the spirits or sorcery. Writing of a specific *nkisi nkondi* (fig. A100) from the Tervuren Museum, MacGaffey explains:

The white face indicates a spirit from the land of the dead; the staring or “naked” eyes are alarming; the glass pupils make them still more frightening. The open mouth probably received food during the activating ritual, as the *nkondi* was adjured to “eat” the unknown criminal against whom was directed. Though most of the hardware is of indigenous manufacture (old hoe blades, for example), European nails and screw are also in evidence. Among them can be seen little bundles, strings, and other “tokens” (*mfunya*) of the matter at issue, so that the *nkisi* would know where to go.⁶

The work mentioned has lost the dagger that many of the *nkisi nkondi* carry. But it is indeed a frightening creature. The figure has many nails, screws, and metal blades embedded into its surface. Each item nailed into it represents a new task for the *nkondi*, which means that this was a very effective and reliable hunter.

⁴ Suzanne Preston Blier, *The Royal Arts of Africa: the Majesty of Form* (New York: Harry N. Abrams, 1998), 222.

⁵ *Ibid.*, 224.

⁶ Wyatt MacGaffey, “Nkondi statue” *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 144.

Nkisi nkondi often have a special hunting pose: one arm is raised in the air with a lance or a knife enclosed (figs. B.1 and B.2). This attribute adds to the *nkondi* or hunter aspect of the figure. Some *nkondi* objects represent animals such as dogs with one or two bodies. Dogs are believed to be nature's great mediators. They mediate between humanity and animals, the worlds of civilization and wilderness, the realms of the living and the realms of the ancestors.

A female *nkisi* (fig. A101) is part of the collection of the Tervuren museum. The figure has a horn-shaped coiffure jutting out from the top of her head, and has a skirt and a beaded necklace. Mary H. Nooter-Roberts writes:

It may have been used for divination, or as a part of a chief's royal treasure, or for religious veneration and invocation. Yet the presence in this figure, which forms a pair with a male statue of horn and other substances embedded in the head suggests that it was probably a vehicle for healing and other apotropaic purposes.⁷

The figure is curious because the hands are touching what one assumes to be breasts. This is a common gesture among the Luba that signifies respect and possession of royal secrets. However, what the figure is touching are actually shoulder blades, because the torso is facing the opposite way of the face. While no clear-cut explanation has been given or is known, it does point out the otherworldly nature of the *nkisi*.

This female figure is not a hunter or *nkondi*; instead, it was used to heal as well as to prevent or ward off evil. Furthermore, it is the larger figure of the male-female set. If one assumes that the artist used a hierarchical scale of importance, then the female figure with her face looking over her back is more important. Because the back and feet face

⁷ Mary H. Nooter-Roberts, "Nkisi female figure," *The Tervuren Museum: Masterpieces from Central Africa* (Munich: Prestel, 1997), 182.

the same direction, one gets the sense that this figure has the ability to see everything around her; she may walk in one direction, but she can see behind her.

The unnatural pose of this figure gives one the impression that it was probably meant to prevent harmful activities from taking place. The piece has a sort of calm about her, with her eyes closed to a slit and her mouth open just slightly. The horn coiffure might also be a clue to her purpose:

If the female figure looks backward to signify vision into the other, ordinarily invisible world, it is still more significant that she wears horn in her head, for Luba say that horns give figures ‘the power of locomotion’. The figures thus have the power not only to see into the beyond but to go there as well.⁸

It is important to note that this figure serves more than the purpose of a crystal ball—it allows for travel to the spiritual realm as well. It has the judicial characteristics of correcting and preventing problems, as well as seeing into the invisible world.

The Congo has other justice-spirits as well. The *mwiya* is a creature that seems to have a human head on an animal body.⁹ Dunja Hersak writes:

It exists because it is seen to exist not only in the nocturnal but also in the diurnal sphere. It exists because it is created into being and controlled by a spoken word and an object from the visible world, which can be a charm, a figure, a pot or any commonplace item. Yombe recollections about the *nwiya* confirm this dual reality although they also bring into view the merging and overlapping of the two planes of reference. They remember it as a terrifying bird of prey which was activated by the *kula* medicine bundle. Its mission was to hunt down criminals, something like the dream revelations about the ‘flying *Nkondi*’. *Mwiya*, I was told, killed mercilessly and could eliminate an entire village, even the animals, until someone confessed to the crime. It picked up bits of cloth, nails, and strands of hair of the villagers as well as left-overs from the cooking pot.¹⁰

⁸ Ibid., 182.

⁹ Dunja Hersak, “There are Many Kongo Worlds: Particularities of Magico-Religious Beliefs Among the Vili and Yombe of Congo-Brazzaville,” *Africa* 71, 4 (2001): 630-631.

¹⁰ Ibid.

The creature seems to be the animal version of the *nkisi nkonde*. Although Hersak describes it as an astonishing bird of prey, others have mentioned it as an alligator or even a double-bodied animal with one human head.¹¹

The Mbole people of the Democratic Republic of the Congo also have figures which are designed to stop crime. *Ofika* (fig. A102) figures often represent men or women who have been hanged for breaking a law. Each image represents a specific person who has done a specific act. Such an image is given to a young person at his initiation when the elders deem that the young person, if unchecked, may venture down the same unwise path as the deceased criminal.

The figures are made for the Lilwa society, which oversees many aspects of Mbole culture in terms of proper legal, moral, social, and religious behavior. Seeing the figures with their hunched shoulders, elongated necks, and dangling toes, one gets the sense that these are portraits of the deceased as they were hanged for their crimes. *Ofika* figures originally had ropes tied around their necks, although they do not always have ropes now. Just as law students learn cases and their results, young Lilwa society initiates learn statues in terms of their crimes and sentencing. An *ofika* figure is a potent means of warning people not to do the same actions as the person for whom the statue is named.

Both the *ofika* figures and the *nkisi nkonde* objects work in a preventative manner. Instead of waiting for crime to occur, the Lilwa society members view people going in the wrong direction and use the figures to prevent their actions from escalating to serious

¹¹ This is somewhat reminiscent of the Native American Illini legend of the Piasa bird, a flying creature with deer horns, multicolored scales and a human face, which hunted down warriors.

crime. The Lilwa society makes or commissions these sculptures for the welfare of its people. There is therefore, no separation between the art and the wheels of justice.

The Dogon *Togu na* (fig. A103) also practice preventative legal politics. *Togu na*, or men's meeting house, is literally a "house of words."¹² Just as government buildings or church steeples often dominate the American landscape, the *Togu na* is usually the predominant architectural structure of a Dogon village, set on a hillside where it can look out over the rest of the village. While it may seem as if there is no female influence, the house posts are composed of a sort of sub-Saharan caryatid, traditionally with physical features of feminine presence such as faces and breasts. Perhaps this suggests the notion that female ancestors visit the *Togu na* at night in order to aid the proceedings that occur there.¹³

The height of the structure is low so that no man inside the structure can stand up in anger. The psychology of having to sit and talk things out prevents physical turmoil as well as any verbal turmoil. The very act of insisting that the body be relaxed and seated leads one's thoughts to be peaceful as well.

To a certain extent, the masks made by the Salampasu of the Congo provide another example of art objects that were made with a protective legal purpose. Living near the very large and powerful Lunda, Chokwe, and Luba empires, the smaller Salampasu promoted a fearsome, cannibalistic image to protect themselves. The Salampasu, known to be violent, utilized their somewhat tarnished reputation to allow

¹² Herbert M. Cole, "The Western Sudan," *A History of the Art in Africa* (New York: Harry N. Abrams, 2001), 138.

¹³Ibid., 139.

themselves to maintain their independent culture amidst larger, more powerful kingdoms.

Elisabeth Cameron writes:

Neighboring peoples from areas controlled by the Lunda, Chockwe, and Luba considered the Sala Mpasu to be barbaric. As a result of this unsavory reputation, the Sala Mpasu were able to maintain independent communities within fifty kilometers of Musumba, the capital of the Lunda Kingdom, without giving up their own sovereignty. Their notoriety was based upon the activities of their warriors' societies, which provided isolation and continual rebellion against political encroachment. In addition to the protection against invaders that these associations provided, they were a means for men to establish reputations and gain property and prestige.¹⁴

The society is ruled by a group of men who settle disputes and train warriors. One of the most unusual facets of Salampasu society is that the family into which you are born makes no difference whatsoever. There is no inherited wealth or social status. Cameron writes:

A young Sala Mpasu man, no matter who his parents were or what clan he belonged to, had no social status whatsoever. This he had to earn for himself. After he was initiated into the local branch of the warriors; social network, he took up residence near a *kalamba* to whom he apprenticed himself.¹⁵

Salampasu masks (fig. A104) represented a variety of things and marked the full gamut of important stages in the human experience, from life to death. While the mask served as a visual reminder that its owner purchased the right to wear that mask, the masks were often ferocious looking in order to frighten any potential enemies.

Accompanying the masks were stories the Salampasu spread about themselves:

The Sala Mpasu applied the same techniques of image management to their encounters with Europeans that they had already used successfully

¹⁴ Elisabeth Cameron, *Reclusive Rebels: An Approach to the Sala Mpasu and their Masks* (Mesa, California: Mesa College Art Gallery, 1992), 7.

¹⁵ *Ibid.*, 8.

with their neighbors. Taking advantage of the Belgians' own stereotypes about Africans, Sala Mpasu men regaled many early missionaries and colonial officials with tales of human feasts, complete with large iron pots, and claimed that Belgians listed as missing had been served up as appetizers. The Belgians, in one of their few colonial retreats, withdrew. They assigned one officer to the area who, for over twenty years, concentrated all his efforts on subduing the Sala Mpasu. They finally surrendered in the mid-1930s, making this area the last in the Congo to be occupied by the Belgians.¹⁶

The masks and stories formed a virtual protective barrier, made by the men to guard them from outside forces.

One of the rarest forms of the mask has copper strips on it. The red-gold sheen, along with the open mouth displaying prominent filed teeth, gave a fearsome image that added to the headhunter impression. The use of copper was possibly an influence of the Lunda people, for whom it was a symbol of chiefly authority.¹⁷ Copper, a status symbol often placed above gold, was also a means of exchange in some parts of Africa.¹⁸ Copper has a pinkish shine instead of a white to gray sheen like silver or aluminum. This makes it rare, regardless of where one travels. It also is a great conductor of heat, and the ability to absorb heat gives copper both practicality and a kind of magical quality.

The items described in this document are still made today. They show that in the societies of sub-Saharan Africa, legal issues could not be separated from the idea of the moral right.

¹⁶ Elisabeth Cameron, "Dancing a New Face: Contemporary Sala Mpasu Masquerades," *African Arts* 37, 2 (Summer 2004): 74.

¹⁷ Elisabeth Cameron, *Reclusive Rebels: An Approach to the Sala Mpasu and their Masks* (Mesa, California: Mesa College Art Gallery, 1992), 15.

¹⁸ Gabel Creighton, "Red Gold of Africa," *American Historical Review* 90, 4 (Oct. 1985): 990.

**APPENDIX D:
INTERVIEW WITH JAMES CUNO, DIRECTOR OF
THE ART INSTITUTE OF CHICAGO**

This Appendix is the print-out of an e-mail interview with Director of the Art Institute of Chicago, James Cuno. The interview took place because Cuno has been outspoken in his ideas regarding the dispute of ownership of cultural property between museums, archaeologists, and representatives for art rich nations. His suggestion for the reintroduction of *partage* has been one of the few proposed solutions for issues of legal ownership of art. The interview took place on Wednesday, November 26, 2008.

(Mary Martin) **How have legal issues affected your work?**

(James Cuno) We are now (and have been for some time) very careful to perform due diligence on all proposed acquisitions. When this involves antiquities likely to have been found in foreign countries, we consider which countries, examine their cultural property laws, seek documentation from the owner of the object giving evidence as to how long they have owned it, how and when it entered this country, and any publications produced that include this object. And then we thoroughly examine all websites with lists of stolen/looted property. And we conduct a thorough scientific analysis of the object to make sure there is no physical evidence to contradict the information gathered from the above.

(Mary Martin) **What changes or developments in this impact have you observed through your career?**

(James Cuno) The rise of cultural property laws and their reach into the jurisdiction of the US has resulted in US museums acquiring few and fewer antiquities. This hasn't resulted

in a decline in looting, only in the acquisition of undocumented antiquities by US art museums.

(Mary Martin) **How did the idea of *partage* as a recommended solution come to you?**

(James Cuno) It was widely practiced at the end of the 19th century and through the first half of the 20th. It seems to me to be a reasonable way to encourage scientific excavation of antiquities, share them widely, distribute risk to their survival, and build study collections around the world, including in the host nations (i.e., Iraq, Egypt, etc.)

(Mary Martin) **In your book, *Who Owns Antiquity?* you mentioned that the surge of nationalism was to blame for the downfall of *partage*. Do you see a shift in the other direction now towards a more international approach to the stewardship of objects?**

(James Cuno) No, sadly I do not. Nationalism remains strong and in fact is resurgent.

(Mary Martin) **How would you respond to critics of "the encyclopedic museum" who say that it is simply an extension of colonial politics?**

(James Cuno) I don't understand this, except that it is a reflexive argument. That is, even during the colonial area, non-colonial powers excavated and shared finds with local governments. And this is in fact how the national museums in Kabul and Baghdad and Cairo got built. The local authorities can still have first choice. As it stands, their refusal to allow the sharing of finds through *partage* prohibits the wider appreciation of this material and concentrates the risk to its survival in one place.

**APPENDIX E:
TREATIES AND CONVENTIONS THAT INFLUENCED THE DISPOSITION OF
AFRICAN ART FROM 1815 TO 2000**

This Appendix is a chronological list of treaties and conventions that influenced the disposition of African art from 1815 to 2000. I used it to help myself write the dissertation, and provide it here as a reference.

Date: 1815

Title: **Congress of Vienna**

Signatories: France, Prussia

Significance: Settle disputes from recent events such as Napoleonic Wars, re-draw national boundaries.

Date: 1885

Title: **Congo Conference**

Signatories: Great Britain, Austria-Hungary, Germany, Belgium, France, Russia, the United States, Italy, Spain, Portugal, and others

Significance: Declare Africa a free trade area; divide Africa into 50 colonial territories.

Date: 1886

Title: **Berne Convention**

Signatories: DRC, Mali, Ghana, Nigeria and others

Significance: Any creative work automatically copyrighted upon creation.

Date: 1904

Title: *Entente Cordiale*

Signatories: England and France

Significance: Separate colonial territories recognized: will not interfere in each other's territories.

Date: 1919

Title: **Treaty of Versailles**

Signatories: Great Britain, France, Italy, US (Germany forced to agree)

Significance: Spoils of war must be returned and/or reparations made; prevent future loss.

Date: 1945

Title: **UNESCO**

Signatories: U.K., New Zealand, Saudi Arabia, South Africa, Australia, India, Mexico and many others

Significance: Insure protection of the world's cultural property.

Date: 1954

Title: **Hague Convention**

Signatories: Egypt, Myanmar, Mexico and others
 Significance: Prevent loss of cultural property in future armed conflicts.

Date: 1970

Title: **UNESCO**

Signatories: Ecuador, Bulgaria, Nigeria, Central African Republic, Cameroon were the first, then many others, including US (1983)

Significance: Eleven-part definition of cultural property; cultural property owned by country of origin, which must set up laws against illicit trade.

Date: 1973

Title: **UN Resolution on Restitution to Developing Countries**

Signatories: Zaire (DRC), Senegal, Cameroon, and others

Significance: Developed countries should return cultural property, free of charge, to developing-nation source countries.

Date: 1983

Title: **Convention on Cultural Property Implementation Act (CCPIA)**

Signatories: United States national law

Significance: Allows US to enter into bilateral agreements with UNESCO signatory nations (for example, 1993 emergency ban with Mali).

Date: 1990

Title: **Native American Graves Protection and Repatriation Act (NAGPRA)**

Signatories: United States national law

Significance: Return cultural property to Native Americans, prevent future grave robbing.

Date: 1995

Title: **UNIDROIT**

Signatories: Italy, Egypt, Nigeria, South Africa, Tunisia, and others

Significance: Supplement UNESCO 1970 to make more countries proactive in preventing illicit trade.

**APPENDIX F:
SIGNIFICANT EXHIBITIONS REGARDING AFRICAN ART
FROM 1890 TO 2001**

This Appendix is a chronological list of significant exhibitions involving African art from 1890 to 2001. I used it to help myself write the dissertation, and provide it here as a reference.

1890: The Stanley and African Exhibition

Museums/Venues: Victoria Gallery, London

Significance: Took viewer step by step through Henry Stanley's trip down Nile to the Congo featured real boys said to be orphans.

1897: Some Interesting Bronzes from Benin City

Museums/Venues: Royal Colonial Institute, London

Significance: One of the first public displays of Benin Art in London after the Punitive Expedition.

1897: Ivories and Bronzes from Benin City

Museums/Venues: The British Museum, London

Significance: Helped to stimulate British interest in Benin art.

1897: World's Fair, Brussels with Congo Exhibition

Museums/Venues: Belgium, the next year moved to building called *Musée du Congo*

Significance: Hugely successful world's fair attracted over 1.2 million people in 6 months.

1900: *Exposition Universelle*

Museums/Venues: Paris

Significance: Displayed mock villages from colonized peoples such as Dahomey and Congo villages.

1916: Statuary in Wood by African Savages: The Root of Modern Art

Museums/Venues: Gallery 291, New York City (owned by Stieglitz)

Significance: Paul Guillaume's African art collection was shown to make the connection to modern art.

1924-1925: British Empire Exhibition

Museums/Venues: Wembley, England

Significance: Displays of villages in the British colonies or trade interests including South Africa and Nigeria (Gold Coast).

1957: Grand Opening of National Museum of Ghana

Museums/Venues: Accra, Ghana

Significance: Art from all over the continent of Africa.

1973: The Royal Art of Cameroon

Museums/Venues: Hood Museum of Art, Dartmouth, NH

Significance: Displayed Afo-A-Kom which was illicitly removed from Laikom, Cameroon.

1982: Opening of the Michael C. Rockefeller Wing

Museums/Venues: Metropolitan Museum of Art, New York City

Significance: African, Oceanic, and American Art.

1984: Primitivism in 20th Century Art

Museums/Venues: Museum of Modern Art, New York City

Significance: Exhibition described as “Affinity of the Tribal and the Modern”.

1994-1996: Vallées du Nigers

Museums/Venues: Europe, Africa, and America

Significance: Art from the Niger Valley (Mali, Senegal).

1995: Africa: Art of a Continent

Museums/Venues: Royal Academy of Arts, London

Significance: Part of “Africa 95” events in England.

1997-2000: Sensation

Museums/Venues: Royal Academy of Arts, London; Hamburger Bahnhof Museum, Berlin; Brooklyn Museum of Art, New York

Significance: Part of Young British Artists Exhibition including Chris Ofili’s The Holy Virgin Mary.

2001: Committed to the Image

Museums/Venues: Brooklyn Museum of Art

Significance: Large Exhibition of Contemporary African American Photography including Renee Cox’s Yo Mama’s Last Supper.

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