The Return of Looted Benin Bronzes: Art, History and the Law

By:

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Following the University of Cambridge and University of Aberdeen's recent return of bronzes looted by British soldiers from Benin City, Southern Nigeria, in 1897, Dr. Titilayo Adebola is pleased to present this fireside chat with Professor Bankole Soidipo. The University of Cambridge relinquished possession of a bronze cockerel "Okukor" after students campaign inspired the decision for it to be returned in November 2019. While the University of Aberdeen relinquished possession of a bronze depicting the head of an Oba of Benin after its approved repatriation in March 2021. Professor Sodipo was actively involved in facilitating the discussions and negotiations between the Nigerian stakeholders and British universities that culminated in the return of these Benin bronzes. Professor Sodipo was recently nominated (in October 2021) to be conferred with the prestigious rank of Senior Advocate of Nigeria, of which official investiture will be in December 2021. He received his LLM from the University of Lagos and Ph.D from Queen Mary, University of London. He is a Professor of Law at Babcock University, where he has previously served as the Dean, Faculty of

Law. He is the Senior Partner at G. O. Sodipo & Co.

Titilayo Adebola (TA): What are your thoughts on the University of Cambridge and University of Aberdeen's return of the Benin bronzes on 27th and 28th October 2021 respectively?

Bankole Sodipo (BS): It is a remarkable and exciting moment for Africa, its creativity, innovation and history. What the University of Cambridge and University of Aberdeen have done is tell the rest of the world that what happened in 1897 was wrong and nobody has an excuse to hold on to artefacts that are stolen. Our history was looted. Art for us then was not what art is in the West or what art is today. Art was used to record events and history. It was cultural and spiritual. In Benin, the people involved in bronze casting belong to the Igun clan. There is a street called Igun, you had to be initiated into the cult or community of bronze casters. No one else could be involved in bronze casting. Through a system of trade secrets, taboos, metaphysical interventions and customary laws/regulations, the community was able to protect their creativity, innovation and traditional knowledge. It is commendable that the University of Cambridge and University of Aberdeen are returning these artefacts. It is momentous for me because I have been involved in the process of the return.

TA: How were you involved in the discussions and negotiations that culminated in the return of the Benin bronzes?

BS: I have been interested in cultural property for over three decades. In recent years (since 2019), I observed the discussions that were going on with the Benin dialogue group and various institutes and organisations that were holding on to cultural property from Nigeria. I spent my sabbatical at Queen Mary University of London and the University of Cambridge in 2019/2020 (although my time at Cambridge was truncated because of the Coronavirus -COVID-19- pandemic). I had the opportunity to discuss with different people in the art world during my sabbatical at Queen Mary University of London through their Art, Business and Law programme co-sponsored by the British Museum. It was through that platform that I met Neil Curtis, the head of the University of Aberdeen's Museums and Special Collections. He contacted me and explained that the University's Museum had at least one cultural property that was clearly

part of the British loot. He wondered whether I could help with the negotiations towards the return.

I contacted Nigeria's Minister of Information and Culture, who supervises the National Museums and Monuments Commission. By law, the Federal Government of Nigeria is responsible for this subject. The Minister put me in touch with a senior officer in the Museum Monument Department. I also contacted the government of Edo state (Benin is the capital of Edo State), the secretary to the government, the Attorney General and Commissioner for Justice, and the Oba's palace. The Oba's Palace assigned me a chief. We created an email group to discuss the proposals. This led to the University of Aberdeen's public announcement in March 2021 as the first United Kingdom (UK) University to commit to returning the Benin bronzes. Thereafter, the University of Cambridge contacted me and mentioned that they had been working on returning the Benin bronze in their possession for about two years. It wanted to be the first University to physically return the bronzes. However, the Cambridge officials mentioned that they had some difficulties with the Oba of Benin's palace. I intervened by speaking with the Secretary to the Oba's Palace who raised a number of pertinent concerns. I had to engage in numerous discussions with the Oba's palace, the government of Edo state, and the legacy trust that was set up to birth a new international standard museum (which hopefully will house the returned bronzes).

There have been lots of undercurrents. Since there could be no physical return in March (because of the Coronavirus -COVID-19- pandemic movement restrictions), it was agreed that the return could be organised when the COVID-19 situation eased up. The Nigerian government team mentioned that they would visit the UK around the end of September or October 2021. This prompted the acceleration of the University of Cambridge discussions. I think Cambridge wanted to be the first UK university to physically return the Benin bronzes. That informed the return event on 27th October 2021 (one day before the University of Aberdeen's return event).

TA: How are the Benin bronzes protected (or how could they be protected) as cultural property?

BS: I started my Ph.D research in early 1991. Before then, there were a number of scholars around the world that had been researching and writing on cultural property. I was fascinated by the arguments because I was involved in lobbying for and drafting Nigeria's Copyright Act of 1988. There were a lot of people who claimed that we did not need such laws in Nigeria or Africa. I realised that to persuade governments about the need for intellectual property rights in our region of the world, it may be necessary to revisit our history. Did we have forms of works that could be protected as modern intellectual property rights? My investigation suggested that we had literature, symbols, designs, names, and inventions, which are considered literary, artistic, dramatic, musical works and innovation that could be copyrighted and protected through industrial property or *sui generis* rights. We had herbalists that were our doctors. We had miners, bronzesmiths and goldsmiths. My grandfather was a goldsmith.

The next question was: were these creators and inventors recognised and rewarded for their works? I discovered that we had our forms of protection. For example, we had protection through guilds. In Benin, you could not be a bronzesmith if you were not part of the Igun clan. We had protection through trade secrets passed from generation to generation. We also had rules and taboos. For instance, to celebrate birthday or burials, the Yoruba from Southwestern Nigerian have oratory sessions performed only by particular people. Some of these cultural activities have disappeared in the last 50 and 100 years. Many have not been documented or passed on to subsequent generations. We also had rich clothing designs and textiles all around Africa.

My position was that we needed to study our forms of creativity and innovation and protect it with suitable laws. That was my interest at the time. In the mid-1990s, the World Intellectual Property Organisation set up an investigative team to explore the intellectual property rights landscape around the world. It was at that time that ideas on traditional knowledge and traditional cultural expressions were birthed. Before then, people referred to folklore. In relation to Nigeria, we have not done enough to identify what constitutes folklore. For instance, we do not have a database for folklore. Since we do not who know what constitute folklore, we do not value these works. That is one of the problems we have in relation to preservation and protection of our creative works. It is time for us to start placing value on our brilliant world class works. Hopefully, the return of these bronzes will spur a love for our arts and history. If

the Benin and Ife dynasties 500/600 years ago were able to produce works which measured up to internationally celebrated standards, it means we had a high level of sophisticated civilisation before slavery and colonisation.

While we have modern/Euro-centric intellectual property rights, we cannot say every creation or innovation must fit into these established structures, otherwise, there would no protection. When the Berne Convention for the Protection of Literary and Artistic Works was adopted in September 1886, there was no internet. With the advent of the internet, new treaties such as the WIPO Copyright Treaty were adopted. New treaties and systems were created to respond to technological advancements in the West. That adoption was accepted as fitting. But when we talk about genetic resources, traditional knowledge and traditional cultural expressions, some western scholars and actors argue that these works cannot be protected as intellectual property rights. In my Ph.D, I argued that if the West does not heed the cry from the Global South about expansion of intellectual property rights through regimes that protect alternative works prevalent in the Global South, then we will begin to also erode our acceptance of the modern intellectual property right regimes. I am calling for the protection of different works and inventions.

In relation to protection of cultural property in Nigeria, I would say we have two options. The first option: it could be owned/held by the Obas or Kings in trust for their peoples. Culturally, the communities where those works arise from should own and benefit from them. The second option: it should be owned/held by the Federal Government of Nigeria in trust for Nigerians. While state governments could have been an option, the production of some works cross the boundaries of states. The Constitution of the Federal Republic of Nigeria includes the protection of monuments in the Exclusive Legislative list (Second Schedule: Part 1, Item 60 (b)).

TA: Who should the Benin bronzes be returned to?

BS: The bronzes should be returned to Benin. The crucial question is, who or where in Benin? The Oba wants to build a museum, at the same time, the Edo state government also wants to build a museum. The Oba maintains that the bronzes were taken from his grandfather and great grandfather's house, why should any other person keep them? If the bronzes are kept outside the Oba’s

palace, some remuneration could be offered to the Oba, like a percentage of the fees charged to the visitors. With the return of artefacts, there would be more demands of visitations and pressure on the Oba's palace. We need to think carefully about this.

TA: What are your thoughts on questions about Nigeria's ability to preserve and protect the Benin bronzes and artefacts generally?

BS: My position is - if you took something from me, you stole it, return it. You do not have to ask me what I will do with the returned stolen goods or how I will keep it. In fact, this is one of the reasons the Oba's palace stopped talking to the University of Cambridge. I know this because the Master of Jesus College called me to speak about it. The Oba's palace mentioned that Cambridge sent a voluminous agreement. I had to suggest to the University of Cambridge to send a less voluminous agreement - perhaps, a two-page agreement - as proof of the return. That is what happened eventually.

Ultimately, do not ask whether the owners of the bronzes can preserve their works because that is demeaning. If they have suggestions and requests, they can offer them or politely ask to discuss them. For instance, if they would like to loan or exhibit them, make replicas of them, learn from them, or undertake excavations, explorations and restorations. Politely offering suggestions or making requests would be the preferrable approach; not the condescending contrary approach of asking how creators of works will preserve it. Nevertheless, that is a question which we need to ask ourselves. But it is not for a foreigner who is wrongly holding on to our cultural property to ask. Using a foreign analogy; let us assume the foreigner has a right to hold on to assets because he is a trustee. A trustee should not ask the beneficiary how they are going to use the assets. If you are supposed to hand over assets when the beneficiary is 25 years old, you hand it over. If you want to give the beneficiary advice about how to manage the assets, then ask for permission to offer advice. The British are diplomatic; they should know how to address these concerns politely and respectfully.

TA: At the domestic level, what should Nigeria's next steps be?

BS: We need to start building data to document the arts. Our history is important. My wife designed a book on teaching alphabets with African names

to children. In Ibadan, Oyo State (Southwestern Nigeria) there is a place called Oju-Irin. Irin means elephant. I realised that there were elephants in that part of Ibadan. Our carvings with tusks of elephants suggests that elephants were killed. Our arts can help uncover our histories and stories. We need to design laws to establish the structures for the use of our arts.

TA: What is the implication of the return of these Benin bronzes for knowledge systems in Africa?

BS: The University of Cambridge and University of Aberdeen have contributed to the renaissance of African arts, culture and history. It is vital for African children on the continent and in the diaspora to know their history. For example, the British looting and its links with trade. The return of these artefacts will ignite the search and hunger about the past and how the past helps us understand the present and prospects for the future. Accordingly, I am calling for the return of all African artefacts. For instance, the British Museum has refused to return the carving of the Festac mask. I have hinted that the Federal Government of Nigeria can institute this as an action at the International Court of Justice. I am hoping that the University of Cambridge and University of Aberdeen's return of the bronzes will also ignite a rebirth of new knowledge systems in Africa, where we interrogate and expand the orthodoxies of intellectual property rights. African scholars and practitioners need to drive this new intellectual property rights movement.

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