The Repatriation of Benin Bronzes: Analysing the Intersections of Arts, Culture and the Law

By:

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Titilayo Adebola, Associate Director, Centre for Commercial Law, University of Aberdeen and Editor, Afronomicslaw.org discusses the University of Cambridge and University of Aberdeen's return of Benin bronzes to Nigeria on 27th and 28th October 2021 respectively, with Babatunde Fagbayibo. Babatunde Fagbayibo is a Professor of International Law at the University of South Africa. His research interests include the intersections of arts, culture, and the law; public international law; African Union; African politics; and international relations. His recent publications on these subjects include "African Approaches to International Law" (Oxford Bibliographies, 25 August 2021), "Studying the Past in Present Tense: International Law in the Benin Empire" (Politikon, 23 August 2021) and "Some Thoughts on Centring Pan-African Epistemic in Teaching of Public International Law in African Universities" (International Community Law Review, 02 May 2019).

Titilayo Adebola (TA): You recently published a paper on international law and the Benin Empire. Share your thoughts on the University of Cambridge and University of Aberdeen's return of Benin bronzes on the 27th and 28th of October respectively.

Babatunde Fagbayibo (BF): It is commendable that they found the moral and legal impetus to return the bronzes. It is indeed a welcomed development. France and Germany have also returned artefacts to African countries. While we commend the University of Cambridge and University of Aberdeen, we also need to deal with the elephant in the room: the refusal of the British government (and the British museum) to return Benin artefacts, claiming custodianship on behalf of humanity. There is no moral and/or legal basis for this position. Let us imagine a reverse scenario: Somewhere in Nigeria, there are some British artefacts dating back to the 9th or 10th century, and despite Britain's request for their return, the Nigerian government asserts that it has chosen to be the custodian of the artefacts in the interest of humanity. You and I know how the British government will respond to this. I am sure that political and economic sanctions would be imposed on Nigeria, including other harsh measures to ensure that the artefacts are repatriated. It is unconscionable for the British museum to keep holding these artefacts. They must be returned to the rightful owners.

TA: Tell us about your paper titled "Studying the Past in Present Tense: International Law in the Benin Empire."

BF: The paper looks at internationality in the Benin Empire, at least from the 1400s until the demise of the Empire in 1897. I considered how the various Obas of Benin participated as international actors through various lenses, including international trade with the Portuguese, Dutch, Spanish and English, and the exercise of diplomatic immunity in the course of these interactions. This also includes the interaction with neighboring Empires such as the Itsekiri Kingdom and the Oyo Empire, and the exercise of vassal authority in places like present day Akure and Owo. The title of the paper, "Studying the Past in Present Tense", is not in any way meant to romanticise history, but to consider the implications of the facts of history for present day internationality on the continent. This includes issues such as regionalism, international trade, critical pedagogy, including contexts and linkages between customary law and

international law, and how that informed the way the Empire structured its interactions with partners. Those are the key issues that I discussed in the paper. Current developments on the continent including the African Continental Free Trade Area (AFCFTA) can draw useful lessons from the past. Writers such as Moses Ochonu have also done some critical works on pre-colonial trade networks, and its implication for the AFCFTA.

TA: What was the role of arts in the relationships between communities, Empires/Kingdoms and states in pre-colonial Africa, including the Benin Empire?

BF: For pre-colonial African societies, arts had more than aesthetic qualities. They were also for documentary purposes. For example, in the Benin Empire, some of the artefacts were artistic portrayals of interactions between the Empire and external parties. These include bronzes showing Benin soldiers carrying guns, and sculptures showing the interaction between Portuguese (and other European actors) and Benin diplomatic actors. Another example is how those artefacts served the purpose of filling missing gaps in historical interactions with external parties. I will give you a typical example in this respect. Historical accounts show that the Benin Empire made several attempts to buy guns from Portugal, with no success. Portugal had placed an embargo on selling guns to the Benin Empire due to the former's refusal to sell guns to non-Christians. However, certain bronze statutes show Benin soldiers carrying Portuguese guns. Historians have been able to use this in piecing together, and confirming, the narrative that the Benin Empire eventually procured Portuguese guns albeit through other alternative, unofficial channels. In the paper, I referred to this as one of the Empire's diplomatic deftness, and assertion of its sovereign autonomy in achieving its objectives. These artefacts also show the depth of the Benin trade relations and industrialisation within the Empire. For example, some of the artefacts depict Benin nobles wearing certain ornaments, which were acquired through trade with the Portuguese and other European partners. Indeed, arts can shed more light on known and unknown stories.

TA: What are your thoughts on the contestation in Nigeria about who the bronzes should be returned to?

BF: The Edo state government has indicated that it is currently building a modern museum, where it would house the artefacts, thereby ensuring their preservation and protection. The Oba of Benin has rightfully asserted that, based on the principles of customary law, the monarchy is the primary custodian of the artefacts. Remember that many of these artefacts were commissioned in the past by the Obas. In addition, many of the artefacts were looted from the palace in 1897. Individual ownership of art works was not a key priority in those days. I think the best way to deal with this is to understand the agency of the Edo people. The Benin suffered the invasion, and dispossession of their cultural heritage, in 1897. It will be grossly unfair to repeat the dispossession. I would say what is needed is a conscious and deliberate discussion between the monarchy and the state government on how to preserve and protect the artefacts. The role of the Nigerian government is also important here in providing both financial and human resources for achieving the task of preserving these artefacts. Similarly, organised and wider civil society have significant roles to play. The different stakeholders should continue to explore common grounds in this regard.

TA: What are your thoughts on concerns raised about Nigeria's ability to preserve and protect the artefacts?

BF: We must not ignore the condescending and racist connotation of that statement. What you are saying in essence is that the people who made these artefacts, and their descendants, have no understanding of the various knowledge systems of preserving and protecting them. It also assumes that they have no agency. Bronzesmiths are still making important bronze works in Benin and its environs till this day and they do not lack the requisite knowledge systems of preserving and protecting these works. Our conversation about the repatriation of artefacts must never start from the position of whether the owners can preserve and protect their works. That for me should not even be on the table. This reminds me of Julius Nyerere’s response in the 1960s to the condescending question about whether African countries were ready for independence. He famously intoned: “If you come into my house and steal my jacket, don't then ask me whether I'm ready for my jacket. The jacket was mine in the first place and you had no right at all to take it from me.” In the final analysis, ownership trumps all other consideration in this matter. However, this does not mean that we cannot discuss the issue of local capacity. Capacity in

this context means providing artists with the necessary material and human support to continue producing works.

TA: What is the implication of the return of the artefacts for the knowledge systems in Africa.

BF: The return of the bronzes has significant implications for our knowledge systems. Different African countries will have to work around different contexts – social, cultural, economic and political – in determining how to use this as a basis of knowledge production. For example, the return of the bronzes can engender an important platform for universities within Edo states and other parts of Nigeria in rethinking and embracing the study of arts and culture. Additionally, the artefacts could stimulate the development of the tourism sector by attracting local and international visitors and enhancing more collaborative engagements. Suffice to say that this could positively impact the local economy. An area in which I am even more interested in is its importance for critical pedagogy in the humanities. In this respect, these artefacts could be employed to fill the gap and missing links in our knowledge systems. In the context of international law, they could serve as extra-textual sources for teaching and understanding pre-colonial aspects of international trade, diplomatic immunity, sovereignty, and even soft power dynamics. One of the things that the Benin Empire did quite well was its cultivation of soft power (power of attraction), through the spread its culture to other Kingdoms across present day Nigeria. It is vital for us to see these artefacts as a stimulant for engaging broader social, political, and economic, and cultural issues. However, there must be deliberate efforts on the part of actors including, government, civil society organisations and scholars to see how we can use these repatriated artefacts to shape and reshape knowledge systems across the continent.

TA: There are still artefacts from Nigeria and other African countries held in international institutions. How can we promote the repatriation of these works?

BF: The Nigerian government has been engaged in diplomatic negotiations for the return of the artefacts. To keep the momentum, we should step up the ‘naming and shaming’ of governmental and non-governmental actors that

refuse to return stolen artefacts. Let us call it what it is: It is an act of criminality for museums or universities to retain these artefacts. That is theft, grand theft. The African Union (AU) also has an essential role to play here as well. The AU has declared 2021 as the year of Arts, Culture and Heritage. In addition, the AU has a treaty, the Charter for African Cultural Renaissance, that speaks to the importance of Africa's cultural heritage. There is a Model Law that is being designed to give full effect to this objective. Agenda 2063 is also key. It provides the following. (i) Pan-African ideals should be fully embedded in all school curricula. (ii) Pan-African cultural assets (heritage, folklore, languages, film, music, theatre, literature, festivals, religions and spirituality) should be enhanced. (iii) African creative arts and industries should be celebrated throughout the continent and in the diaspora. (iv) African languages will be the basis for administration and integration. These instruments - both soft and hard laws - already exist and provide an important basis for stressing the importance of repatriation for the socio-cultural and economic development of the continent.

TA: Please share your parting words on arts, culture and the law in Africa.

BF: A key component of my ongoing research is an emphasis on the intersection of arts, culture and the law. I am looking at how we can use extra-textual sources such as music, poetry, artefacts etc. as tools for decolonising the teaching and understanding of international law. I want our curriculum and instruction materials to reflect intersectionality of thoughts and approaches. Toyin Falola's conception of the "ritual archives" is very important here. As he noted, ritual archives are "the conglomeration of words as well as texts, ideas, symbols, shrines, images, performances, and indeed objects that document as well as speak to those religious experiences and practices that allow us to understand the African world through various bodies of philosophies, literatures, languages, histories and much more." Indeed, we can tap into these archives for gaining relevant information that could be useful for our social, cultural, political and economic development. I want to conclude by thanking Afronomicslaw.org for its efforts in enhancing knowledge production on the continent. This should be supported and encouraged.

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