

Reclaiming and Repatriation: Brief Discussion on Ethical Issues Surrounding Reclaiming of Chinese Cultural Objects

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Abstract: *Requesting for repatriation of looted artifacts from western museums has become a top priority for many countries in the postcolonial context, whilst only a small portion of the plundered volume has been lawfully reinstated to China. More recently, serial art crimes targeted at Chinese artifacts have been committed in museums across Europe. Drawing on this, the study delves into the illegitimacy of art thefts, the catastrophic effects of trafficking of historic antiquities, as well as related international and domestic regulations, to unpack the ethical issues surrounding reclaiming of Chinese cultural objects. Importantly, in this discussion, initiative return is put forward as the proximal and sustainable resort to address reinstatement dilemmas and relevant ethical issues. In this way, collaborative participation within the network of museum communities is necessitated, which includes improvements of legal formulation and enactment on domestic and international bases, introduction of an official worldwide registry of artifacts, enhancement in museum management regarding security and accessioning, as well as negotiations between museums.*

Keywords: *Cultural Nationalism; Cultural Repatriation; Art Crimes; Initiative Return; Museum Decolonization*

1. Introduction

Cultural nationalism, in the wake of national awareness and establishments of state museums ^[1], has brought about critics and reflections on resplendent western museums with regard to illicit accessioning and acquisition of looted antiquities. ^{[2][3][4]} This partially reveals increased political and diplomatic influences of nations that pursue reinstatement of their plundered cultural objects. The concept of cultural nationalism and shift of national power serve as underlying dynamics of requests for repatriation of looted artifacts in today's postcolonial context. In China, only a small percentage of the plundered volume has been licitly reinstated by the government, by means of purchasing, reciprocal exchanging, and diplomatic reclaiming. However, since 2010, serial art crimes targeted at Chinese objects, particularly those forcibly taken by western powers during the Opium War ^[5], have been committed in museums across France, the UK, Belgium, and Norway. Interestingly, the publication of these art heists titled "The Great Chinese Art Heist" ^[5], followed by other articles released on mainstream media ^{[6][7][8]}, has raised suspicions on Chinese free agents and even Chinese government of getting involved in "rogue repatriation" ^[9]. Drawing on illegitimacy of art thefts in the case, this essay approaches reinstatement dilemmas and ethical issues through return of looted legacies initiated by museums before suggesting measures essential for proper reinstatement.

2. Art Thefts: Impacts and Possible Solutions

Precariously, it has been suggested that the Chinese government has a role to play in these art heists for reclaiming of historical dignity lost during the Century of Humiliation, ^[8] and stolen artifacts were rationalized by individualized private collections as a symbol of cultural liberation and patriotism. ^[7] China's response not solely denied prospects of government intervention ^[10], but meanwhile implies at great possibilities for social agency involvement. Despite whether free agents or official authority is behind this remains highly contentious on the web, the illegality surrounding this unorthodox attempt to reclaim plundered antiques reveals itself, as it not solely exerts destructive consequences on Chinese cultural patrimonies, but stands in opposition to Chinese legal principles and international ethical

conventions.

Illicit art heists have put stolen artifacts in peril and can result in a loss of culture and history. As temptation and incentive to trade these illegally obtained Chinese objects increases with their “problematic” background, they are more readily to be owned by private collectors through unregulated illicit trafficking procedures than by public collections and authorized museums. This jeopardizes sentimental and cultural values of objects by cutting off their accessibility to the public and researchers, which play inalienable parts in demonstrating their values. Also, though indelibly marks of illegal provenances engrained into these artifacts by criminal thefts could have meant rises in their monetary value in black markets, illicit dealers will make it almost impossible for authorized departments to purchase back those items, considering it would be no longer easy to control objects’ commercial values at illicit art markets according to previously reported statistics ^[11]. Hence, whatever aims are underlying these high-profile art heists, they prove to be counterproductive for reclaiming of historical dignity nor reinstatement of cultural patrimonies.

To prohibit violations of domestic cultural objects, Law of the People's Republic of China on Protection of Cultural ^[12] was implemented. Though locations of the crime exceed the geographic border governed by the law, thefts undeniably violate substances of legal principles in China, as well as those in many other nations, such as Egypt’s “Law 117” and “18 US Code § 2315” in the USA. While Genoways ^[4] has admitted inadequacy of legal principles regarding international art crimes, inconsistency of laws and complexities of transnational art crimes cannot be translated into the legality and justification of these thefts.

Due to the lack of a legal system, with illicit stealing and trafficking of cultural legacies becoming a globalized issue ^[13] ^[14] and the absence of proper enforcement and investigation ^[15], measures must be taken. Domestic approaches include enhancement of museum security constructions, improvements in legal systems for prohibition and conviction, establishment of “the full history of the item” ^[16] during accessioning that go in accord with due diligence principles of museums, as well as establishment of specialized heritage police forces and agents to combat illicit trades with unmeasurable illegal benefits and transactions. Practices carried out by the Italian Gendarmerie of Antiquities and the French Central Office for the Fight against Trafficking in Cultural Property ^[17] have made huge differences in preserving cultural patrimonies within national borders. On the international level, instead of remaining ambivalent on this issue as import countries did decades ago ^[18], negotiations or even compromises are required. Collaborations against art stealing within the network of international museum communities should be put on agenda. Establishing an international registry of artifacts and antiquities with displaced trajectories, peculiarly those being illicitly taken or pillaged from countries of origin, can be quite beneficial. This should be backed up by transnational-governmental support and sponsorship. And, this platform is supposed to allow for exchanging of statistical records between transnational law enforcement agencies and art communities. Feasibility and primary formats of this approach have already been verified and offered by programs and publications, with INTERPOL ^[19] and The ICOM Red List Database ^[20] approaching illicit trafficking based on a worldwide range. However, more is needed, as museum communities still need a cooperating system for reclaiming and repatriation of those seemingly lawful owned cultural legacies.

3. Initiative Return: Justification and Measures

With illicit accession, unmoral acquisition, and improper deaccession of pillaged cultural legacies continue, it is time for displaced cultural artifacts to find a way to be legally reinstated. Illegal nature of and detrimental impacts brought up by art crimes make it neither an unlawful approach nor the last resort towards cultural reclaiming. Additionally, since outcomes of licitly proper reinstatement such as purchasing, reciprocal exchanging, and diplomatic reclaiming approve depressing ^[21], the most feasible sustainable approach for the Chinese government is the promotion of return initiated by western museums which takes reflection, initiatives, and morality. The premise of this approach lies in the acknowledgment of justification of cultural reinstatement. However, the return of looted cultural patrimonies has been consistently objected to by Cultural Internationalists, also known as the Humanity Ownership Argument ^[22].

Proponents of Cultural Internationalism regard reinstatement as recrimination and claim that cultural legacies do not belong to one particular group of people. ^[23] Rather, they are legacies of “common humanity” ^[22]. Such argument has been supported by the assertion that national geographic boundaries, within which artifacts are forcibly fitted ^[23], are constructed by contemporary political influences and are

modifying throughout history^[24]. Furthermore, as has been put forward by Ortiz^[25], the 1970 UNESCO Convention, which remains in good standing with cultural reinstitution, “attacks collecting” and thus is “flawed, ideological and simplistic”. These seemingly plausible arguments simplify humanity by abstracting and generalizing individuality, as well as segregating humans from the societies to which they belong. Also, they fail to recognize the essence of contemporary culture and society, which is a construction built entirely upon differences, interactions, and ethnical fusion, which will continue to be shaped and contextualized by the shifting of various political, economic, and social powers. Hence, there is no such thing as a “human simpliciter”^[26], and cultural legacies that were unmorally and unlawfully taken should be returned to the culture and nation that produced and housed them. At the core of this is to return ownership of culture by placing culture’s physical presentations and legacies at the center of conceptual and geographical space.

Additionally, Cultural internationalists argue that reinstitution jeopardizes existing museum collections^[4] and this may topple the foundation of western museums, considering western museums have a better means to curate objects. What has been neglected here is the fact that looted artifacts and antiquities that are on display in public museums as well as those reclaimed by original countries merely constitute a small proportion of the whole pillaged volume with illicit provenances, with some remaining undocumented or unpublicized. Even though Jenkins has emphasized “positive developments”^[23] in the preservation of these plundered objects within museum sectors, it does not justify museums’ ongoing possession of looted artifacts. And alleged purposes of safeguarding and preservation do not imply the entitlement to accession and process another nation’s historical and cultural legacies. Recognition of the original country’s ownership of cultural artifacts does not interfere with its status as the cultural heritage of humanity. In fact, asserting obstinately against cultural reinstitution is a manifestation of putting the interests of their own country (importer) at the expense of the cultural heritage of original countries, and even of humanity as a whole, which is indeed a “crime against humanity”^[4] and obviously contrary to their advocates.

Above discussions reveal potential solutions and inspirations for source museums’ initiative return of looted objects. First is the formulation and enactment of a universally applied law. Since not all illegal exports are illegal imports^[27] and considerations of illegality are not always “straightforward questions of fact”^[27], reinstitution and legitimate provenance are of high ambiguity. Current ethical guidelines and legal principles do not bear enough binding power and fail to cope with the complexities surrounding reinstitution^[4]. Despite licit provenance and proper reinstitution have been stressed in the ICOM Code of Ethics^[28] and UNESCO Convention, they fail to fulfill their mission.^[29] And, the same is true for the previous two versions, as ethical guidelines are more readily applied for deaccessioning rather than accessioning and reinstitution.^[30] In practice, details regarding acquisitions provided in confidence or artifacts with commercial sensitivity are scarcely released.^[31] Also, not all countries have signed to comply with the 1970 UNESCO Convention. These factors have made it impossible for ethical guidelines to fill in the gap between insufficient legal principles on domestic and international bases. To promote proper reinstitution of once looted and plundered objects, the implementation of a new and effective “customary international law” has been constantly urged by Chinese museum practitioners since the 21st century^{[32][33][34]}. But it has yet to come around. Only when the museum communities can develop internationally binding laws can nations, especially those in the Third World with fewer discourse rights, have adequate sources and implementations to reclaim their legacies looted by theft or illegal exportation. Secondly, bilateral negotiations between museums for reinstituting and exchanging of objects should be arranged. While previous attempts have successfully sent antiquities back to Africa^[35], China^[36], Italy, and Greece^[3], they should be further encouraged. Important is that museums and exhibitions involving looted objects should become a nexus for different cultures and nations to discern, care and relieve their historical sufferings. And, marvelous objects kept in western museum storage, or even replicas of the reclaimed objects, can be alternatives for display after objects are returned to their original countries.

Initiative return can become an inspiration for museum communities to reflect on roles “objects” play in the postcolonial context and to realize that the ultimate goals of displaying are to serve the people who have created artifacts and to serve the culture in which these splendid antiquities were nurtured, produced and aboded. It is time for museum practitioners to look at the transformation of the functions seriously in postcolonial society. It can be reclaimed here that reinstitution is not all about a shift in national power nor a game of conflict-of-interest, it is more of a morality advocate for repatriation of the original country’s culture and history that have once been plundered and stolen. It is also a calling for an act of “atonement”^[24] and self-reflectiveness among museum sectors.

4. Conclusion: Working Together as a Community

Above discussions have examined illegitimacy surrounding reclaiming Chinese artifacts via thefts, before offering initiative return as the sustainable approach towards proper reinstitution. In this case, stealing leads to unlawful acquisition of objects and traps them within situations of detachment and de-contextualization that feature illegality of provenances and destruction of history. Hence, reinstitution of Chinese artifacts, particularly those which bear indispensable “sentimental and cultural value”^[37] should be achieved through initiative return. The case is the same for not only those that are most likely to have flowed into black markets but also plundered Chinese antiquities still owned by and displayed in western museums. As has been illustrated, combating art thefts and promotion of moralistic return for proper reinstitution of Chinese properties necessitates collaborative participation within the network of museum communities, including improvements of legal formulation and enactment on domestic and international bases, introduction of an official registry of artifacts worldwide, enhancement in museum management regarding security and accessioning, and negotiations between museums.

Issues inherent in repatriation is at the core of what museum should contribute to in the postcolonial context.^[38] It remains problematic to safeguard the integrity of cultural properties of humanity until both original and import nations put aside discontent and agree to reciprocate and join in the discourse on an equal basis. This requires working jointly as a community for the preservation of the legacies of humanity.

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