

# Customary Law, Cultural Stewardship, and the Restitution of Benin Heritage Objects: Reassessing Ownership and Custodianship

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## Abstract

The removal of cultural objects from the Benin Kingdom following the British punitive expedition of 1897 represents one of the most significant episodes of cultural dispossession in colonial history. Thousands of artefacts—commonly referred to as the Benin Bronzes and encompassing works in bronze, ivory, coral beads, and other media—were forcibly removed from their original context and dispersed across museums and private collections worldwide. These objects were not merely artistic creations but constituted living cultural heritage, deeply embedded in the spiritual, political, and ritual life of the Benin Kingdom. Their transformation into museum artefacts has, in many cases, obscured their original meanings and functions. As contemporary international debates increasingly focus on restitution and the return of Benin cultural objects, questions of post-restitution ownership, custodianship, and conservation have assumed central importance. This article examines these questions through the framework of Benin customary law and indigenous governance structures. Drawing on local jurisprudence, cultural practices, and historical norms, the study argues that traditional legal principles provide a coherent and legitimate basis for determining ownership and stewardship of restituted objects. Within Benin customary law, these cultural objects—understood as *Emwin Arre*, or living heritage—are intrinsically linked to the institution of the Oba of Benin. Their ownership is collective yet vested in the monarchy as a custodian acting on behalf of the community, ancestors, and future generations. The article contends that restitution processes which disregard indigenous legal systems risk reproducing colonial patterns of exclusion and misrecognition. Instead, meaningful restitution should include the restoration of cultural authority and decision-making power to traditional institutions. The article concludes that the Royal Palace of Benin, operating within established customary norms, represents the most appropriate site for the preservation, protection, and public sharing of these restituted cultural objects.

**Keywords:** Benin cultural heritage; restitution law; customary law; ownership and custodianship; colonial expropriation; living cultural objects.

## Introduction

In reflecting upon the ownership of cultural heritage objects, we argue in this article for the customary rights approach to restitution. As policies surrounding the restitution debate take centre stage, traditional leaders and their communities need to be part of the discourse. In this regard, this article focuses on two issues, i.e. 1) the historical and cultural perspective of cultural objects as living heritage; and 2) the customary laws of the Benin people. We introduce a conceptualization of the historical narrative concerning how the cultural objects came into existence and the role of the guilds as protectors of

these skillsets. The evolutionary journey of native law into customary law within the Nigerian legal framework is discussed. In this context, we refer specifically to the Benin Kingdom as an entity which later evolved during colonization and then became part of present-day Nigeria. It also examines how the influences of traditional cultural objects transcend the ontologies on tangible heritage and the encasement of cultural objects in Western museums. The quest for restitution of the *Emwin Arre* (a Benin term for the Benin Collection: bronzes, ivories, beads, and other artefacts) and the question of ownership is further explored, while the article concludes with an analysis of the current interpretations of customary law within a restitution framework and the usurpers within it.

### **Reflections on the Customary Laws of Benin Kingdom and Its Living Cultural Objects in the Discourse of Ownership and Restitution**

#### ***A Design Consciousness Is Birthed***

The cultural objects of the Benin Kingdom in Edo State, located in Southwestern Nigeria, are numerous, historically significant, and cover a wide range of design schemata. The cultural objects that are known today depict individuals and household objects; for example, heads of Obas, Queens, and Chiefs, as well as face masks, chairs, bowls, etc.. The design consciousness and style of expression convey the creative ingenuity of the Benin guilds. The *Emwin Arre's* sophistication and symbolism, which date back many centuries, demonstrate the monarchy's capacity to use art as a dynamic tool of the State. The Oba of Benin, as the political and spiritual leader of the kingdom, became more ceremonial as a result of the cultural objects. The court art concentrated on the Oba's claim to divine origins and the *Emwin Arre* was preserved in the palace for use during rituals and festivities.

A glimpse into the majestic architecture of the ancient palace is provided by two significant cultural objects; namely a brass plaque with a bas relief sculpture of the veranda roof of the palace courtyard, and a bronze box modelled after one of the royal structures. This roof, which previously covered the Oba's ancestral shrine, was surrounded by leopards and supporting columns. A wide open-air courtyard in the middle was surrounded by a veranda with built-in seating that was supported by pillars. About 500 people could fit in the open courtyard, which was around 30 by 60 m. More than 850 bronze relief plaques were installed on the pillars that surrounded the open court. The hall had a tall canopy decorated with a cast-bronze snake, and the plaques adorning the pillars below showed images of courtiers and soldiers. The plaques gave an impression that the pillars were made of solid bronze as they were hung on all sides of the columns. The palace of the Oba and his chiefs were the reason for the *Emwin Arre* production. The *Emwin Arre* were positioned on structural earth altars that were devoted to previous Obas. *Emwin Arre's* signature sculptures often take on shapes that pay homage to Benin's royal forefathers. After an Oba passed away, his successor would have an altar built in a vast rectangular building and then hire carvers and casters from guilds to create artwork in memory of him. This would allow the new Oba to interact with the deceased Oba, thereby invoking a living cultural object as a medium.

### *Guilds as Protectors of Emwin Arre Creations*

Indigenous legal systems had regulated social relations before the arrival of colonial rule in Africa. These institutions were for the most part customary in origin and type. With the introduction of colonialism, a fundamental and far-reaching impact was wrought on the Indigenous social and legal arrangements, the results of which have downplayed the Indigenous legal system, dictated by the people's culture and belief system—a system that reveres the Oba as the most supreme. The Palace court art was organized to principally serve as a spiritual, socio-political, and economic heritage for the Palace, and by extension its people.

The guild system was initiated in the 1st century during the reign of Ogiso Kings. Ogiso Ere of Ogiso Igodo, the first in the Ogiso dynasty, in an effort to create economic reforms embarked on the development of multiple guilds. The guilds were artisan organizations which would initiate a series of royal creations for various festivals and cultural events in the Benin Kingdom. The guilds included the bronze casters' guild (*IgunEromwon*); woodworkers' guild (*Owina*); dancers' guild (*Ogbelaka*); ivory and wood carvers' guild (*Igbesanmwan*); weavers' guild (*OwinaN'do*); pot makers' guild (*Emakhe*); and the leather workers' guild (*Isohan*). The bronze casters' guild became the most popular art guild in Benin. The Benin bronze casting site is located along Igun Street in Benin City, which is home to the majority of the renowned bronze casting families in Benin.

The guilds served as Benin's forms of protection. For example, bronzesmiths had to be part of the *IgunEromwon* clan to be able to hone their craftsmanship. The craftsmanship skills were passed down through the lineages of the bronzesmith kins. The administration and protection of the guild was sustained by the conferment of chieftaincy titles to the heads of the guilds. *Inneh* was custodian and head of the art of bronze casting in the Benin Kingdom. The unifying force of the guild had been the Obas of Benin (before 1897) who were the grand patrons of the guilds, and regulated their activities and the ancestral shrine of Igueghae.

The *Emwin Arre* were viewed as art work to record events like the *Ugioro* festival, where the Oba celebrates the *Igue* festivals, and capture images of royal family members and decorate the Palace of the Oba of Benin and the Palace court entourage. The art of bronze casting continued to flourish until 1897. The impacts from the punitive expedition resulted in the collapse of the guild. In 1914, Oba Eweka II, the senior son of Ovoramwen, encouraged the guild of bronze casters to cast replicas of and replacements for the bronze creations that were taken from the royal ancestral shrine.

The succession of properties under customary law in Africa is executed in two ways, depending on the communities: patrilineal and matrilineal. The patrilineal is the most common in Nigeria and is based on primogeniture, whereby the eldest son ascends to the throne of his deceased father, and also inherits his properties absolutely and governs the inheritance in the Benin Kingdom. The native laws and customs of the Benin Kingdom practice this system of primogeniture. Within the Benin monarchy, the hereditary traditional title holders are known as chiefs, and the principal actor in the burial ceremony is the eldest surviving son of the deceased title holder. A well-established principle of the Benin native law and custom states that the deceased's eldest son is entitled to inherit the house where the deceased lived and died. This custom amongst the Benin is referred to as "Igiogbe".

In accordance with *Igiogbe*, Benin customary law, the family seat automatically goes to the eldest child on the death of the father. Regarding the return of the *Emwin Arre*, it can thus be argued that since the *IgunEromwon* received their royal charter by Oba Oguola in AD 1280, and used the cultural creations for the beautification of the palace, this enabled them to create a database of memories for the Benin Kingdom. This in turn makes the current Oba the eldest son of the house and the rightful owner to the artefacts according to *Igiogbe*. The *Igiogbe* constitutes a building that contains the ancestral shrine, wherein the head of the family and other family members worship the spirits of the departed ancestors. It also serves as the traditional family seat. This means that the British expedition against the Benin Palace—where the Oba was first exiled from and later died—the Palace is thus, the *Igiogbe* in this instance. The Oba's descendants are entitled to use the Benin principle of primogeniture customary law of *Igiogbe* to receive the returned *Emwin Arre*, because the royal ancestral shrine is still in the Palace of the Oba. Benin native law and the customs of "Igiogbe" are an application of inheritance law.

### ***The Evolution of Benin Customary Laws***

In the Palace court, the Oba, together with his Chiefs and the *Iyase*, enforced the laws and sat in judgment in the jurisprudence of the Benin customary law. These Indigenous or customary laws were usually unwritten and there are several such laws in different parts of Nigeria. Benin, as part of Nigeria, is the focus of this article. Customary law makes up the cultural customs accepted by the indigenes as what binds them in kinship. These kinship rules have a long history of law enforcement within communities, as recognized by the Nigerian Evidence Act.

The Nigerian courts uphold customary laws as a primeval rule of law, binding a specific community with rules that can change over time due to the rapid development of social and economic conditions, established in the *Alfa & Omega v. Arepo* case. In 1988, the Supreme Court of Nigeria adopted customary law in the case of *Kimdey & Ors v. Military Governor of Gongola State & Ors*. One major characteristic of customary law concerns its acceptance by the community as a binding rule of kinship. For the Benin kinship, this was a body of customs and traditions that regulated various aspects of their lives and transactions and bound every Benin indigene as "natural justice, equity and good conscience".

Following the British occupation and colonization of Benin, some of the customary laws and practices that were deemed "barbaric" and "primitive" were abrogated. This led to a gradual neglect and systematic interruption of kinship in customary laws. "Native Courts" were created, subject to the approval of a colonial administrator. By 1957, the Native Courts evolved into customary courts as a result of late colonial constitutional changes. Customary law covers various issues, such as land and matrimonial matters, debt and demands, guardianship and custody of children, inheritance upon intestacy, and other related matters.

However, issues relating to cultural artefacts are not addressed in the customary court system. As a result, the application and jurisdiction of the restitution of objects to original owners means that customary law faces lots of challenges. The nation-state that emerged at the end of British colonial rule did not represent the wishes and aspirations of the people, as colonialism undermined local institutions and imposed a "foreign" government. While the local rulers such as the Oba of Benin continued to maintain some authority over

their people, they now had to derive their staff of office from the Nigerian government, and their power over issues of jurisprudence has been greatly limited.

The Benin people have always revered the Oba of Benin as the propagator of their native law and custom. The proclamations made by the current Oba of Benin—His Royal Majesty Omo N'Oba N'Edo Uku Akpolokpolor, Oba Ewuare II—regarding native law and customs are regarded as binding. A well-organized traditional chain of command imposes severe traditional punishments on any sort of disobedience. The recognition of customary laws and protocols governing the restitution of the Benin Bronzes will need to include the perspectives of Benin communities within this dialogue.

### *The Emwin Arre's Journey as a Collection*

The Western perceptions of African art in the 19th century were negative, denying that African arts had the sophistication that was attributed to European arts. Though the economic value of what constitutes art shifted at the turn of the 20th century, collections from Africa were still seen as anthropological artefacts that provided knowledge about other people who were different from Western People. They were labelled as "native crafts" and not art. However, over time the perception of artefacts from Africa began to change, as did the way they were displayed. The *Emwin Arre* were transformed from living cultural objects of anthropology to objects that not only defined the Benin people, but Africa as a whole. In the words of Meyer Schapiro, "what was once considered monstrous now became pure form and pure expression". From this perspective, the *Emwin Arre* are now regarded as objects of value, attracting attention in their own right. The *Emwin Arre* were a collection from the ancestral shrines in the Palace; sacred communal and spiritual objects from individual shrines; and ancestral shrines from the dwellings of the community at large. The theft of the *Emwin Arre* cannot be considered as spoils of war, as this minimizes the effect of the crime committed against the Benins, who refused to be duped by a treaty. Rather, they were purposely collected to be sold to defray the cost of the punitive expedition. British officers disregarded the Benin customs during the reign of Oba Ovonramwen by invading the celebration of the annual royal rites. The retaliatory punitive expedition led to the loss of lives and livelihood of the Benin people, as the kingdom was razed by fire.

The theft of the *Emwin Arre* has exposed the once-revered living cultural objects to various acts of individuals who have desecrated the collections. *Emwin Arre* have been handled by commercial art dealers and Western auction houses, Western museums, private collections, and small institutions. A British officer, Capt. Herbert Sutherland Walker, described the heinous act in his diary as he recounted how a British associate was "wandering round with a chisel and hammer, knocking odd brass figures and collecting all sorts of rubbish as loot". It is worth noting that what he classified as "rubbish" were valuable items that were auctioned to collectors.

### *The Encasement of Emwin Arre in Museums*

Restitutions open up a deep reflection of historical, spiritual, and cultural significance. The circumstances that surrounded the losses of cultural objects and the past colonial trauma of oppression inform Africans that the formation and development of institutional Western museums in Africa are not the natural ways of Africans. African custodians have to be seen as the keepers of their heritage, using their own traditional methods. The

concept of a museum in its current form does not represent how the Africans have showcased their living cultural objects.

The exhibition of living cultural objects is intertwined with intangible heritage at three levels within the African contexts: the home, communal spaces, and the Palace (residential, spiritual, and institutional buildings). The *Emwin Arre* were not created to be kept in glass cases in Western museums, nor as a Western taxonomy for knowledge-gathering. The decolonization of living African cultural objects begins with the restoration of their ancient interpretation guidelines, meanings, and values as royal sacred objects. African living cultural objects were created to be kept within family homes and their ancestral shrines and communal kinship compounds; and with the majority of the living cultural objects designed for the Palace, to be placed at ceremonial shrines and displayed during festivals and cultural events. Within the family, residential spaces constitute personal shrines for revered deities. The *Emwin Arre* belonging to each household are displayed, worshipped, and honoured. In Benin, the Oba is regarded as the highest custodian of culture and serves as its principal gatekeeper; hence the best of the society's creativity is stored within the Palace.

The interpretation ascribed to *Emwin Arre* by the global North indicates a lack of intangible heritage understanding and a false concept of perpetuity. The Western practice puts objects through a process of preservation of the tangible, which creates a lacuna in the objects' living intangible heritage. For example, the Igbo *Ikenga* is made to serve, deteriorate, and expire when the human linked to the object dies. The lifecycle of heritage objects is equally as important as the spiritual attributes that dwell within them. The "proper" preservation conditions in Western-style museums often impede the spiritual validity of these valuable living cultural objects.

### ***The Quest for the Restitution of Emwin Arre***

The 19th century restitution movement eventually culminated in the codification of the restitution principles in the Brussels Conference of 1874; the Hague Convention of 1899; and the Hague Convention of 1907. However, these Conventions only systematized the existing state of international law, and did not create any new commitments to restitution. The British claim to the Benin Bronzes and ivories rests on the 19th-century international law on the spoils of war, as applied to non-European people.

However, the current clamour for their return—and President Emmanuel Macron's statement in 2017 at Ouagadougou; coupled with the follow-up effect of the Black Lives Matter movements—has prompted fresh demands for the restitution of artefacts. The basis for their restitution has become the new concept for the protection and preservation of the integrity of national cultural heritage.

In Felwin Sarr and Bénédicte Savoy's 2018 report, restitution simply meant the return of cultural objects, without conditions or stipulations. The report recommended a restitution process based on legal frameworks, which meant to re-institute the cultural items back to the legal owner. How then can restitution be complete or permanent? A simple definition of the term seems to elude the West. As a result, temporary solutions that encourage some form of accessibility and jurisdiction by the West and their institutions tend to be favoured as a condition for restitution. President Macron's proposal to allow for the "circulation" of African art cannot be described as a path to a proper restitution process.

Germany is currently working towards developing an agreement on how to best reconstitute the *Emwin Arre* in their possession. Germany's efforts however have raised many questions: 1) What law governs the return of these collections? 2) To whom will they be returned? 3) Will they be returned permanently or temporarily?. Such dialogues however continue to involve only the Nigerian government officials, whose limited policies are guided by bilateral relations agreements. Nigeria needs to enact processes for the restitution of *Emwin Arre* in alignment with Benin customary law. The Nigerian National Commission for Museums and Monuments Act of 1990 ("the NCMM Act") has become inadequate for restitution processes in the current international arena.

### ***State vs Communities (Palace, Legacy Trust, Edo State)***

Nigerian officials and the Benin Palace court in 2007 participated in an exhibition in Vienna. By 2010, the Benin Dialogue Group (BDG) officially developed a workshop titled "New Cultures of Collaboration, Sharing Collections and Quests for Restitution: The Benin Case". The BDG focused on "loans" and "sharing", both of which reinforce the colonial attitude denying Africans their cultural heritage and legacy.

When issues of restitution are brought to the fore, they are discussed on the basis of moral grounds. The quest for a restitution policy based on moral and ethical grounds has been deemed ineffective and thus a justification for the delays in the return of the *Emwin Arre*. However, it behoves the Oba of Benin to ensure that there is no conceivable alternative but for the *Emwin Arre* to be returned to Benin. The Oba of Benin has this right through his customary court to seek the return of the *Emwin Arre* using the principles of primogeniture.

In 2018, the Governor of Edo State gave his support for a Benin Museum to be developed, led by an independent trust—the Legacy Restoration Trust (LRT)—and to develop a cooperation model between the Edo Museum of West African Art (EMOWAA) and the NCMM. This ambitious project was intended to create a modern-day museum embodying international practice. All of these plans made without the input of the Benin Community and the Palace court—resulted in the Palace stating that the Oba has been duped in the custodianship negotiations.

### **Conclusions**

This article has examined Benin's customary law as the basis for the return of the *Emwin Arre* to the Oba's palace. We have argued that according to the customary laws of Benin, the *Igiogbe* provides a legal framework for the ownership and the restitution of these collections. This rule of customary law has been in place for many centuries, and the Benin people uphold its application as sacred.

In the matter of a restitution process, the return of the *Emwin Arre* will require a clarification that only the Oba, as the custodian, can apply. This will ensure that the histories, identities, and memories of the Benin people are preserved and protected through the Palace and the Palace court. The decision over the fate of these collections does not lie in the hands of international museums and collectors, who have illegally obtained and imprisoned these objects, but in the hands of the Oba and his people, who have an ancestral mandate to preserve, protect, and transmit Benin culture to future generations. Attempts to deny the Oba's ancestral responsibility as enshrined in the local

customary law is an infringement on his divine mandate and a perpetuation of the Euro-American colonial project.

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