

PART V

TOWARDS

A NEW ETHICS

At three major moments in the history of art robbery, Western and Southern Europe have had the leading roles. The first was in Europe's colonial territories, in the so-called 'distant' or 'imperial' colonies, that is, far-off territories in Latin America, Asia and Africa. This was the subject of the previous chapters. The second was in settler colonies in South Africa, the United States, Canada, Australia and New Zealand. Settlers were Europeans who had left their continent for good and cut administrative ties with their mother country. They conquered territories, enslaved the peoples who had lived there since time immemorial and confiscated fertile and mineral-rich lands. As in the distant colonies, the newcomers in settler colonies appropriated cultural artefacts and ancestral remains on a large scale. Most are still in museums and private collections in North America, South Africa, Australia and New Zealand, but museums and private owners in Europe also possess many of them.

The third moment took place under the Nazi regime. You come across stories about it, for example, from the descendants of art dealer Jacques Goudstikker and collectors such as Franz Wilhelm Koenigs, Baron Mór Lipót Herzog or Maria Altmann, who all reclaimed looted works of art. Sometimes, this moment comes even closer to home, as it does in the story of a Jewish family who lived in my street. In the Second World War, the father and a son perished in Auschwitz. The mother and three other children survived. Their next of kin have been trying to get compensation for all the valuables that disappeared from their house.

For a long time, the three moments were viewed as separate events. Nowadays, they are more often linked. What they have in common is

that they are seen as moments of great historical injustice and that the redress for each of these moments and possible returns are increasingly seen as a moral obligation. Of course, there are major differences between the three, especially between the Nazi plunder on the one hand and looting from remote and settler colonies on the other, and there are differences in the means by which the restitution demands associated with each moment can be substantiated.

But it is worth finding out whether former colonies can benefit from the way in which descendants of minorities in settler colonies and victims of the Nazi regime deal with claims. Since looted art from distant and settler colonies has much in common, we will first examine how minority communities in settler colonies deal with it. What means are available to them and do they succeed in recovering objects and remains of ancestors? Then we will look at how victims of Nazi art theft fare.

Lastly, I will tell you about a round table. On the agenda is a disputed colonial object, and anyone who feels they have a stake in the object is invited to join in. The conversation turns to where this object is best at home. In order to give shape to the conversation, I have formulated guidelines that parties from the Global North and South around the table can use as a basis to see if they are really making progress. They emphasise trust, equality and justice, or rather, diminishing mistrust, reducing inequality and, to the best of one's ability, undoing injustice.

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LESSONS FROM SETTLER COLONIES AND THE RESTITUTION OF NAZI-LOOTED ART

From around 1600, Europeans began to settle in Australia, Canada, New Zealand, the United States and South Africa. They encountered peoples who had lived there for a long time: Aboriginal peoples in Australia (ca. 45,000 years), First Nations in the United States (ca. 12,000 years), Khoisan in South Africa (ca. 2,000 years), Inuit in Canada (ca. 1,000 years) and Māori and Moriori in New Zealand (several centuries).

The way in which the newcomers dealt with these peoples fills us with revulsion today. In 1652, on behalf of the VOC, Jan van Riebeeck from the Dutch town of Culemborg founded a refreshment station for ships sailing between the Republic and Asia at Cape of Good Hope in South Africa. Soon families from the Republic settled there permanently. They chased the Khoisan from their ancestral lands and brought in forced labourers from the Indonesian archipelago and South Asia for heavy agricultural work and domestic work. With their arrival, many Khoisan died of disease and violence, and their numbers declined sharply.

Similar things happened in other settler colonies. The newcomers introduced rules and laws that served their own interests but were alien to the original population. The latter knew, for example, only communal and no individual property. And like their European fellows in the distant colonies, settler colonials presented their approach as part of a civilising mission.

In New Zealand, this led British arrivals to trample on the Māori's rights to their own land and resources and to plunge them into poverty. In the United States, Europeans forced indigenous peoples to live in reserves, where they withered away. Under the slogan 'kill the Indian in the child', church and state in Canada snatched indigenous children

from their communities to give them a Christian education in boarding schools. Most of the native populations resisted but had no answer to the military superiority of the newcomers from Europe.

AN OBJECT FROM 1613 DISAPPEARS

The Europeans took away massive amounts of ancestral remains, grave finds and other sacred objects from the oldest inhabitants. Most of these ended up in private collections and museums in the settler colonies themselves. Many also moved to Europe, as can be seen in museums here. As already mentioned, several museums in the Netherlands and Belgium acquired tattooed Māori heads. Two have Andean mummies and accompanying grave goods. Several have painted tree barks, masks, gourds, baskets, moccasins, caps, spears, shields, fishing tackle and water jugs from North America. Remains of Aboriginal people were found in Leiden. Objects from the Inuit were abundantly on display at the exhibition *Netsilik-Inuit from the North of Canada* (1991) in the former Etnographisch Museum in Antwerp and at the exhibition *Canadian Inuit Art* (2018) in Museum Volkenkunde. The Leiden museum showed clothing, drawings, weapons, jewellery, ceramics, photographs and utensils from private collections belonging to, among others, the Dutch Princess Margriet and her husband, Pieter van Vollenhoven.

Over the years, objects from settler colonies have also disappeared. A *wampum* from 1613 is one such example. Wampums are belts of white and purple beads with which the Iroquois, a confederation of several indigenous peoples in the United States and Canada, seal promises, agreements and treaties. The wampum in question is of great value, not only because of its age but also because of the role it played: the sealing of the Two Row Wampum Treaty between the Iroquois and Dutch settlers in New Amsterdam (now New York). In the treaty, the parties promised to leave each other alone and respect each other's territory and religion. Such a promise was special because it exempted the Iroquois from the European custom of granting a new territory to the occupiers and invalidating the property rights of the people who had long lived there.

Sometimes the wampum from 1613 turns up in an article that suggests that it is in the Netherlands. However, when I approach the authors concerned, in the Netherlands or in the United States, they have no concrete information. Gerrit-Jan Merslam (*Vlieg*, e-story 64), who attended the celebrations for the four-hundredth anniversary of the treaty, writes to

me that the original belt ‘no longer exists, nor does the Netherlands have any written historical document that testifies to the treaty, but the existence of the treaty is confirmed in the hundreds of years of oral tradition of the Iroquois.’ There is ‘a replica: three rows of white beads embodying a triple obligation of “friendship, peace and forever”, separated by two purple rows of beads, one of which symbolises ‘a canoe’ of the Iroquois and the other ‘a sailing ship’ with Dutchmen ‘as equal partners’.

The Two Row Wampum Treaty still plays a role in American land ownership jurisprudence. The Iroquois leaders would like the wampum back; it will evoke the spirit of their earliest encounters with Europeans. If found in the Netherlands, there is no legal obligation to hand it over, but perhaps it is the kind of object that belongs more in the country of origin than here.

A SPECIFIC APPROACH

There is a difference between the restitution wishes expressed by indigenous peoples and claims by distant former colonies. In the case of the former, the emphasis is on remains of ancestors, grave clothes and other goods. Ancestors only come to rest when their body parts are united and lie in their own soil. The Māori heads that were repatriated are an example. Governments in distant former colonies are often keener on objects that help to strengthen the unity and identity of their countries.

The latter is certainly true in Africa. DR Congo, Nigeria and many other African countries are still struggling with the borders that the European participants in the Berlin Conference drew. The European leaders sometimes divided one nation over several states or squeezed several nations into one state. In their efforts to strengthen the political identity of the country, African governments sometimes come up against the desires of peoples who were unwillingly brought together but are so different. For these governments, war trophies (weapons, battle flags) and the remains of national heroes are important. They must provide unity and commonality.

Over the years, indigenous peoples in former settler colonies have become better organised. Their restitution requests are more fruitful. In the United States, the black civil rights movement and mass resistance to the Vietnam War in the 1960s became an inspiration for them. It paid to have your voice heard. In 1990, the ground-breaking Native American Graves Protection and Repatriation Act (NAGPRA) was introduced. It requires federal agencies to inventory ancestral remains and cultural objects be-



ABOVE: *Example of a wampum belt, eighteenth century, North America.* © National Museum of World Cultures Collection (RV-364-1); RIGHT: *Wampum bag, exhibition First Americans – Tribute to Strength and Creativity.* © National Museum of World Cultures Collection (RV-720-2)

longing to First Nations that are in their possession. The number was estimated at 10 to 15 million pieces. The government offers assistance, even if the requests are made to foreign countries. In Canada, a similar development is taking place. Legislation has been improved. One Canadian province has a repatriation manual, drawn up in close co-operation with indigenous communities. In both North American countries much has been returned, according to Vanessa Tünsmeyer (*Repatriation of Sacred Indigenous Cultural Heritage and the Law*, 2020, pp. 29–30), but the balance of power is still often unequal and much remains to be done.

In Australia, Aboriginal peoples began to organise more strongly in the 1970s and 1980s. Initially, this involved the return of territory with ancestral graves, which had been taken from them for mining purposes.



Later, with the help of progressive curators, they asked museums for the return of remains and burial objects of ancestors. At the end of the last century, Māori and Moriori in New Zealand also began to take a stronger position. Developments in Australia and New Zealand give the impression that the law is increasingly in line with current attitudes and that a new phase is beginning in which three actors – government, national community, indigenous people – make a joint effort to return their rightful property to the indigenous peoples. In this phase, trust and respect for the rights and customs of the oldest inhabitants are central.

In South Africa, too, communities, museums and the government are joining forces. The Khoisan, who were the largest group in the area before Van Riebeeck's arrival, now make up only 1 per cent of the population and are divided among thirty-six communities. After apartheid was abolished in 1990, they received financial support from the government and practical assistance from Iziko Museums in Cape Town. These museums began by returning ancestral remains from their own collections to Khoisan communities. They then used their international connections to bring back such remains from Europe.

In the Netherlands and Belgium, too, it is noticeable that indigenous peoples are standing up for their rights more. In 2020, Museum Volkenkunde in Leiden organised the exhibition *First Americans – Tribute to Strength and Creativity*. Exhibition maker Henrietta Lidchi tells me: 'I had been working on this for years, and succeeded in making the exhibition together with a curator and some First Americans artists. They largely decided how their history, resilience and future would be portrayed. There were objects from Leiden depots, but they were chosen because they had something to do with their contemporary work or issues.'

The National Museum of World Cultures (of which, to reiterate, Museum Volkenkunde is a part) recently took an unusual step. It has made the Zuni people in New Mexico aware of some of the twin gods in its possession. 'They are known as the Ahayu'da, sculptures with ceremonial power and intended as health gods', says Lidchi. They are made during the winter solstice and carved by members of the deer or bear clan. They are then entrusted to priests who place them in shrines. The museum has alerted the Zuni to the procedures for reclaiming them. That means it actively encourages original owners of objects to file restitution claims. Once back in New Mexico, they will be left outside,

exposed to the elements and allowed to decay naturally. Lidchi says: 'Returning them means accepting that they are under the control of a sovereign people who will determine the most appropriate way to dispose of them. It is as it is, we as a museum think, because it is no longer up to us to decide.'

Since 2017, the AfricaMuseum in Tervuren has been consulting with the Nunavut Arctic College in northern Canada on the digitisation of the Inuit collection and its documentation in Tervuren. It is a modest beginning; the momentum has yet to build.

UN DECLARATION IN SUPPORT OF INDIGENOUS CLAIMS

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was accepted. It is the result of a years-long struggle for recognition of the injustices done to indigenous peoples and offers support for restitution claims. The declaration starts with what seems to be a self-evident statement: indigenous peoples are entitled to all human

In 2009, an Aboriginal delegation collected human remains at Leiden University Medical Centre. © Arno Massee



rights and fundamental freedoms. Isn't everyone entitled to them? The reality is different. Indigenous peoples still face disadvantages. **UNDRIP** recognises their right to self-determination and to economic, social and cultural development. They have the right to preserve and revive their cultural traditions and customs. Article 12.2 stipulates that states shall seek to promote 'access to and/or repatriation of ceremonial objects and human remains' in their possession, using 'fair, transparent and effective mechanisms' developed 'in cooperation with the indigenous peoples concerned'.

A declaration like this is non-binding, so those who violate it cannot be taken to court. Yet it has received widespread support, including from the governments of former settler colonies. Critics, however, question its effectiveness. They say the declaration came as a bolt from the blue in most former settler colonies: most were already working to strengthen the rights of their indigenous inhabitants and **UNDRIP** would add little. But a 2017 report by the UN Human Rights Council called the declaration the most far-reaching and comprehensive tool available to indigenous peoples. One might argue that **UNDRIP** has not led to immediate concrete returns, but it has greatly strengthened the position of indigenous peoples in restitution claims.

Would the return of collections to former remote colonies be easier if Europe adopted a declaration like **UNDRIP**? By Europe, we mean likeminded countries like Belgium, France, Germany, Great Britain, the Netherlands, the Scandinavian countries and Switzerland. Such a declaration can increase former colonies' trust that former colonisers genuinely want to deal with their colonial collections in a new way. At present, mistrust keeps some former colonies from submitting restitution requests. Too often, they have knocked on Europe's door in vain.

PRINCIPLES FOR CLAIMING NAZI ART

The demand for a **UNDRIP**-like declaration leads to another declaration that was established for another moment in art theft: the Nazi art looting. During the Nazi regime, millions of works of art, books, libraries, archives and other cultural treasures, most belonging to Jewish families and institutions, were confiscated. Much of it was burned at the stake, auctioned off, sold or squandered. The leaders of the regime confiscated numerous objects, and it also happened that neighbours took things from Jewish families who were forced to flee or deported and never

returned, or who did return but saw their requests for the restoration of their belongings rejected by the new inhabitants.

From the end of the Second World War onwards, specialised Allied units searched warehouses, museums and other places where the Nazis may have stored works of art. What they found was returned to the governments of the countries from which it had been stolen. These governments, in turn, lent the valuables to their museums and other institutions. This included the governments of the Netherlands and Belgium. This left the descendants of the rightful private owners and dealers empty-handed. After the war, the Netherlands had recovered more works of art than Belgium. This had to do with the size and composition of the Dutch Jewish population. The Netherlands had had a large Jewish community for centuries. In Belgium, many relatively poor Jewish immigrants had arrived in the 1920s. The Nazis had less to gain from them.

It was only in the second half of the 1990s that governments that had profited so much from these post-war returns began to realise that their owners' descendants had been seriously wronged. Art historian Rudi Ekkart, who led the investigation into Nazi-looted art in the Netherlands and was the first chairman of the Restitutions Committee, and investigative journalist Geert Sels, who conducts similar research in Belgium, are both critical of their countries' restitution policies. The Ekkart Committee (Commissie-Ekkart, *Herkomst gezocht/Origins Unknown*, 2006, p. 28) called Dutch policy 'formalistic, bureaucratic, cold and often even heartless'; Sels ('Kunst voor das Reich', 2017) called that of Belgium 'lamentable' and 'heartless'.

In 1998, this awareness led governments in Europe and North America to adopt the Washington Conference Principles on Nazi-Confiscated Art. These principles stimulate the Netherlands, Belgium and other signatories to actively seek public collections for looted works of art and to return them to their rightful owners. They ask for understanding for the fact that there were large gaps in the provenance of many pieces and that parties seek fair and just solutions, preferably outside the courtroom and using alternative means of conflict resolution.

Can the Washington Principles be made applicable to colonial collections? Some legal experts and historians, of whom I asked this question a few years ago, frowned at the idea. There would be resistance from Jewish organisations working for the restitution of Nazi art. You shouldn't compare apples to oranges, you cannot tar colonial looted art

and Nazi looted art with the same brush, they argued. I came up with even more counter-arguments myself. Nazi plunder had been part of an internationally recognised *genocide*. Colonialism was about *exploitation*, even if it regularly bordered on genocide – think of First Nations in North America, the peoples in Leopold’s Congo or Nama and Herero in Namibia. Nazi looting was more recent, within one continent, and lasted a relatively short time. Looting from colonial areas began a long time ago and continued well into the twentieth century. There is considerably more documentation on Nazi-looted artworks than on dubious colonial collections, which has implications for the evidence. The descendants of duped Jewish and other former owners are easier to trace, whereas with colonial looted art it is sometimes unclear to whom objects should be returned. One difference was rarely mentioned and apparently it touched a nerve: Nazi robbery had taken place in the Netherlands and Belgium themselves – they had been occupied and been victims of it. In the case of colonial art theft, the Netherlands and Belgium had been perpetrators.

WHAT ABOUT CLAIMS FROM FORMER COLONIES?

The main argument in favour of creating something similar to the Washington Principles for looted objects from former colonies is that here, too, a great historical injustice has been committed. They have in common massive loss, pain, violence and the dehumanisation of the victims. In Africa, people have been making the link already for some time. Aimé Césaire (1913–2008), a poet from Martinique (*Discours sur le Colonialisme*, 1955), called fascism ‘the application of colonial procedures to white people’. David Olusoga and Casper Erichsen (*The Kaiser’s Holocaust*, 2010, p. 3) compare the idea behind and the methods used during the murder of millions of Jews and others in the Second World War with those of the Namibian genocide (1904–1908) – which left 80,000 Nama and Herero dead – and of the exhaustion and violence in other colonial areas. They speak of ‘colonial amnesia’ among those who do not want to see the parallels.

That amnesia is diminishing. The Dutch Council for Culture, in its advice on dealing with colonial collections of October 2020, mentions Nazi looted art, albeit briefly, and uses the term *involuntary loss of property* for colonial looting, a term that has been used in cases involving Nazi looted art. In 2018, in the exhibition *Collected. Bought. Looted*, museums in Frankfurt put Nazi looted art and colonial looted art under

the same magnifying glass. The NIOD Institute for War, Holocaust and Genocide Studies in Amsterdam and the Dutch Restitutions Committee addressed both moments of art robbery at an expert meeting in 2019.

Would former colonies benefit from a Europe-wide declaration of principles about their right to the return of involuntarily lost collections? Something similar to the Washington Principles or UNDRIP for indigenous claims? Until now, European countries have involved in undoing colonial injustice at the national level. For example, in 2017 President Emmanuel Macron announced, in Burkina Faso, a new French restitution policy for Africa. In 2019, Germany declared that it would actively seek out rightful owners of colonial collections, and in early 2021, that Benin objects would be returned to Nigeria. In the Netherlands the Minister of Culture declared in early 2021 that she would unconditionally return looted art and other dubious collections to former Dutch colonies. In 2021, the Belgian government announced a new policy, transferring the property of proven looted art to DR Congo.

But not one of those countries has taken the initiative for a Europe-wide approach. The Dutch minister is in favour of ‘knowledge exchange’ with other European former colonial powers and of ‘museum co-operation’, but does not go any further. We are waiting for a Europe-wide declaration that will strengthen the confidence of former colonies in a happier ending.

Nazi loot, loot from old settler colonies and loot from distant former colonial possessions are three key moments in the history of art robbery and are comparable historical injustices. Their victims are therefore all equally entitled to reparations for this suffering. This general principle can be the impetus for the recognition of the suffering of colonised people and restitution of colonial collections. The experiences with the restitution of Nazi looted art and looted art from settler colonies show that widely accepted principles or a widely accepted declaration make it easier for victims to back up their demands. Victims of looting and other involuntary loss of property in former colonies would benefit from a generally recognised declaration of intent from former colonisers.