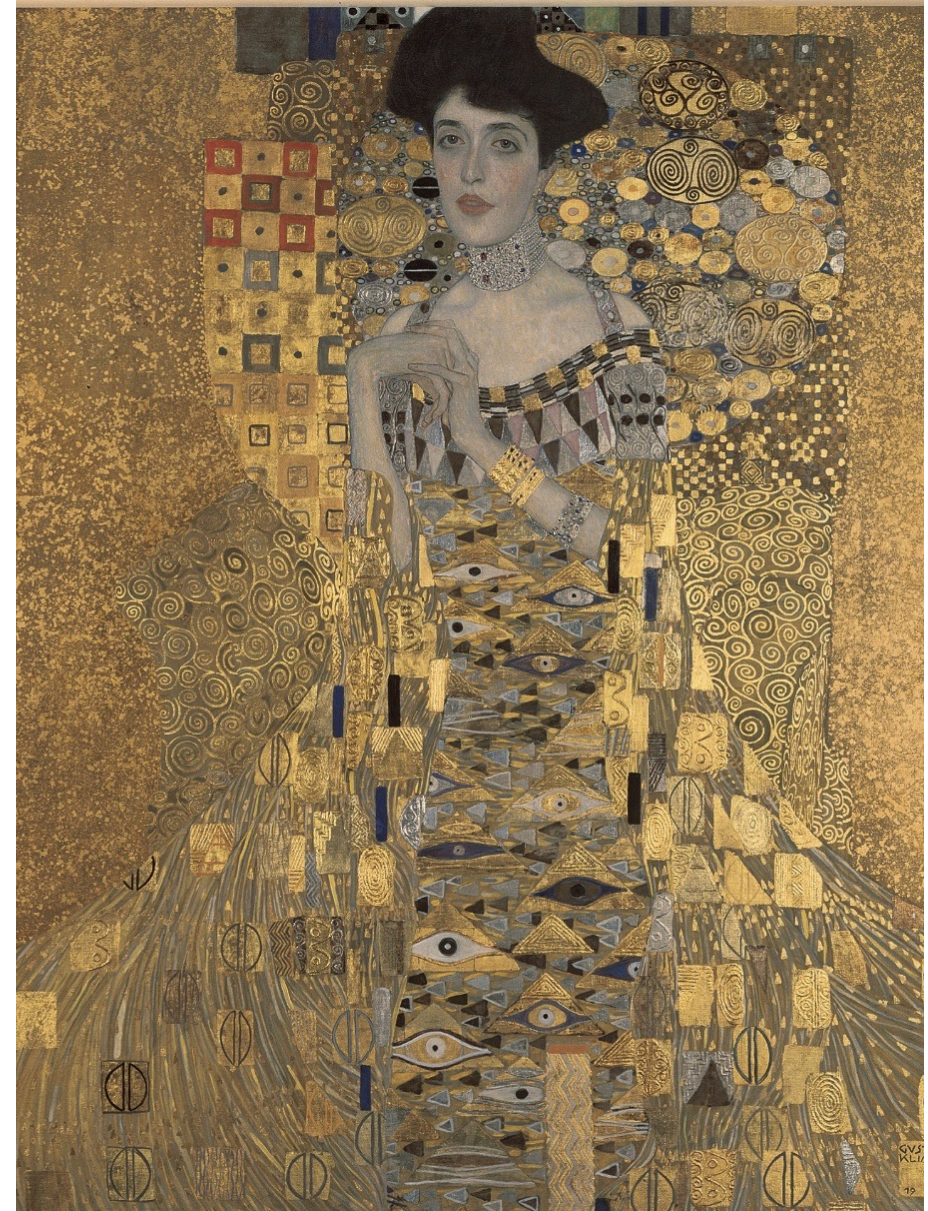


Restitution of looted art

Dr. Evelien Campfens

7 May 2024 | CLE Abroad & US attorney associations





Overview lecture

Categories (colonial, Nazi, present-day)
Legal & ethical standards (focus Europe)
Developments

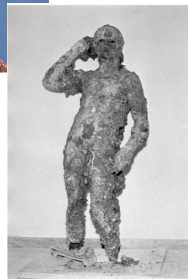
European court affirms Italy's right to seize ancient bronze statue from LA's Getty Museum



Copyright Credit: AP Photo/Nick Ut

By Theo Farrant & AP

Published on 03/05/2024 - 13:16



The Statue of a Victorious Youth, around 300BC-200BC, as it appeared shortly after its recovery from the Adriatic Sea, before conservation. J. Paul Getty Museum

Getty vs. Italy (ECtHR 2 May)

- Ca. 300 BC: Greek sculptor Lysipos (?)
- 1964: (international?) waters off Italian coast
- 1977: Getty acquires bronze for \$4 million
- 1989: Italy requests return
- 2018: Italian supreme court issues confiscation order
- **2 May 2024:** ECtHR denies Getty's complaint (violation right to property): "nearly 50 years of public possession & neither created by an Italian artist nor found within Italian territory"
- ... appeal?

Jeroen Bosch or 'El Bosco'?

Petitie kunstliefhebbers moet Tuin der lusten van Jeroen Bosch naar Nederland halen

12 januari 2016 | Laatste update: 28 januari, 17:21



Winners takers?

1625 "There are some things .. which reason itself requires to be spared even during war. .. Such are temples, statues and all other elegant works and monuments of art." *Hugo Grotius*

1815 Congress of Vienna 'restitution principle of justice *amongst civilized nations*'



Colonial-era takings



'Universal Museum'

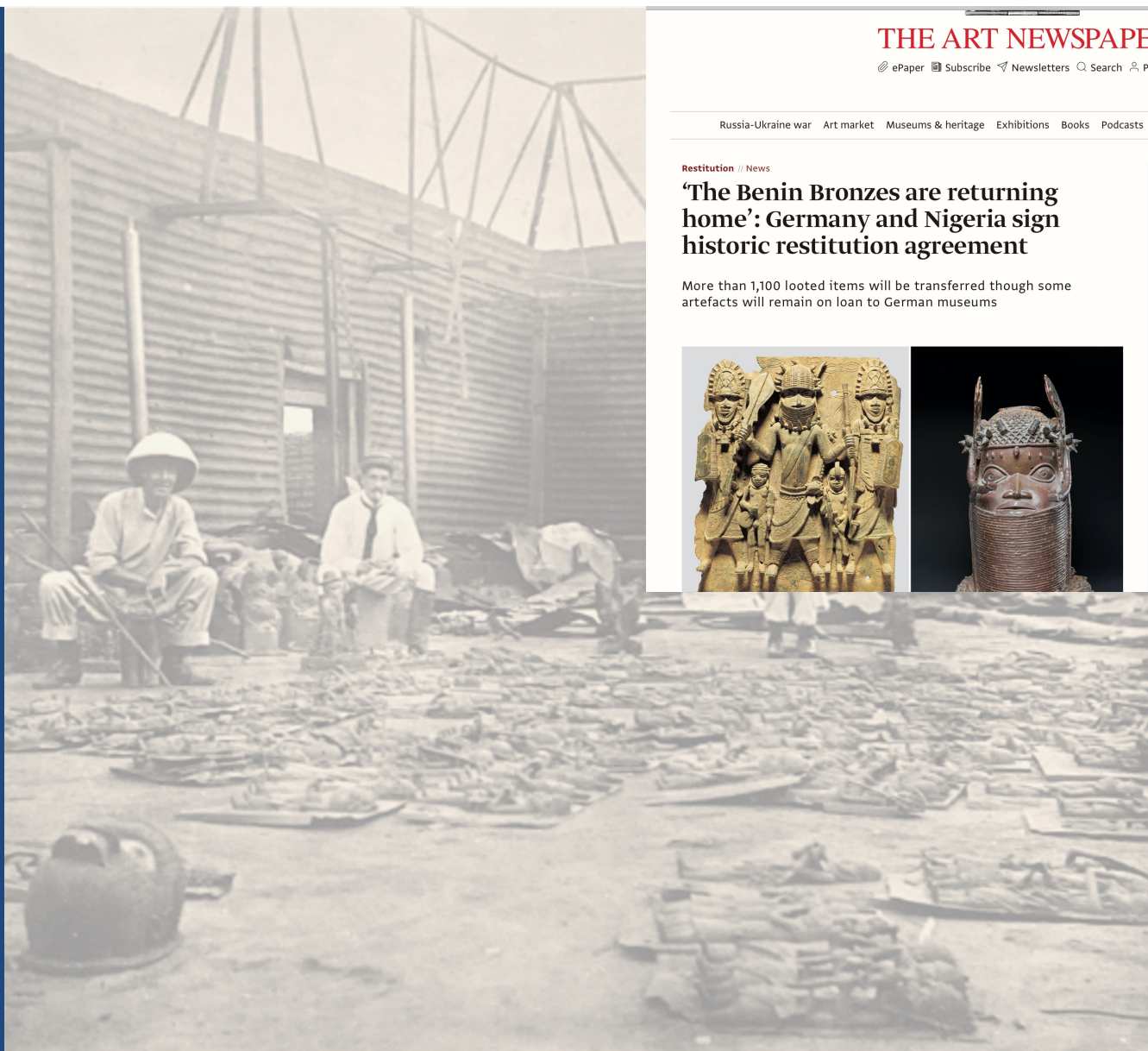


Colonial booty

The palace of shame that makes China angry

by Chris Bowlby
BBC News, Beijing

February 2015



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Restitution // News

'The Benin Bronzes are returning home': Germany and Nigeria sign historic restitution agreement

More than 1,100 looted items will be transferred though some artefacts will remain on loan to German museums



Lawful?

1625 "There are some things ... which reason itself requires to be spared even during war. .. Such are temples, statues and all other elegant works and monuments of art." *Hugo Grotius*

1815 Congress of Vienna 'restitution principle of justice'

1899 Hague Regulations: "seizure or destruction of works of art is forbidden and should be made the subject of legal proceedings"

➤ *NB: 'amongst civilized nations' (=> sui generis category)!*

Soft law



< 1973: over 20 UN GA Res. on 'Return or Restitution of Cultural Property to the Countries of Origin' urging 'return of cultural property that is of fundamental spiritual, historical and cultural value'

= right to self-determination of newly independent states

1978: UNESCO Intergovernmental Committee for Promoting the *Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriations (ICPRCP)*

ICOM Ethical Code (1986):

"Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin."

Developments in Europe



France: Sarr/Savoy Report (2018)

- Follow-up: return 26 sculptures to Benin (Dec. 2021)
- *Draft law pending?*

Germany: Policy framework (2019):

Return if acquired “in ways that are legally and/or ethically unjustifiable today”

- Follow-up: agreement with Nigeria

The Netherlands: Policy framework (2021)

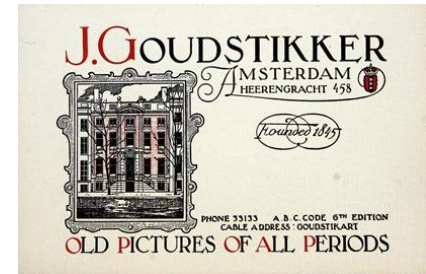
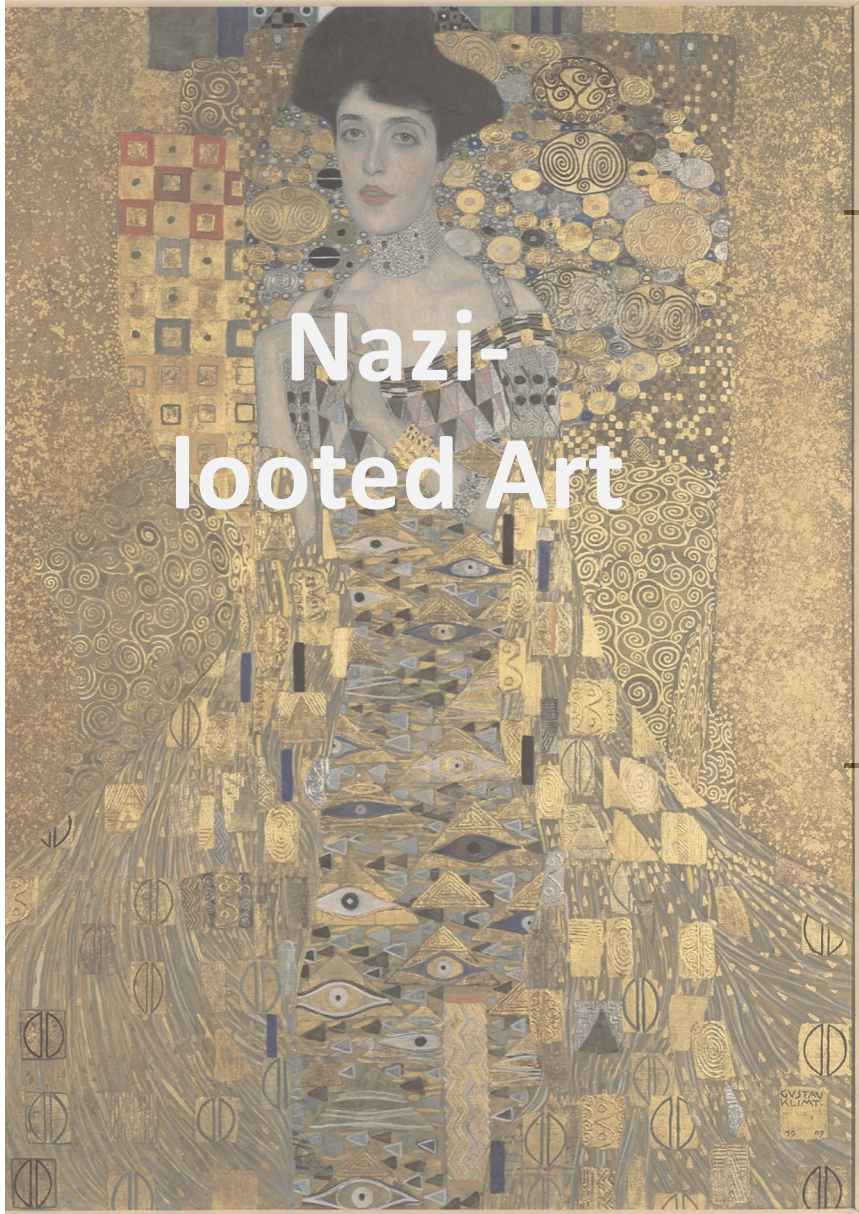
Focus on former colonies

- Follow-up: Special Panel & 2023 first returns

Belgium: law enabling return to former colonies

UK: 2022 Arts Council Guidelines: procedure

- Legal constraints to return (Charity Act) & policy of “retain and explain”



Rosenberg's indictment at Nuremberg

“Acting under Hitler’s orders [Rosenberg] organized the ‘*Einsatzstab Rosenberg*’, which plundered museums and libraries, confiscated art treasures and pillaged private houses:

- In December 1941, .. **69.619 Jewish homes were plundered** in the West.
- As of 14th July 1944 .. **more than 221.903 art objects** had been seized .. in the West.
- In the Eastern territories ... responsible for the **destruction of 427 museums and confiscation of numerous museum collections.”**

* *Source: Trial of the Major War Criminals Before the International Military Tribunal, vol 22 (International Military Tribunal 1948) 540.*

Post-War system

1. 'external restitution' (interstate level)

'The rules of land warfare expressed in the 1907 Convention ... by 1939... were recognized .. as being declaratory of the laws and customs of war' (1946 *Nuremberg Military Tribunal*)

2. 'internal restitution'

Special restitution laws at domestic level

- Nazi looting
- Post-War restitution system
- Renewed efforts
- Morality or justice?

Internal restitution: deprived owners

- Domestic restitution laws:
 - Aimed at “Speedy restitution of property .. lost by wrongful deprivation ... for reasons of race, religion, nationality, ideology or political opposition to National Socialism” (Art. 1 US Law 59, for occupied Germany)
 - Other occupied & neutral states: special laws *overruling regular private law*
- *However, enthusiasm soon faded, and laws expired*



- Nazi looting
- Post-War restitution system
- Renewed efforts
- Morality or justice?

1998: Washington Conference Principles on Nazi Confiscated Art

- **'Just and fair solutions':**

'if the pre-war owners of art that is found to have been confiscated by the Nazis and not subsequently restituted .. steps should be taken to achieve *a just and fair solution*'

- **Alternative dispute resolution (ADR):**

'Nations are encouraged to develop national processes .. particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.'



Legal reality

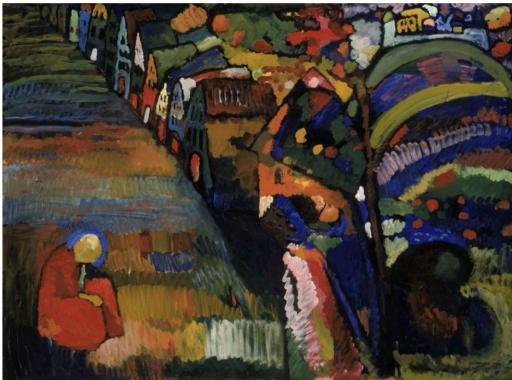


- Restitution = matter of national private law (NB *lex rei sitae*)
- differs widely:
 - Europe: transfer title after bona fide acquisition & claims time-barred
 - US: more favourable to original owners

ADR in Europe

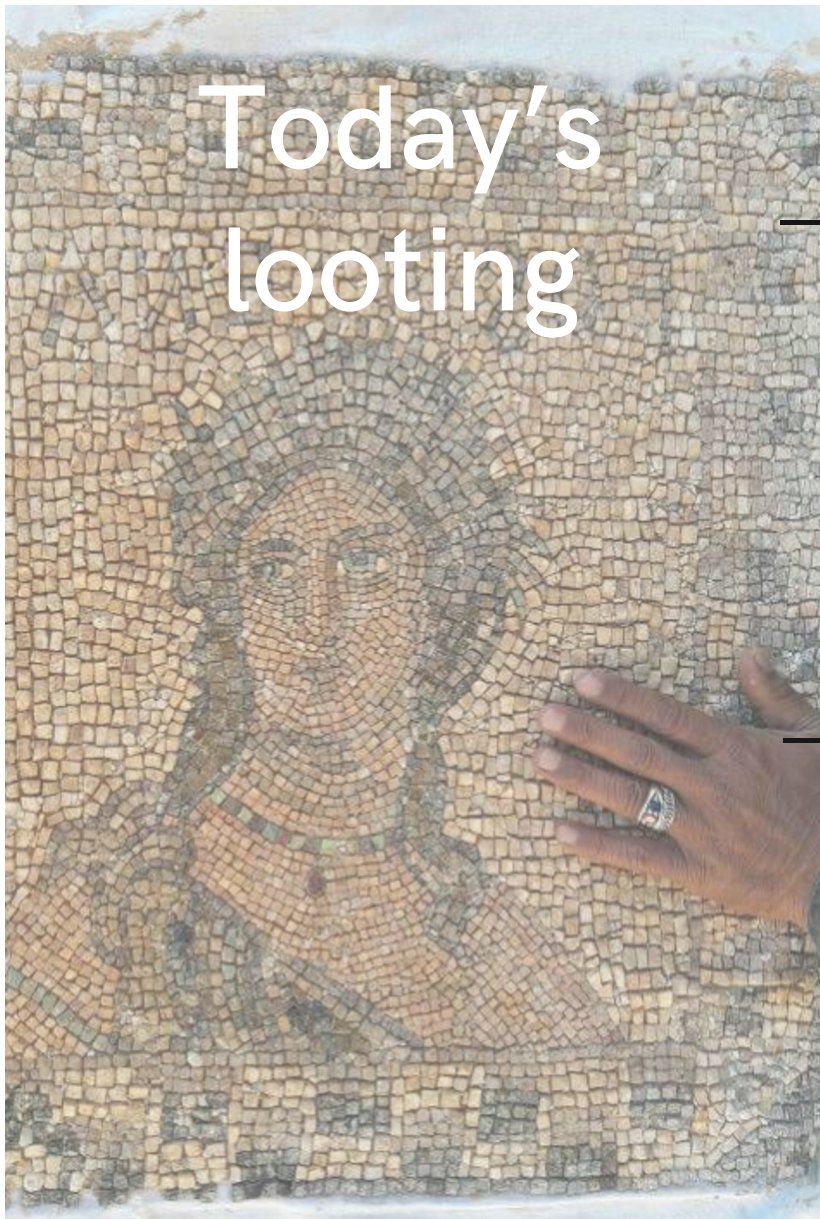
Amsterdam to return Kandinsky sold under Nazi occupation to heirs

The decision ends a bitter dispute that damaged the reputation of Dutch restitution policy

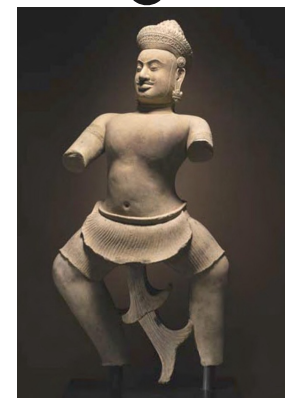


- Governmental Panels < 2000
 - UK, Netherlands, Austria, France, Germany
 - Public collections & voluntary procedures
- Downside:
 - Limited mandates
 - Lack of clear rules
 - No appeal possible
 - Access to justice?

Today's looting



How ISIS Turned Looting Into Big Business



Lawful?

1954 UNESCO Convention on the Protection of Cultural Property in the Event of Armed Conflict & 1st Protocol

- codification of protected status of cultural objects in times of armed conflict

1970 UNESCO Convention on the Illicit Import, Export and Transfer of Cultural Property

- international cooperation to fight illicit trade / protective measures in source countries / principle of restitution of looted artefacts

... and more (international) legal instruments

However: non-retroactive & need adoption and implementation [E.g., NL only in 2009 to UNESCO1970 Convention]

Clash of laws..



“For us, Master Zhang is our family ... We have been with him for a thousand years.” (local villager Sanming)

Amsterdam court 2018: claim denied
Chinese courts 2021/2022: awarded

Observations

- Not merely 'goods'
- Clash of laws
 - Source vs. destination country
 - International law?

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Final Ruling Made in China: Return of a Mummified Buddha Statue

Wed, 07 Sep 2022

Categories: China Law in One Minute

Contributors: CJO Staff Contributors Team

Editor: Lisa Bi

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Developments

Trends:

- 1) Humanization
- 2) Criminalization



Oud-directeur Louvre verdacht van smokkelen

Kunstmokkel De oud-directeur van het Louvre in Parijs, Jean-Luc Martinez, wordt volgens AFP in staat van beschuldiging gesteld voor het smokkelen van Egyptische archeologische vondsten.

Arjen Ribbens 27 mei 2022
Leestijd 1 minuut



A photograph of the social media star became the missing link in an investigation into looted treasures, reports Ben Lewis



In summary: many categories ‘looted art’

- Present-day looting: wartime losses & illicit trafficking
- Historical looting: Nazi-looted art & colonial takings

➤ *These categories differ considerably but commonalities exist*



At times, these overlap..

Zemanek-Münster

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Revealed: Royal Benin head from Jewish art collection

Provenance research and an amicable agreement with the heirs shortly before the publication of the auction catalogue



Royal commemorative head, Benin, 19th century



Main common problems

- **Normative level:** *fragmentation*

Disconnect between norms at different levels:

- *Causes injustice & legal insecurity*
- *Incentive for the illicit trade*

- **Practical level:** *problem of traceability*

There is no registration or certification system for the trade, enabling the trade in artefacts *without* documentation on their ownership history

- *Complicates distinction unlawfully looted / lawfully obtained artefacts*



**Thank you for your
attention!**

