Aesthetics as State Security: International Law, Art Repatriation, and Ontological Security

Andrew Noland

Political Science

I.   Introduction

Why do historical imperial powers resist repatriating the cultural property of their formerly colonized subjects? In the height of European imperial expansion, metropoles consistently engaged in and coordinated efforts with other state and non-state actors to plunder the aesthetic material objects of their colonies.[i] Museums in European colonial powers such as France, Britain, Belgium, the Netherlands, and Germany are filled (both in exhibits and storerooms) with the cultural memories of the Global South: the Khmer of Southeast Asia, the Mughal Empire of India, the Kingdom of Benin of central Africa, among many others. One puzzle in the 21st century concerning private international law of art is determining, in the presence of powerful international norms concerning the legacies of imperialism and colonialism, why former imperial states still refuse to engage in large-scale art repatriation efforts.

Before turning to the roadmap and arguments of the article, a review of the key terms that are used throughout the literature review and analysis of the paper is necessary. *Cultural property* was defined by the 1954 Hague Convention on the Protection of Cultural Property as aesthetic material of "great importance to the cultural heritage of every people" including "architecture, archaeological sites, works of art, manuscripts, books" and "other objects of artistic historical or archaeological interest."[ii] *Repatriation* is "the process of returning cultural property to its country or people of origin."[iii]

This article combines the literature and concerns of international law, and its potential to compel states to action, with the theory of ontological security. It extends the arguments of

ontological security scholars to the existing problem of colonial art repatriation. Using Brent Steele's concepts of "aesthetics" in state identity and "counterpower" demonstrates that imperial powers do not want to hand back the cultural property they plundered due to their desire to feel confident and maintain an aesthetic regime that hides the horrors of their colonial pasts.[iv] Returning art that the colonizer state looted from its colonies forces a reflexive confrontation that might generate a sense of shame and draw condemnation from internal actors (such as students, historical societies, or lobbying groups) and external forces (such as international organizations, multinational corporations, transnational advocacy groups, and other states). Avoiding these confrontations is obviously in their immediate material interest: admitting that their past actions were wrong might legally bind a state to hand over money, artifacts that draw tourism, or even land and resources.[v] However, this article puts forward that former colonizer states also do not want to acknowledge wrongdoing in their past because of their desire to preserve their "beautiful" Self.

International law provides a platform for both formerly colonized states and non-state actors to deliver counterpower, or challenge to an imperial power's sense of identity and aesthetics. Cultural property has a kind of "political power" which can upset the delicate aesthetic identity a state constructs for itself.[vi] While international law might be ineffective in compelling states to hand over their stolen art from their colonial pasts, it provides a vehicle for anti-colonial arguments and international norms to consolidate and present themselves. This pressure might compel a change in state behavior, which is useful absent a World State capable of forcing nations to obey international law.[vii]

This article proceeds as follows: it first outlines three germane bodies of literature necessary for building its argument. It tracks the development of scholarship on international law

and empire before delving into the works of ontological security. The literature review ends by discussing the recent surge in publications on the intersections of international politics, international law, and art repatriation. The subsequent section outlines the methods and defines the scope of inquiry of the article. The analysis begins by describing ontological security in states and states' desires for an aesthetically pleasing sense of self and outward appearance. The theory of ontological security holds true in describing state behavior as seen in the history of restitution, the limits of international law, and two case-studies. The first case-study centers on the high-profile, contentious debates concerning the Benin Bronzes. The second account examines Japan's retention of the historically significant *Mongyudowŏndo* landscape painting of the Korean Chŏson Dynasty. This article concludes by restating its thesis and thinks about how international relations (IR) can approach art restitution. This article is situated at the nexus of scholarship in the history of international relations (historical IR), international law, the relationship between domestic politics and international affairs, international security (namely ontological security), and the lingering influences of imperialism in international politics.

II.   Literature Review

a. *International Law and Empire*

Post-World War II international law jurists attempted to ignore the historicization of its field by imagining their work as universal and impartial. The first noteworthy and thorough rejection of this thesis came from Alexandrowicz (1967) who argues that positivist conceptions of international law omitted Asian and Pacific peoples from the international community; this exclusion prevented states from engaging in and enjoying the protections of international law.[viii]

Anand (1972) was the next major figure to tackle the influences of imperialism in international law. In his collection of lectures, Anand claims that decolonized Asian and African

states attempting to participate in international law are not doing so on "emotional" or "cultural" grounds like they are often accused; instead, their involvement in international institutions and diplomacy are pragmatic. However, Anand warns that the colonial character and limited means of reform in international law will inevitably benefit Western industrialized states.[ix]

Koskenniemi (2001) provides a substantial treatment of international law by imagining the subject not as a progression of schools of thought, but instead as a narrative tracking the flow of historical currents and ideational changes. Another collection of lectures, the text's overarching argument is that international law in the nineteenth century served an instrumental purpose: to "civilize" non-Western states. Western states were "civilized" and international law as negotiation among equals was only possible among other European states. Non-civilized or barbaric states (primarily Asian and African) need only obey the precepts of international law because interaction between the civilized and barbaric would ultimately enlighten the latter's backward societies.[x]

Engaging in the same exercise, Anghie (2005) reveals through legal confrontations between the colonizer and colonized that international law primarily manifests as a mechanism for domination. Additionally, these encounters demonstrate that international law and sovereignty are deeply entangled with Western imperial powers' "civilizing mission."[xi] Part of the justification for the "civilizing mission" was a notion of "protection." Specifically, empires claimed they should safeguard their own subjects and other foreign nationals and migrants; this meant that international treaties were required to apply this "benevolent" practice. Benton and Clulow (2017) show that this process of unequal treaty-making created an often blended yet ultimately discrete dualism between those inside and outside of protection. International law was

used to determine who could be protected, who was excluded, and what zones were worthy of participation in the international legal community.[xii]

International Law and Empire (2017) details in thematic arguments how colonialism informs the character of international law and how international law in the realms of trade and capitalist development seems divorced from democratic impulses. Instead, authors in their respective chapters fear that international law might be unable to escape its Eurocentric origins if it maintains its extractive economic ends.[xiii] Another work that recounts international law's imperial origins is Pitts' (2018) Boundaries of the International. The book highlights how European powers defended international law as universalistic and that international lawyers of the nineteenth century put racial and ethnic qualifications on who could be part of the international legal community. Pitts also argues that the framework of international law should be investigated further to determine what contemporary legal processes still replicate patterns of dominance.[xiv]

b. Ontological Security

The original concept of ontological security is derived from social theory. Anthony Giddens (1991) in Modernity and Self-Identity characterizes ontological security as an identarian story designed to instill a distinct sense of self, determine the boundaries between comfort and anxiety, and grant human beings a teleological end in an otherwise confusing social world.[xv]

Mitzen's (2006) article is understood as the foundational text for ontological security in IR scholarship. In addition to importing Giddens' definition, she argues that states routinize their "relationships to other groups," and that narratives and interactions grant a sense of continuity and direction for states.[xvi] Steele (2008) also advanced ontological security as a missing link in IR research. Both works wanted to account for why states do not always behave in manners

which advance their material power. However, Steele's book argues that states require ontological security for their own sake, not primarily for interaction with other states.[xvii]

Zarakol (2011) looks at how members of the international community can shape social environments through shared values and norms. Zarakol's article explores how the West's "civilization" narrative excluded rising powers like Japan, Russia, and Turkey from feeling "secure" as members of the international community. Non-Western states needed to adhere to alien cultural interactions and behaviors, and this developed an internal stigma which still influences their present-day behavior.[xviii]

Subotić (2016) argues that in times of crisis, states "activate" and "deactivate" different aspects of a state narrative. Different components of narratives are selectively activated in times of war, or other political disasters, and might be designed to marginalize those who can be classified as enemies.[xix] While internal elements of a narrative are contested, Eberle (2019) claims that state narratives are often written in the genre of fantasy. States possess a desire for "obscene" and "transgressive" elements to their ontological security which explains why they exclude or discriminate in issues like immigration and access to public goods.[xx]

c. *Art Repatriation and International Law*

Art repatriation as a subject of academic inquiry remained largely contained to the disciplines of history and art history. However, interest in art as "cultural heritage property" emerged following the UNESCO (1970) and UNIDROIT (1995) Conventions.[xxi] In terms of cross-border art repatriation, much of Western scholarship on the topic has been focused on returning art stolen by Nazi Germany. Thompson (2011) provides a detailed summary of the legal cases and efforts to locate the aesthetic survivors of the Nazi "cultural genocide."[xxii] The issue of to whom

art belongs stands as a still contested issue in scholarly conversations concerning international private law.

One of the first extended articulations of the cultural internationalist camp (that art belongs to the entire human community) came from Cuno (2010). In *Who Owns Antiquity*, Cuno claims that nationalist art and archaeological protection laws foster dangerous precedents on who can see and claim art. The fear is that states will limit who can access their peoples' aesthetic treasures, as well as potentially harm global culture and international relations if artifacts remain confined to national boundaries and are subject to politicization.[xxiii]

The turn to cultural nationalism (that art ought to be primarily thought in the historical and cultural contexts of its home states and returned to its historical homelands) has taken shape over the last two decades. Savoy (2022) follows the story of how African nations sought to regain their cultural memories still located in European and American museums; the work argues that restitution must remain the operative word despite attempts by museum curators and art scholars in the West to dismiss and disparage the idea.[xxiv] Trying to regain their cultural property through international law has proven mostly fruitless; some argue this stems from the origins of international law as an instrument of colonization. Brown (2021) posits that the development of international cultural property law is maintained by a "self-serving legal system" whose role is to protect the holders of plundered art rather than provide a vehicle for wronged parties to seek restitution.[xxv]

Because international law requires state compliance in both enforcement and passage of legislation, there are substantial domestic interests which might prevent the return of cultural property to their homelands. Godwin (2020) investigates the legal and historical dynamics behind the British Museum, and finds that due to parliamentary law, the museum trustees alone

cannot legally hand back appropriated art (such as the Elgin Marbles or the Benin Bronzes).[xxvi]
Labadie (2021) outlines the failures of existing international statutes and organizations in returning stolen art from the colonial era. The only effective processes according to Labadie seem to be "alternative dispute resolution mechanisms" such as bilateral state negotiations and fora such as conferences between museums and government operatives.[xxvii]

These three bodies of scholarship establish a groundwork from which this article can proceed. First, it outlines the colonial origins of international law and how imperialism still influences existing legal processes and institutions. Ontological security imagines that states possess a desire for continuity and identity in the same mold as individuals; this theory explains why states behave in ways that do not always support a desire for power or material gain. Current scholarship on art repatriation and restitution draws a bleak picture for how international law can be used by formerly colonized state and non-state actors to win back their cultural artifacts.

III.   Research Design

This article remains primarily conceptual in nature in its combination of otherwise discrete literatures within international relations scholarship. This is where most of the concentration and effort in conducting and presenting this research lie.

This article utilizes two methodologies to make its argument: interpretive methods and comparative historical analysis. The former adopts the approach of centering historicism, narratives, and, most crucially, the meanings states and people assign to things.[xxviii] Meaning is central to this article's thesis. Whether the interested parties are the imperial power holding on to the plundered art or the victim of colonialism demanding their cultural memories be returned,

both colonizer and colonized hold salient values for these cultural artifacts that need to be explicated.

To discover and unpack these meanings, comparative historical analysis is used to investigate the Benin Bronzes and *Mongyudowŏndo*. Both are cases of cultural property seized by imperial powers, maintained currently in Britain and Japan respectively, and are emblematic of a larger issue of international law's inadequacies concerning the return of art plundered at empire's zenith. These two cases of imperial pillaging in the East and West demonstrate the universality of this issue in international law. In the realm of cultural property, international law still seems to benefit and protect the colonizer's interests.

IV.   Analysis

a. Ontological Security: Aesthetic Power and Counterpower

Ontological security argues that state agents narrate about themselves, and a Self is then realized through policies, state actions, and rhetorical claims.[xxix] These political tools are often referred to as a "politics of memory" which ultimately construct and deconstruct a state's sense of Self.[xxx] Therefore, a state's identity is constantly in motion, being made and remade by action and reaction, and then solidified in routines.

When this Self is maintained by a stable politics of memory with little to no domestic or international pressure to change its state narrative, it feels secure.[xxxi] When this Self is challenged by domestic sources or other states' behaviors, rhetoric, and policies, states may feel anxiety. For people, anxiety induces fear about our individual meaning and our "'existence as a person.'"[xxxii] Whether a totalizing transformation of a state's identity or a minor self-reflection, anxiety ultimately forces a state to choose whether to change what makes it comfortable, close itself

further and enter a critical situation, or simply ignore the source of pressure (to either be confronted later or to fester).[xxxiii]

For both scholars (Mitzen 2006; Steele 2008) who first articulated the concept of ontological security in IR analysis, the issue of intersubjective versus reflexive security was paramount. Mitzen understands ontological security as important for states because they need to be seen and understood in relation to and by others.[xxxiv] Steele argues that, like individuals, states want continuity and a sense of purpose for their own stability in an otherwise disorienting anarchic world.[xxxv] States need and want a sense of identity to understand their role in the international community. How they appear to the international community is critical to their ontological security. These two concepts of feeling (reflexive) and appearance (intersubjective) highlight Steele and Mitzen's emphases in ontological security and turn the conversation toward how states achieve satisfaction in both realms.

States use aesthetics to accentuate and differentiate their respective Selves. The formation of a self-image and the purpose of a state's aesthetic craft is to ultimately promote a sense of "confidence."[xxxvi] Confidence is the key to understanding why states do *anything*. If State A possesses a strong material capability over State B, yet the former's leadership and population lack the confidence to seize upon its advantage, it is as if State A does not possess the advantage at all. Therefore, power cannot only be understood in IR theory as material. Power, drawing on Foucault and Steele, is disaggregated and measured across a myriad of relationships and interactions.[xxxvii] As an example, colonialism still emerges in the relationship of domination between those who can use international law to achieve their ends (a basic understanding of power: State A getting b from State C) and those who cannot. Power in its meeting with aesthetics thus denotes a self-image and a perception that a state can control its own self-image

and influence others with its form and abilities.[xxxviii] Confidence, and the aesthetic tools used to augment it in a state's self-image, can tell security scholars why states behave in seemingly irrational ways.

This aesthetic power manifests, according to Steele, in three forms. The first is aesthetic power as psychological. States exert power because it can be "emotionally satisfying" and a psychological link is necessary at times to connect the goals of the nation with the state.[xxxix] Second, power is imaginative; the state believes that its purpose and function is "ethical and even beautiful."[xl] The constituents of the state believe that all events, even the ones that occur outside the state, say something about the Self (the collapse of State B's regime speaks to the strength of State A's regime). Third, power can appear rhythmically. The state's bureaucratic functions, narrative maintenance, and calendar commemorations function as a rhythm which makes the state, and its people, feel as if things are running smoothly and (importantly) correctly.[xli]

The self-image and aesthetic patterns of a state can be disrupted. If this idealized and imagined form is compromised, it can "produce emotional and traumatic ruptures—ruptures that powerful actors seek to rectify by reacting in sometimes violent ways."[xlii] If State A's self-image is disrupted by the presence of new immigrants from State B, State A might try to forcefully stop migrants from entering its borders. Because aesthetics is a fragile and carefully nurtured power, the smallest "counterpowers," or micropressures that destabilize "*the psychological, imaginative, and rhythmic subjective of power*," can undermine the constructed self-image.[xliii] Counterpower can be lawsuits which challenge a longstanding tradition, a speech from a foreign leader which condemns another state's action, or, as is relevant to this project, a demand from a state, museum, group, or individual to hold a former imperial power accountable for past transgressions. The return of art to a former colonized country forces a former imperial state to

face its own self-image in a non-flattering, non-idealized way. Like individuals, states tend to avoid recognizing when it has committed a wrong and want to escape from the feeling of shame.[xliv] Self-reflection forces a reckoning, coming from international and domestic sources, on a state's history that might not match the state narrative it has crafted for itself and its constituents. Whether it can withstand the forced introspection is up to each state, the resilience of its politics of memory, and/or its willingness to change its identity without complete collapse.

Key passages of state narratives are deliberately written to instill confidence. States want to feel self-assured and practice power in styles which secure that feeling. States needing to appear confident logically implies the forces or counterpower which can undermine that goal.

b. *International Law as Alleviation: Ontological Security, Aesthetics, and Imperialism*

The long nineteenth century marks the highwater point for most Western powers' forays into imperialism. The British, French, German, Dutch, Portuguese, and Belgian Empires expanded across Africa, Asia, and the Pacific to varying degrees. In contacting new peoples, treaties with polities from the Global South established new precedents, customs, and patterns of rule which came to define the earliest stages of a truly global international law.[xlv] International jurists of the period fashioned a new legal philosophy which adhered to the "notion of the primacy of the state" and believed that "states are the principal actors of international law and they are bound only by that to which they have consented."[xlvi] Known as the legal school of positivism, positivist language ultimately possessed violent intentions for non-Europeans. Because the necessary requirement for participating in international law was possessing state power, positivists actively excluded and subordinated indigenous colonized peoples. Positivists designated other political regimes from the Global South as not sophisticated or developed enough to be classified to as states. In courtrooms, the pages of their briefs and manuscripts, and

their lecture halls, positivists grounded their marginalization of the colonized world in sociological evolution theories of human development. They claimed European and other white-dominant nations were advanced while Asian and African states were still in primitive forms; argued that "non-European, barbaric regions" simply had no laws; and that there was an international "civilized society."[xlvii] Positivists like Travers Twiss and Gustave Rolin-Jacquesmyn believed that they held a kind of special moral character and that their participation in a "transnational fraternity of aristocratic heroes" gave them the insight capable of distinguishing between barbaric and civilized states.[xlviii]

This distinction between civilized and barbaric had ramifications for Western states' imagination of non-European bodies, land, and polities. In addition, this "othering" affected non-Western states' conceptions of themselves. Especially in powerful centralized states like Russia, Japan, Siam, and the Ottoman Empire, all not part of this "international society," states inadvertently adopted internal stigmas about their own behavior in the international political arena.[xlix] Regardless, in the nineteenth and early twentieth centuries, positivists would have never allowed Asian or African states to be seen or treated on the same level as their European counterparts.[l] Positivists, and the treaties they wrote, were designed to denigrate, humiliate, and shame non-Western states for not being part of "international civilized society". The principles of the positivism did not match the language of the coercive and unequal treaties the positivists wrote and the terms European states enforced in Asia and Africa.[li]

Why did positivists go through the effort of making brand new categories? International law provided a colonial easing mechanism designed to instill confidence in Western states while they interacted with non-European powers. States like China, Ethiopia, Benin, Japan, Siam, and the Ottoman Empire[lii] possessed powerful state bureaucracies, read European international law texts

to counter positivist arguments, sent their younger generations to Western universities, and formulated their own visions of international law, order, and relations.[liii] Using the concept of ontological security and aesthetic power, positivists found themselves uncomfortable learning that non-European people and states began challenging the supposed superiority of European international law and customs. International law, as a measure to determine civilization, therefore needed to create a new discursive language that could justify the conquest and subjugation of colonial peoples and maintain the identity of Europe as "civilized."

A key component of ontological security is how states determine what gives them comfort and what provokes anxiety; positivists, and the states they inhabited, rendered their purpose as a "civilizing mission" in the era of colonialism.[liv] To recognize that Asian and African polities and peoples were civilized would undermine the moral and legal bases of their conquests and looting in the Global South. Western powers did not want to reflect on the full range of their moral transgressions in the colonies. International law in its positivist form provided a mediating tool to rationalize their behavior. International law soothed the anxiety in European states' ontological security and safeguarded their self-confidence in their superiority.

c. *Art as Counterpower: How International Law and Ontological Security Withstand Anticolonial Norms and Demands for Art Repatriation*

The power that museums and former imperial states can hold over another state is a feature of Edward Said's argument that imperialism produced "intertwined and overlapping histories" for the colonized and colonizer.[lv] Cultural property held by a former colonizer holds a kind of "political capital" and "physically ties heritage between a nation, its institutions, and its visitors, building patriotism and a sense of belonging in a nation."[lvi] This understanding connects back to ontological security and aesthetics. Imperial powers use plundered art to build a triumphant,

beautiful history which downplays the violence and dispossession committed during its colonial past. The act of holding another's valued cultural memory gives the colonizer a kind of authority to influence how the former colonized nation feels about its own identity and its own trajectory. This transgressive action of keeping away what belongs to another builds the state's confidence (and rhymes with the phenomenon of psychological satisfaction of wielding power) and repatriating the art implies an admission of an unjust past. However, this description only provides an explanation as to why states resist restitution, and not how they do so.

European states first addressed the practice of cultural art restitution in the 16th and 17th centuries, but the first large-scale plunder of European art occurred during the Napoleonic Wars. Napoleon I, in his campaigns in Italy, Egypt, and against the Grand Coalition, brought back many of the aesthetic treasures of his defeated and occupied foes.[lvii] The victorious powers at the Congress of Vienna included clauses concerning the restitution of art in their peace agreements with the defeated France. Following the First World War, similar art restitution clauses emerged, and the Allied Powers met several times during the Second World War to discuss the return of stolen art which had been taken to Nazi Germany.[lviii] In the post-war boom of international law and institution-making, two international conventions tackled the issue of cultural property repatriation. The 1970 UNESCO Convention met to establish "a cooperate legal framework that would serve to prohibit and apply international pressure preventing the illicit exportation of cultural property."[lix] The Convention also requires signing countries to "take necessary measures … to prevent museums and similar institutions within their territories from acquiring cultural property originating in another state."[lx] While the treaty provided a potential structure for legal action, it could not compel or punish states who violated its terms.

The 1995 UNIDROIT Convention sought to rectify some of the shortcomings of its predecessor by requiring the return of stolen items, accounting for ignorance in cases of stolen items, and compensation for people who must give up stolen cultural property.[lxi]

However, the limits of the treaties became clear. Without an enforcing power and legally binding compliance mechanisms, the treaties clear no direct path to return cultural property taken during the colonial era. The treaties applied to cases and cultural property identified after signing the treaty. Both treaties remain limited in scope (most of the terms apply to armed conflict) and possess short timeframes in which to challenge ownership of stolen cultural property.

Finally, the varying legal claims and strategies by groups and states affected by colonialism, the nebulous definition of cultural property, and the practicality of tracing stolen artifacts from centuries prior make application of the conventions' terms extraordinarily difficult.[lxii] Signatories ensure that the language of the treaties do not bind them to returning colonial-era possessions. Beyond the material gain from holding these possessions for purposes of tourism, retaining the cultural property of their formerly colonized subjects provides a state the feeling of confidence. Keeping the artifacts also avoids the ontological anxiety of confronting a potentially violent past. As seen in history and modern treaties, the colonial character infused in the framework of international law allows for imperial powers and their institutions to hold on to their plundered cultural possessions.

d. The Benin Bronzes and Mongyudowŏndo

Two examples demonstrate the challenges of returning cultural property and how they remain in the hands of former colonial powers through the avenue of international law: the Benin Bronzes and *Mongyudowŏndo*. The Bronzes originate from the Kingdom of Benin, a powerful West African kingdom which struggled to modernize and resist the Scramble for Africa. The

British colonial armies finally attacked the capital of Benin City in 1897, stole and categorized the artifacts found in the palace, and sold Benin's cultural treasures, including the Benin Bronzes, around the world to individuals, organizations, and museums. The Bronzes earned worldwide fame for their beautiful depictions and their significance as historical memories of the looted kingdom.[lxiii]

Nigeria spent much of the last half of the 20th century bargaining with state and non-state actors around the world and participating at auction houses to bring back their cultural property. Although they have negotiated limited rotating loan programs to display many of the Benin Bronze pieces in Benin City, representatives in Austria, Sweden, the Netherlands, Germany, and the United Kingdom still claim that their museums and private citizens maintain primary ownership of the pieces.[lxiv] This insistence on ownership ignores the well-documented history behind how the Benin Bronzes were looted. The British Museum is the most notorious holder of the Benin Bronzes due to its complicity in the plunder of Benin City and the British government's refusal (and sometimes curt public dismissal at the notion) to return many states' historical cultural property.[lxv]

Debates still swirl around how and if South Korea might regain the *Mongyudowŏndo* and the other 89,000 cultural objects of Korean origin currently located in Japan. A seminal landscape painting of one of the golden ages of Korean history, *Mongyudowŏndo* depicts the Prince Anpyŏng's dream of travelling to a "utopian land envisaged in a fable by fourth century Chinese poet Tao Qian."[lxvi] The piece was likely stolen during Japan's late 16th century invasion of Korea. While it disappeared from history for several centuries, it was eventually found and catalogued in the late 19th century. Donated to Tenri University in 1953 by a private collector,[lxvii]

Japan gave the painting a designation of "important cultural property" which grants it a heightened legal protection status.

As a result of Japanese legal classifications and national memory practices, South Korea has found it impossible to repatriate the art using Japanese domestic courts and international law.[lxviii] Japan formally refuses to acknowledge South Korea's claims to the art, and this battle folds into the vicious partisan struggle in the Japanese Diet on how the history of the Japanese Empire ought to be portrayed in nation's collective memory.[lxix]

Why do Japan and Britain refuse to consider returning the art through international law or repatriate them generally? Ontological security, and desire for aesthetic power as confidence, explains why states resist returning art taken during the colonial period. Both Japan and the United Kingdom have taken active steps throughout their "post-imperial" history to avoid highlighting or confronting their colonial pasts using textbooks, political rhetoric, and monuments.[lxx] Japan and Britain simply do not want to, especially in the wake of the end of their empires, acknowledge or apologize for its colonial pasts in the form of art restitution. Art restitution, and cultural property repatriation broadly, is a counterpower to both nations' self-images. By using norms and legal avenues to reclaim their cultural property, both state and non-state actors sympathetic to South Korea and Nigeria challenge Britain and Japan's ontological securities. Britain and Japan want to retain an image of confidence and their power over their former colonized subjects by holding the cultural property.

V.   Conclusion

This article argues that international law has been complicit as a tool designed to help former imperial states "feel" confident despite holding on to cultural property seized during their colonial pasts. By combining the scholarly bodies of literature on international law's roots in the

Age of Imperialism and ontological security, this article shows that art restitution is an example of a practice states avoid due to the limited capacity of international law. Art repatriation is a counterpower to the confidence states such as Japan and Britain want to maintain for themselves following the downfall of their empires. Evading legal responsibility for their actions during imperialism also avoids confronting the memory of their brutal pasts. States use international law as an alleviating mechanism to protect their Self narratives from international norms and legal suits concerning the brutality and material consequences of imperialism.

Scholars specializing in international law need to acknowledge and assess the effects of current or past imperialism in the dynamics of state and international organization interaction. Additionally, because international law already lacks significant compulsory force, more research must be undertaken to determine how former colonized states and marginalized people might win back their cultural memory through legal avenues.

Endnotes

ⁱ Dan Hicks, *The Brutish Museums: The Benin Bronzes, Colonial Violence, and Cultural Restitution* (London: Pluto Press, 2020).

ⁱⁱ Hannah R. Godwin, "Legal Complications of Repatriation at the British Museum," *Washington International Law Journal* 30, no. 1 (2020): 143–70. 149. United Nations Education, Scientific, and Cultural Organization, "Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention" (U.N.T.S., May 14, 1954).

ⁱⁱⁱ Godwin, "Legal Complications" 148.

^{iv} Brent Steele, *Defacing Power: The Aesthetics of Insecurity in Global Politics* (Ann Arbor: University of Michigan Press, 2010).

^v Robert Aldrich, "Apologies, Restitutions, and Compensation: Making Reparations for Colonialism," in *The Oxford Handbook of the Ends of Empire*, ed. Martin Thomas and Andrew S. Thompson (Oxford University Press, 2018), 1-21.

^{vi} Godwin, "Legal Complications," 151.

^{vii} Leslie Johns, *Politics and International Law: Making, Breaking, and Upholding Global Rules* (Cambridge: Cambridge University Press, 2022), 27-30.

^{viii} C.H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th, and 18th Centuries)* (Oxford: Clarendon Press, 1967).

^{ix} R.P. Anand, *New States and International Law* (Delhi: Vikas Publishing House, 1972).

^x Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2001).

^{xi} Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

^{xii} Lauren Benton and Adam Clulow, "Empires and Protection: Making Interpolity Law in the Early Modern World," *Journal of Global History* 12, no. 1 (2017): 74–92.

^{xiii} Martti Koskenniemi, Walter Rech, and Manuel Jiménez Fonseca, eds., *International Law and Empire: Historical Explorations* (Oxford: Oxford University Press, 2017).

^{xiv} Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, MA: Harvard University Press, 2018).

^{xv} Anthony Giddens, *Modernity and Self-Identity*, (Cambridge, UK: Polity Press 1991), 45-46.

^{xvi} Jennifer Mitzen, "Ontological Security in World Politics: State Identity and the Security Dilemma," *European Journal of International Relations* 12, no. 3 (2006): 341–70. 352.

^{xvii} Brent Steele. *Ontological Security in International Relations: Self-Identity and the IR State* (New York: Routledge, 2008).

^{xviii} Ayşe Zarakol, *After Defeat: How the East Learned to Live with the West* (Cambridge: Cambridge University Press, 2011), 4, 18, 20, 24.

^{xix} Jelena Subotic. "Narrative, Ontological Security, and Foreign Policy Change." Foreign Policy Analysis, 12(4) (2016): 620-627.

^{xx} Jakub Eberle, "Narrative, Desire, Ontological Security, Transgression: Fantasy as a Factor in International Politics," *Journal of International Relations and Development* 22 (2019): 243–68.

^{xxi} I address the two conventions in more detail in my analysis.

^{xxii}Erin L. Thompson, "Cultural Losses and Cultural Gains: Ethical Dilemmas in WWII-Looted Art Repatriation Claims Against Public Institutions," *Hastings Communication and Entertainment Law Journal* 33, no. 3 (2011): 406–42.

^{xxiii} James Cuno, *Who Owns Antiquity: Museums and the Battle over Our Ancient Heritage* (Princeton: Princeton University Press, 2010).

^{xxiv} Bénédicte Savoy, *Africa's Struggle for Its Art: History of a Postcolonial Defeat* (Princeton: Princeton University Press, 2022).

^{xxv} Camden W. Brown, "Admire the Plunder, but Abhor the Thief: How the Development of International Law Perpetuates Colonial Inequities as Modern Nations Battle for the Repatriation of Looted Art and Artifacts," *Washington University Jurisprudence Review* 14, no. 1 (2021): 219–50.

xxvi Hannah R. Godwin, "Legal Complications of Repatriation at the British Museum," *Washington International Law Journal* 30, no. 1 (2020): 143–70.

xxvii Camille Labadie, "Decolonizing Collections: A Legal Perspective on the Restitution of Cultural Artifacts," *ICOFOM Study Series* 49, no. 2 (2021): 132–46.

xxviii Mark Bevir and R.A.W Rhodes, eds., *Routledge Handbook of Interpretive Political Science* (London: Taylor and Francis Group, 2015), 19-21.

xxix Brent Steele, *Defacing Power: The Aesthetics of Insecurity in Global Politics* (Ann Arbor: University of Michigan Press, 2010), 3.

xxx Jennifer Lind, *Sorry States: Apologies in International Politics* (Ithaca: Cornell University Press, 2008).

xxxi Jennifer M. Dixon, *Dark Pasts: Changing the State's Story in Turkey and Japan* (Ithaca: Cornell University Press, 2018). Dixon's book outlines why there is variation in why states must change their state narratives from domestic and international pressures.

xxxii Karl Gustafsson and Nina C. Krickel-Choi. "Returning to the Roots of Ontological Security: Insights from the Existentialist Anxiety Literature," *European Journal of International Relations 26*(3) (2020): 875-895. 886.

xxxiii Gustafsson and Krickel-Choi, "Returning to the Roots," 889.

xxxiv Mitzen, "Ontological Security."

xxxv Steele, *Ontological Security*, 3, 72.

xxxvi Steele, *Defacing Power*, 5.

xxxvii Steele, *Defacing Power,* 15.

xxxviii Steele, *Defacing Power*, 15.

xxxix Steele, *Defacing Power*, 28-29.

xl Steele, *Defacing Power*, 30-31.

xli Steele, *Defacing Power*, 36-37.

xlii Steele, *Defacing Power*, 9.

xliii Steele, *Defacing Power*, 47. Italicized in source.

xliv Steele, *Ontological Security,* 72.

xlv Anghie *Imperialism*, 32.

xlvi Anghie, *Imperialism* 33.

xlvii Anghie, *Imperialism,* 58-59.

xlviii Koskenniemi, *Gentle Civilizer,* 78. It is important to note that not all jurists believed this to be true. See pages 139-142.

xlix Zarakol, *After Defeat*.

l Koskenniemi, *Gentle Civilizer* 135.

li Anghie, *Imperialism*, 72-73.

lii The Ottoman Empire obviously had sustained contact with Europe since the former's inception. However, it was easy for Europe to cast Istanbul as a site of backwardness because of its different religion and customs from the rest of Western Europe. See Zarakol (2011) for more detailed descriptions.

liii Charles Holcombe, *A History of East Asia: From the Origins of Civilization to the Twenty-First Century*, 2nd ed. (Cambridge: Cambridge University Press, 2017). Felix RÖSCH and Atsuko Watanabe, eds., *Modern Japanese Political Thought and International Relations* (London: Rowman and Littlefield, 2018). Federico Ferrera, *The Political Development of Modern Thailand* (Cambridge: Cambridge University Press, 2015). Anghie *Imperialism*, 72.

liv Koskenniemi, *Gentle Civilizer*, 143.

lv Edward Said, *Culture and Imperialism* (New York: Vintage Books, 1993), 18.

lvi Godwin, "Legal Complications," 151.

lvii David Gilks, "Attitudes to the Displacement of Cultural Property in the Wars of the French Revolution and Napoleon," *The Historical Journal* 56, no. 1 (2013): 113–43.

lviii Labadie, "Decolonizing Collections," 133.

lix Godwin, "Legal Complications," 154.

lx United Nations Education, Scientific, and Cultural Organization, "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property" (U.N.T.S., November 14, 1970). Art. 7.

lxi Godwin, "Legal Complications," 156.

lxii Labadie," Decolonizing Collections," 135.

lxiii Dan Hicks, *The Brutish Museums,* 109-114. 145-151.

lxivG. Harris, "Looted Benin Bronzes to Be Lent Back to Nigeria," *The Art Museum*, 2017, 294, https://www.theartnewspaper.com/news/looted-benin-bronzes-to-be-lent-back-to-nigeria.

lxv See Mark Brown, British Museum Chief: Taking the Parthenon Marbles was 'Creative', THE GUARDIAN (Jan. 28, 2019, 2:45 PM), https://www.theguardian.com/artanddesign/2019/jan/28/britishmuseum-chief-taking-the-parthenon-marbles-was-creative. Aimee Dawson, In Damning Online Critique of British Museum's Ethics, Trustee Ahdaf Soueif Announces Resignation, THE ART NEWSPAPER (Jul. 16, 2019), https://www.theartnewspaper.com/news/it-hardly-speaks-writer-ahdaf-soueif-pens-damning-critique. Ahdaf Soueif, On Resigning from the British Museum's Board of Trustees, LONDON REVIEW OF BOOKS (Jul. 15, 2019) https://www.lrb.co.uk/blog/2019/july/on-resigning-from-the-british-museums-board-of-trustees.

lxvi Lydia (Soo Min) Lim, "Reclaiming Mongyudowŏndo: Legal Challenges to Restituting Korean Cultural Property from Japan and Alternative Solutions," *2021* 42, no. 3 (2021): 889–920.

lxvii Lim, "Legal Challenges," 892.

lxviii Lim, "Legal Challenges," 903.

lxix Jennifer Lind, *Sorry States: Apologies in International Politics* (Ithaca: Cornell University Press, 2008). Yoshiko Nozaki, "Japanese Politics and the History Textbook Controversy, 1982–2001," *International Journal of Education Research* 37, no. 6 and 7 (2002): 603–22.

lxx Susanne Grindel, "The End of Empire: Colonial Heritage and the Politics of Memory in Britain," *Journal of Educational Media, Memory & Society* 5, no. 1 (2013): 33–49. Lind, *Sorry States*. Dixon, *Dark Pasts*.

References

Aldrich, Robert. "Apologies, Restitutions, and Compensation: Making Reparations for Colonialism." In *The Oxford Handbook of the Ends of Empire*, edited by Martin Thomas and Andrew S. Thompson, 1-21. Oxford University Press, 2018. https://doi.org/10.1093/oxfordhb/9780198713197.013.39.

Alexandrowicz, C.H. *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th, and 18th Centuries)*. Oxford: Clarendon Press, 1967.

Anand, R.P. *New States and International Law*. Delhi: Vikas Publishing House, 1972.

Anghie, Antony. *Imperialism, Sovereignty, and the Making of International Law*. Cambridge: Cambridge University Press, 2005.

Benton, Lauren, and Adam Clulow. "Empires and Protection: Making Interpolity Law in the Early Modern World." *Journal of Global History* 12, no. 1 (2017): 74–92.

Bevir, Mark, and R.A.W Rhodes, eds. *Routledge Handbook of Interpretive Political Science*. London: Taylor and Francis Group, 2015.

Brown, Camden W. "Admire the Plunder, but Abhor the Thief: How the Development of International Law Perpetuates Colonial Inequities as Modern Nations Battle for the Repatriation of Looted Art and Artifacts." *Washington University Jurisprudence Review* 14, no. 1 (n.d.): 219–50.

Cuno, James. *Who Owns Antiquity: Museums and the Battle over Our Ancient Heritage*. Princeton: Princeton University Press, 2010.

Dixon, Jennifer M. *Dark Pasts: Changing the State's Story in Turkey and Japan*. Ithaca: Cornell University Press, 2018.

Eberle, Jakub. "Narrative, Desire, Ontological Security, Transgression: Fantasy as a Factor in International Politics." *Journal of International Relations and Development* 22 (2019): 243–68.

Ferrera, Federico. *The Political Development of Modern Thailand*. Cambridge: Cambridge University Press, 2015.

Gilks, David. "Attitudes to the Displacement of Cultural Property in the Wars of the French Revolution and Napoleon." *The Historical Journal* 56, no. 1 (2013): 113–43.

Godwin, Hannah R. "Legal Complications of Repatriation at the British Museum." *Washington International Law Journal* 30, no. 1 (2020): 143–70.

Grindel, Susanne. "The End of Empire: Colonial Heritage and the Politics of Memory in Britain." *Journal of Educational Media, Memory & Society* 5, no. 1 (2013): 33–49.

Harris, G. "Looted Benin Bronzes to Be Lent Back to Nigeria." *The Art Museum*, 2017, 294 edition. https://www.theartnewspaper.com/news/looted-benin-bronzes-to-be-lent-back-to-nigeria.

Hicks, Dan. *The Brutish Museums: The Benin Bronzes, Colonial Violence, and Cultural Restitution*. London: Pluto Press, 2020.

Holcombe, Charles. *A History of East Asia: From the Origins of Civilization to the Twenty-First Century*. 2nd ed. Cambridge: Cambridge University Press, 2017.

Johns, Leslie. *Politics and International Law: Making, Breaking, and Upholding Global Rules*. Cambridge: Cambridge University Press, 2022.

Koskenniemi, Martti. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*. Cambridge: Cambridge University Press, 2001.

Koskenniemi, Martti, Walter Rech, and Manuel Jiménez Fonseca, eds. *International Law and Empire: Historical Explorations*. Oxford: Oxford University Press, 2017.

Labadie, Camille. "Decolonizing Collections: A Legal Perspective on the Restitution of Cultural Artifacts." *ICOFOM Study Series* 49, no. 2 (2021): 132–46.

Lim, Lydia (Soo Min). "Reclaiming Mongyudowŏndo: Legal Challenges to Restituting Korean Cultural Property From Japan and Alternative Solutions." *2021* 42, no. 3 (2021): 889–920.

Lind, Jennifer. *Sorry States: Apologies in International Politics*. Ithaca: Cornell University Press, 2008.

Mauro, Benedetta. "The Reoverry of Cultural Property in International Law: Collaborative Settlements of Disputes." *Dissertation*, n.d.

Mitzen, Jennifer. "Ontological Security in World Politics: State Identity and the Security Dilemma." *European Journal of International Relations* 12, no. 3 (2006): 341–70.

Nozaki, Yoshiko. "Japanese Politics and the History Textbook Controversy, 1982–2001." *International Journal of Education Research* 37, no. 6 and 7 (2002): 603–22.

Pitts, Jennifer. *Boundaries of the International: Law and Empire*. Cambridge, MA: Harvard University Press, 2018.

RÖSCH, Felix, and Atsuko Watanabe, eds. *Modern Japanese Political Thought and International Relations*. London: Rowman and Littlefield, 2018.

Said, Edward. *Culture and Imperialism*. New York: Vintage Books, 1993.

Savoy, Bénédicte. *Africa's Struggle for Its Art: History of a Postcolonial Defeat*. Princeton: Princeton University Press, 2022.

Steele, Brent. *Defacing Power: The Aesthetics of Insecurity in Global Politics*. Ann Arbor: University of Michigan Press, 2010.

Thompson, Erin L. "Cultural Losses and Cultural Gains: Ethical Dilemmas in WWII-Looted Art Repatriation Claims Against Public Institutions." *Hastings Communication and Entertainment Law Journal* 33, no. 3 (2011): 406–42.

United Nations Education, Scientific, and Cultural Organization. "Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention." U.N.T.S., May 14, 1954.

———. "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property." U.N.T.S., November 14, 1970.

Zarakol, Ayşe. *After Defeat: How the East Learned to Live with the West*. Cambridge: Cambridge University Press, 2011.