From Colonial Loot to Cultural Restitution

An Analysis of UNESCO Conventions and France's SHURCWA Guidelines

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Abstract

This thesis investigates the restitution of cultural artefacts looted during the colonial-era, through the comparison between two United Nations Educational, Scientific and Cultural Organization (UNESCO) Conventions and the newly proposed French guideline, Shared Heritage: Universality, Restitution and Circulation of Works of Art (SHURCWA). Through a qualitative case study employing Carol Bacchi's *What is the problem represented to be?* (WPR) approach, the research critically examines and compares how these guidelines frame the restitution process. By analysing both international and national guidelines, this study explores the extent to which international norms influence national practices in heritage preservation. The study finds that the narrow scope of both UNESCO Conventions and SHURCWA challenges the possibility of just restitutions. This thesis underscores the need for a refined approach to restitution, since the guidelines impose a Eurocentric standpoint that omits the rights and voices of indigenous communities who experienced looting. Since SHURCWA acknowledge the persisting repercussions of French colonialism, it takes a step further the UNESCO Conventions, but restrictions of the guideline are likely to hamper successful restitution claims.

Keywords: Restitution, Cultural Heritage, France, United Nations Educational, Scientific and Cultural Organization, Justice
Words: 9 982

List of Abbreviations

UNESCO	United Nations Educational, Scientific and Cultural Organization
1954 Hague Convention	Convention for the Protection of Cultural Property in the Event of Armed Conflict
1970 Convention	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
SHURCWA	Shared Heritage: Universality, Restitution and Circulation of Works of Art
WPR	What is the problem represented to be?

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1. Introduction

The restitution of cultural artefacts looted during colonial expansion and conflict has emerged as a significant topic of discourse, both academically and on the international stage (Aguigah, 2023; Panga, 2023, Gates, 2020). Restitution, defined as the "act of returning cultural or natural specimens, objects, works of art, or other material to claimants, often referred to as source country or source community" (Abungu, 2022: 252), has garnered increasing attention in recent years, with France making a commitment to returning cultural artefacts to their former colonies in Africa (Duhennois, 2020). The 15th century marked the onset of European imperial expansion, resulting in the colonisation of territories across the world. Throughout the colonial-era, imperial powers systematically pillaged indigenous lands, looting invaluable artefacts integral to the cultural heritage of these communities. The systematic looting not only deprived these communities of their tangible heritage, but inflicted enduring scars upon their collective identities (Aguigah, 2023; Gates, 2020).

In spite of the passage of time, the scars left remain raw, prompting concerted efforts to redress historical injustices and facilitate the restitution of artefacts that were obtained illegally. International law emerged as a crucial guideline for navigating the complexities in restitution processes, providing legal resources for harmed parties requesting the restitution of their stolen heritage (Adewumi, 2015). However, these legal instruments have had mixed success in obtaining restitution, particularly for colonial-era artefacts, highlighting the need for a refined exploration of the underlying mechanisms guiding restitutions (Diop, 2020). In Europe, France is one of the first former colonisers that has proposed a guideline for the restitution for artefacts that were looted during the colonial-era (Martinez, 2023). Subsequently, the proposed French guideline makes it interesting for investigation due to its unique position, and to see whether or not it perpetuates colonial narratives and power dynamics to the discourse on the restitution of cultural artefacts.

Through a qualitative case study, this thesis conducts a discourse analysis, critically comparing two United Nations Educational, Scientific and Cultural Organization (UNESCO) Conventions and the French restitution guideline, shedding light on the intricacies of cultural restitution processes and their implications.

1.1. Research Aim and Question

This study aims to analyse and compare how France and international law frame the restitution of cultural artefacts. Through the lens of postcolonial theory and reconciliation, the research seeks to investigate the representations within the French guideline and compare them to those outlined in two UNESCO Conventions. By identifying the underlying presumptions, beliefs and priorities that influence each approach to restitution, the differences and similarities are examined. Thereby, the thesis will contribute to advancing the knowledge on how law, ethics and culture intersect and bring to light the complexities surrounding cultural heritage restitution.

In order to research that aim, the following research question is posed:
How is the guideline of restitution for cultural artefacts framed in France compared to international law?

1.2. Scope and Relevance of the Study

This study examines the restitution of cultural artefacts under two UNESCO Conventions and the French guideline. By analysing both a national guideline and two international Conventions, one can assess how and if international norms translate to national policies in the context of heritage preservation. Analysing this case provides insights on how to address restitution of artefacts elsewhere. The UNESCO Conventions serve as benchmarks for member states, setting standards and expectations for the protection of artefacts on an international scale (Adewumi, 2015). Its comparison to France is based on the country's proactive stance on cultural restitution, making it relevant for in-depth investigation and analysis in the context of the research aims. Scrutinising the language, principles and mechanisms embedded within these guidelines reveals the motivations, priorities and challenges shaping restitution.

The French guideline, published on 23 of April 2023, is of contemporary relevance. France, one of the first former colonial nations to propose a guideline for restitution to their former colonies, is a prominent figure in European politics and culture whose actions have a global impact, influencing narratives about heritage preservation and international justice. Its historical ties to colonialism and ongoing efforts to reconcile with its past by reshaping its postcolonial identity make it a representative case for examining broader themes of decolonisation and cultural diplomacy (Duhennois, 2020).

1.3. Delimitations

While case studies offer insights into specific phenomena within a particular context, it is important to acknowledge the inherent limitations regarding external validity. This study's focus on the French guideline and two UNESCO Conventions restrict the generalizability of findings to broader contexts since it may not be directly transferable to other countries with different histories or legal frameworks (Robson & McCartan, 2016: 110). While the analysis provides rich insight into heritage preservation and policy implementation, caution should be exercised in deducing findings to other settings without considering contextual nuances. However, as France is one of several former colonisers in the region, policy changes can indicate broader regional trends. Moreover, the methodology and theoretical framework employed ensure the internal validity and replicability of the study.

Despite ratifying both UNESCO Conventions, cultural artefacts contained in French national collections are inalienable and cannot be transferred out of public collections (Gates, 2020). As of now, restitution decisions are made on a case-by-case basis and the effectiveness of the proposed guideline will need evaluation in the coming years.

2. Background

This section illustrates the background to the area of study, covering colonial-era looting and its impacts, an introduction to key international guidelines for restitution, the 1954 Hague Convention and the 1970 Convention, and lastly the French restitution guideline.

2.1. Colonial History of Looting

The era of colonialism witnessed widespread looting of cultural artefacts, characterised by violent and illicit acquisitions by colonial powers (Hicks, 2020; Adewumi, 2015; Aguigah, 2023; Gates, 2020; Sarr & Savoy, 2018). These acts of looting were not only intended to assert dominance and control over colonised territories (Aguigah, 2023), but undermine and erase indigenous cultures (Gates, 2020). As decolonisation progressed, calls for restitution of looted artefacts grew. This marked a turning point in history, as the demands reflected a larger trend to reclaim agency and assert sovereignty over cultural heritage (Duhennious, 2020; Diop, 2020).

In addition to looting, colonial powers imposed their own narratives and interpretation upon the histories and identities of colonised peoples. Indigenous culture has been systematically erased and appropriated, perpetuating inequalities and marginalisation (Aguigah, 2023). Colonialism left behind increased socio-political and economic disparities, such as the unequal distribution of resources and wealth, the imposition of foreign ideologies and values, and the perpetuation of power imbalances (Sirohi, 2017). Therefore, the demand for restitution is not just a call for justice but also a crucial step in addressing the long-lasting effect of colonialism and promotes reconciliation between former colonisers and the colonised.

2.2.   International Guidelines

In the aftermath of World War II, growing concerns over the protection and restitution of cultural heritage prompted the international community to establish guidelines for safeguarding cultural artefacts (Adewumi, 2015). UNESCO was the governing body tasked with developing a guideline, and two key Conventions emerged: the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* and the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

After widespread destruction and looting of artefacts during times of conflict, these conventions aim to uphold legal obligation regarding the protection and restitution on an international scale. By ratifying these Conventions, countries commit to implementing measures to prevent the illicit trafficking of cultural artefacts, promote cooperation in cultural heritage preservation and facilitate the restitution of stolen or illegally exported artefacts to its countries of origin. The adaptation of these conventions reflects the international community's recognition of the importance of preserving cultural heritage and the need for collective action to address threats to cultural heritage (Bonadies, 2019; Matthes, 2017).

2.3.   Restitution Guideline in France

In November 2017, the president of France, Emmanuel Macron, made a speech in Ouagadougou where he declared that "African heritage can no longer remain a prisoner of European museums" (Panga, 2023) and promised to restitute culturally significant artefacts. This marked decisive progress towards colonial reckoning, since it has been argued that one

of Europe's greatest challenges for the 21st century is the historical, psychological and political responsibility of their past (Sarr & Savoy, 2018). In line with this promise, Macron appointed a professor from Senegal, Felwine Sarr, and a professor from France, Bénédicte Savoy, to assist in creating a plan for restitution (Duhennois, 2020). This resulted in the 2018 report *Restoring African Heritage*, which has since become a landmark in the restitution debate (Elysee, 2018; Gates, 2020).

Following this, Macron commissioned Jean-Luc Martinez, Ambassador for International Cooperation in the Field of Heritage and Honorary President and CEO of the Louvre, to draft the guideline law for the restitution of cultural artefacts owned by French public collections to their countries of origins. Currently, these collections are inalienable and can only be returned under special law (Ministère de la Culture, 2023). The guideline, *Shared Heritage: Universality, Restitution and Circulation of Works of Art* (SHURCWA) (Martinez, 2023) outlines a doctrine and method for reviewing and processing restitution requests and is intended to inform future laws regarding restitution.

3. Previous Research

This section explores the discourse on cultural heritage and restitution. Examining the empirical literature on restitution, the themes of ownership and legal frameworks, ethics and (in)justice, and cultural heritage and identity politics is discussed.

3.1.1. Ownership and Legal Framework

Discussions about the restitution of cultural artefacts mainly concern legal considerations of rightful ownership and protection of artefacts in a global context. Post-World War II, with substantial loss and dispossession of artefacts (Radzilowski, 2016; O'Donnell, 2011), the international community increasingly recognised the importance of preserving cultural heritage, leading to the establishment of international guidelines (Adewumi, 2015; Kamardeen & Beurden, 2022). While there have been coordinated initiatives and legal frameworks in place to address Nazi-looted art, Diop (2020) observes that colonial-era restitution encounters significant hurdles and lacks consistent response. Goldsleger (2005) argues that denying requests for restitution from former colonies has been easier than addressing claims from individuals affected by Nazi atrocities. The absence of dedicated legal

frameworks for colonial-era restitution has caused a preference for targeted restitution approaches (Panga, 2023; Savoy, 2022).

Critics highlight the limitations of international law concerning restitution, which rely on non-binding recommendations from international bodies thus lacking enforceability (Goldsleger, 2005; O'Donnell, 2011). Goldsleger (2005) mentions the inconsistency among national laws, resulting in no universal obligations for states to honour each other's legislation. Moreover, national interests often dictate policy-making, prioritising museums over the emotional connections of claimants (Oost, 2018). While European nations recognise the need to protect cultural heritage during conflict, this does not extend to non-European territories, resulting in substantial loss of cultural heritage in subjugated territories (Adewumi, 2015; Kamardeen & Beurden, 2022). International treaties lack retroactive effect, resulting in a state-centric approach that leaves claimants dependent on state goodwill (Carpenter, 2022; Radzilowski, 2016; O'Donnell, 2011). Gates (2020) and Kamardeen & Beurden (2022) attribute the different approaches to Nazi-looted and colonial-era artefacts to the Eurocentric nature of international law, rooted in European empire-building. Contrarily, Cuno (2011) argues that international law seeks to strike a balance between the state holding artefacts and the wider interest of humanity.

3.1.2.   Ethic and (In)justice

The ethics and justice of restitution involve navigating complexities of historical accountability and moral imperative to rectify past injustices. Only in the 2010s did arguments for the return of artefacts looted during colonialism, based on it being the just thing to do, gain traction (Diop, 2020). Sarr & Savoy (2018) can be credited for bringing the issue of colonial-era artefacts to the forefront of global discussions. Their report played a pivotal role in raising awareness, fostering dialogue and spurring efforts to address the injustices of colonial-era looting. Prior to this, many victims lacked incentive to pursue restitution due to the absence of ethical standards (Carpenter, 2022).

Since the beginning of the 21st century attempts to redress Nazi-looted art have prompted increased recognition of the ethical imperative for restitution, progressively extending to colonial-era looting. However, concerns about economic loss impact decisions, superseding ethical considerations. Aguigah (2023) and Panga (2023) report that the integration of colonial artefacts into Western art circuits is propelled by capitalist mechanisms, leading to their commodification and valuation based on market worth.

Artefacts of cultural heritage are subjected to both symbolic and economic capitalism in museums and art markets, perpetuating a narrative of scarcity and competition for rare items. The link between theft, museums and the art market highlights the intertwined relationship between violent acquisitions and economic capitalism (Aguigah, 2023; Diop, 2020; Sarr & Savoy, 2018), highlighting a powerful incentive for their continued retention.

3.1.3.   Cultural Heritage and Identity Politics

Scholarly discourse has long focused on the cultural heritage embedded in artefacts, often intertwined with identity politics. A consensus has emerged that the act of looting was justified and normalised when against populations considered racially inferior. Throughout colonialism, the theft of indigenous peoples artefacts was excused by claims of conquerors presumptive rights over conquered. This idea was supported by imperialist ideologies that denigrated non-Western cultures as backward or uncivilised, legitimising the theft of cultural heritage, asserting dominance and maintaining institutionalised injustices (Goldsleger, 2005; Aguigah, 2023; Gates, 2020; Savoy, 2022; Hicks, 2020).

The acquisition of artefacts spurred the establishment of ethnographic museums across Europe. These institutions aim to educate people about cultures from across the world, embracing a universal perspective with the goal to facilitate intercultural dialogue and cultivate an appreciation for the diversity of human heritage. This includes artefacts from the nation's imperial past (Goldsleger, 2005; Clark, 2021; Matthes, 2017). These museums often depicted looted artefacts as 'primitive', reinforcing a narrative of racial hierarchy and cultural superiority which was a deliberate political strategy for legitimising colonial rule and asserting economic dominance (Keim, 2022; Matthes, 2017; Aguigah, 2023; Gates, 2020; Diop, 2020, Duhennois, 2020). Subsequently, museums were seen as authoritative representations of 'enlightened modernity' that presented objective truths (Goldsleger, 2005). Over the decades these artefacts have been displayed in ethnographic museums, they have become intertwined in the national identity of Western nations (Goldsleger, 2005; Matthes, 2017; Adewumi, 2015; Cuno, 2011, Duhennios, 2020).

Postcolonial nations have pursued restitution for looted artefacts, stemming from a desire to reclaim their cultural identity which was systematically undermined during the colonial-era (Clark 2021; Savoy, 2022). Clark (2021) notes that governments may utilise cultural artefacts to reinforce their political legitimacy while Cuno (2011) argues that nation-states may exploit restitution to strengthen national identity and employ strict

retentionist laws to advance nationalistic agendas. This perspective has influenced discourse on cultural heritage, with European museums expressing concerns that restitution could exacerbate nationalism in postcolonial nations (Aguigah, 2023). However, Duhennios (2020) suggests that former colonisers can reshape their postcolonial identity through restitution. Using France as an example, restitution becomes a way to symbolically reject colonial nostalgia and demonstrate a willingness to relinquish its colonial trophies.

4.   Theoretical and Conceptual Framework

This section introduces the theoretical and conceptual framework for this study, postcolonial theory and its approach to justice and injustice, combined with a conceptual framework of reconciliation. These are presented, its concepts clarified and their application to the research briefly explained.

4.1.   Postcolonial Theory

The overarching theoretical framework used for this study is postcolonial theory, in particular its approach to justice and injustice. Adopting the approach of postcolonial theory offers a critical lens through which to understand the legacies of colonialism and imperialism, and their ongoing impacts on societies, cultures and power structures worldwide. At its core, postcolonial theory challenges dominant Western narratives, aiming to deconstruct and critique the Eurocentric worldviews that have historically marginalised and opposed non-Western peoples and cultures (Said, 1978).

The thesis builds upon Ohlsson & Mitchell's (2023) postcolonial examination of justice through injustice, which delves into how historical injustices shape contemporary notions of justice. Traditional notions of justice often overlook the systematic inequalities and injustices perpetrated by colonialism and imperialism, as it builds upon Western understandings of the concept. The historical context in which justice functions cannot be separated from it, and any understanding of justice must address the effects of colonial oppression. In the realm of justice theory, postcolonial theory emphasises the deliberate and inadvertent silencing and exclusion of marginalised voices, often denoted as the "other" (Ohlsson & Mitchell, 2023: 95-96).

The idea of epistemic injustice, which describes the deliberate marginalisation, misinterpretation, or silencing of the knowledge and experiences of particular groups as proposed by Fricker (2013) is a key component. Epistemic justice encompasses both testimonial injustice, where one's words are distrusted based on attributes such as race or gender, and hermeneutic injustice, where experiences are systematically misinterpreted due to lack of language capable of understanding them, often resulting from the exclusion of certain groups as legitimate knowledge producers. This concept underscores the extensive biases that hinder marginalised individuals from being heard and understood within society (Spivak, 1999). In accordance with Fricker (2013), Ohlsson & Mitchell (2023: 93-95) highlight the ways that colonialism marginalised the voices of indigenous peoples and gave preference to Western knowledge systems, consequently solidifying epistemic inequalities. In doing so, they emphasise the importance of centering marginalised perspectives in debates about justice and acknowledging the diverse ways in which injustice manifests.

The concept of justice is seen as non-domination (Ohlsson & Mitchell, 2023: 92). As Western conceptions of justice prevail, the power dynamics inherent in colonial relations are frequently neglected. Thus, a redefinition of justice that centres the experiences and struggles of marginalised communities and seeks to dismantle systems of oppression (Ohlsson & Mitchell, 2023: 92-93). Based on current circumstances, justice must address the broader structures of privilege and power that underpinned colonialism and imperialism in addition to individual rights and legal procedures. By centering the historical and contemporary relations of power as the object of justice, they highlight the need for systemic change to address the root causes of injustice (Turnbull, 2017: 6-10).

With this, Ohlsson & Mitchell (2023: 99-101) proposes rectifying justice as a central element. Rather than pursuing punitive measures, rectification of historical injustices is prioritised. Aiming to address systemic inequalities and unfair treatment, rectificatory justice seeks to right the wrongs inflicted upon marginalised groups and challenges the institutions that perpetuates injustices. Thus, questions of political and social responsibility, including issues of reparation, restitution, compensation and apology, turn into a way to make amends for past and present wrongs. The symbolic and tangible significance of memory and reconciliation are, according to Bartels et al. (2017) and Collste (2015), exemplified by the ceremonial restitution of remains and artefacts formerly housed in ethnographic museums. This focus underlines the role of artefacts as tangible reminders of colonial oppressions as well as the need for restitution as a means of addressing historical wrongs and promoting reconciliation.

Through this postcolonial lens, the mechanisms through which colonial exploitation and domination of countries impact contemporary practices of restitution will be investigated. By situating the analysis within the broader context of postcolonial theory, this study aims to contribute a deeper understanding of the inherent complexities and challenges in efforts to address historical injustices and promote justice in the field of cultural heritage preservation.

4.2. Reconciliation

Daniel Bar-Tal (2002) asserts that "justice is indispensable for reconciliation", a principle that aligns with the conceptual framework guiding this study. Rooted in perceptions, beliefs and expectations, the framework of reconciliation serves as the underlying structure, emphasising the importance of justice in the reconciliation process (Robson & McCartan, 2016: 68; Maxwell, 2013: 39). Reconciliation in the context of this study refers to "a societal process that involves mutual acknowledgment of past suffering and the changing of destructive attitudes and behaviour into constructive relationships toward sustainable peace" (Brounéus, 2003: 3). Under these circumstances, reconciliation is seen as a mutual process where anger and hatred are addressed involving both perpetrators and victims in the pursuit of peaceful coexistence.

Brounéus (2003: 28-30) emphasises the pivotal role of restorative justice in reconciliation processes. Viewing crime as a dispute between people, restorative justice recognises the harm inflicted to all parties involved – victims, perpetrators and the community. Rather than punishment, reconciliation is advanced through discussions, where all sides are allowed to express perceived impacts, feelings and thereupon find solutions that address the harm done. This approach seeks to mend conflictive relations by facilitating official acknowledgement of past wrongs, offering formal apologies and providing compensation to victims. Through mutual understandings, restorative justice thus allows all parties to come to terms with historical injustices, fostering reconciliation, healing and a sense of community well-being.

The restitution of artefacts holds significant implications for understanding the dynamics between nations and cultures, as the return of invaluable artefacts marks a significant turning point in the healing and repair process by acknowledging prior grievances. Reconciliation assumes added significance in the context of this study as it intersects with the objectives of investigating the representations of restitution within the French guideline and comparing them to international norms outlined in UNESCO Conventions. By examining

how reconciliation is conceptualised and operationalised within these guidelines, the research intends to shed light on the underlying principles of justice, fairness and historical accountability that underpin efforts to address colonial-era injustices.

5. Methods and Data

This section explains and justifies the methods and data employed. It introduces the research design, followed by the method used for this study, Carol Bacchi's *What is the problem represented to be?* (WPR) approach and its application. Then, it details data collection and analysis and concludes with ethical considerations and study limitations.

5.1. Research Design

This thesis employs a qualitative research design for a critical case study, enabling an in-depth exploration of complex issues and providing detailed insights into restitution efforts (Robson & McCartan, 2016: 20). The research design is to support the investigation and develop a comprehension of the problem, whereby qualitative methods help generate a rich examination of the case. The phenomenon of restitution is investigated within the context of UNESCO Conventions and France. By focusing on these selected cases, the intricacies, nuances and contextual factors that influence the development, implementation and outcomes of these policies can be thoroughly analysed (Robson & McCartan, 2016: 150-151).

5.2. Research Methods

The methodology is based on Bacchi's (2009) *What is the problem represented to be?* (WPR) approach to policy analysis. The fundamental tenet of the WPR approach is that problems arise from within policies; they do not exist outside of them. Policies not only address problems but also define and shape them, making them endogenous to the process of policy formulation. The problem representations embedded in policies significantly influence the actions taken to address the issue, thereby implicating the intended objectives of those policies (Bacchi, 2009: 1-2). This study aims to critically analyse and compare international and French guidelines concerning the restitution of cultural artefacts. As stated by Bacchi (2009: 7), "... policies are elaborated in discourse". Thus, alongside the WPR approach,

discourse analysis will be employed for a deeper examination of the assumptions, values and the meanings of the language used in the policy documents. This combined approach allows one to examine not only how problems are represented within the guidelines, but also the underlying interest, power dynamics and ideologies shaping policy discourse on restitution.

The discourse analysis will follow Bacchi's (2009: 7) proposition of "identifying and interrogating the binaries, key concepts and categories operating within a policy". Investigating binaries includes looking at where they are placed in policies and how they function to influence the problem, further one has to identify and observe which meanings are given to key concepts. Categories are central to governing processes, but they should not be taken as a given but one has to explore how they operate to give specific meanings to representations of problems. Accordingly, discourse analysis aims to reveal underlying assumptions and preconceptions in problem representations along with identifying and considering silences (Bacchi, 2009: 7-9).

Bacchi (2009: 2) proposes applying six questions when examining policies (Figure 1), but it is important to note that while my research is based on the WPR approach, to apply all questions would exceed the aim and scope of this study.

Figure 1. Bacchi's suggested questions for applying the WPR approach.

	Questions
1	What is the problem represented to be in the specific policy?
2	What presuppositions or assumptions underlie this representation of the problem?
3	How has this representation of the problem come about?
4	What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought about differently?
5	What effects are produced by this representation of the problem?
6	How/where has this representation of the problem been produced, disseminated and defended? How could it be questioned, disturbed and replaced?

Three questions will be employed for this study: one, two and four. The first question examines how the problem is framed within the policy, revealing its underlying objectives and implications (Bacchi, 2009: 2-4). Question two uncovers assumptions and presuppositions that shape the problem representation, providing insight into the ideological underpinnings of the policy (Bacchi, 2009: 4-6). Finally, the fourth question identifies aspects that remain unaddressed or marginalised in the policy discourse, showing potential gaps or oversights in the problem representations (Bacchi, 2009: 12-14). Focusing on these questions offers a more focused and in-depth examination that is manageable within the scope of the study, offering a nuanced understanding of the policy implications on restitution. Using Bacchi's framework, the rather broad questions are deconstructed into operational questions based on the collected data, shown in Figure 2.

Figure 2. Structure of the study's questions.

Research Question	WPR Questions	Operational Questions
How is the guideline of art restitution for cultural artefacts framed in France compared to international law?	1. What is the problem represented to be in the specific policy?	1.1. What is the problem represented to be in the restitution guideline?
	2. What presuppositions or assumptions underlie this representation of the problem?	2.1. What are the recurring categories in the guideline and what meaning do they convey?
		2.2. What are the recurring dichotomies in the guideline and what meaning do they convey?
		2.3. What are the recurring keywords in the guideline and what meaning do they convey?
	3. What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought about differently?	3.1. Where are the silences?
		3.2. What is left unproblematic in this problem representation?

5.3. Data Collection

To answer the research question, three documents were collected: the 1954 Hague Convention and the 1970 Convention, and one national policy document in France on the restitution of cultural artefacts.

5.3.1. UNESCO Conventions

The two UNESCO Conventions were selected subsequent to conducting a literature review on the topic of restitution, where they emerged as the two most discussed. Further, Martinez (2023: 41) identified these Conventions as the international reference for restitution. These Conventions, collected through the UNESCO Database, represent internationally recognised standards and norms concerning safeguarding and restitution of cultural artefacts. They reflect the collective efforts of the international community to preserve cultural heritage and combat the illicit trade in cultural property (UNESCO, n.d.a; UNESCO, n.d.c). This selection provides a solid foundation for the international standards and norms regulating restitution and facilitates a comprehensive and insightful analysis of the topic.

5.3.1.1. The 1954 Hague Convention

The *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, also known as the 1954 Hague Convention, is the first multilateral agreement devoted exclusively to cultural heritage preservation during times of peace and conflict. According to UNESCO (n.d.a), the Convention aims to "protect cultural property, such as monuments of architecture, art or history, archaeological sites, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections of any kind regardless of their origin or ownership". It recognizes the significance of cultural heritage as a component of humanity's shared heritage and seeks to ensure its preservation for future generations (UNESCO, n.d.a).

Adopted in 1954 and entering into force on 7 of August 1956, the Convention has 135 State-Parties committed to its obligations. The Convention consists of four chapters, and a total of 21 articles (UNESCO, n.d.b).

The 1970 Convention, formally known as *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, addresses cultural artefact theft, looting and illegal trafficking, which weaken social cohesiveness by depriving people of their history and culture. Its primary goal is to prevent the illegal trade in cultural property and facilitate the restitution of stolen artefacts to their countries of origin, while concurrently recognising the importance of protecting cultural heritage and curb the illicit activities that contribute to its loss and destruction. By promoting cooperation and coordination of legal measures, the Convention aims to preserve the integrity and authenticity of cultural artefacts (UNESCO, n.d.c).

 After its adoption in 1970, the Convention entered into force on 24 of April 1972. As of now, there are 145 states parties who have either ratified, accepted, or acceded to the Convention. It is composed of 26 articles (UNESCO, n.d.d).

5.3.2.   French Restitution Guideline

France was selected based on its unique position in proposing a guideline for the restitution of cultural artefacts to former colonies. The document was collected through the French Government's database. Among former colonising nations in Europe, France stands out as one of the first countries to have taken concrete steps towards addressing the issue of restitution through proposed legislation. Its colonial history, particularly its extensive empire in Africa, has sparked significant debate and scrutiny regarding the acquisition and retention of artefacts from its former colonies.

The proposed guideline, SHURCWA by Martinez (2023), reflects a momentous departure from historical practices and signifies a shifting attitude towards restitution of cultural heritage. France's initiative provides an opportunity to explore the complexities of addressing historical injustices, power dynamics and privilege in the cultural heritage sector and the role of international norms in shaping national policies. Furthermore, studying France's approach provides insights into best practices, challenges and potential pathways for advancing restitution efforts globally.

The guideline addresses restitution to former French colonies in Africa, providing a number of recommendations, including:

- incorporating nine criteria of restitution into legislation;
- forming bilateral ad hoc commissions including experts from both France and the countries of origin to evaluate restitution;
- introducing a concept of "shared heritage" for certain symbolic works that may not fully meet the criteria for restitution, and
- a Europeanisation of restitution policies, collaborating with countries like Germany, Belgium and the Netherlands, focusing on provenance research and welcoming the involvement of African researchers.

Hoping to foster collaboration and ensure the equitable return of cultural heritage, the recommendations seek to provide a guideline for dealing with the complexities of restitution (Martinez, 2023; Ministère de la Culture, 2023).

5.4.   Data Analysis

Following Bacchi (2009: 7), discourse analysis is applied to the analysis process to examine what was said and how language was used (Robson & McCartan, 2016: 371-372). This study employed deductive coding based on Bacchi's (2009) WPR approach, where codes and categories emerge from the operational questions (see Figure 2). Systematic coding revealed patterns and themes, providing a deeper understanding of the policy. After the coding phase, the phenomenons in the guidelines for each WPR question were compared to each other, following Smelser (1973) method of conducting a comparative analysis by identifying similarities and differences between the findings. Finally, the identified patterns and themes are analysed in relation to the study's theoretical and conceptual framework to answer the research question.

5.5.   Ethical Considerations and Limitations

5.5.1.   Limitations to the WPR Approach

Conducting a discourse analysis using Bacchi's (2009) WPR approach does not produce objective results, as the analysis and the interpretation of the results reflect the researcher's personal beliefs and understandings. Therefore, researchers must acknowledge their responsibility to not blindly accept problem representations without considering its causes, intentions and implications (Bacchi, 2009: 19; Robson & McCartan, 2016: 106). Likewise, several feminist researchers reject the assumed objectivity in favour of incorporating subjectivity (Bourke et al, 2009; DeVault, 1996; Cook & Fonow, 1989). Arguing that objectivity often makes power dynamics and biases inherent in the research process, Kim (2009) states that researchers have to recognise and challenge systematic disparities. As the WPR approach is normative in nature, a degree of personal views are reflected in the policy recommendations. Subsequently, the study's adaptability is limited by the subjective and normative nature of the WPR approach. However, the WPR approach is applied here to examine policies aiming to "minimising losses and maximising the gains" (Bacchi, 2009: 73).

5.5.2.   Source Criticism

State documents carry inherent biases due to their creation within specific governmental contexts, influenced by political agendas and ideologies. These biases can manifest in selective representation of information, the framing of issues and omission of alternative perspectives (Robson & McCartan, 2016: 351, 357).

The French guideline proposed by Martinez (2023) is not ratified legislation, and may raise concerns about the reliability of the findings. However, given it is commissioned by the French President to inform future legislation, it remains valuable for analysis. Any modifications made during ratification could provide insight into how problem representations have changed since its original draft, thereby reducing validity concerns. Furthermore, the French guideline's translation from French to English reflects the translator's interpretations, limiting the research. Nonetheless, the publication of the English version of the guideline on the French Governments database ensures that the translation closely mirrors the original French expressions.

6. Analysis

This section addresses the research question, *how is the guideline of restitution for cultural artefacts framed in France compared to international law?*, and consists of three parts with sub-sections, based on the operational questions (see Figure 2). The first part examines how each guideline represents the problem. Section 6.2 explores the underlying presuppositions and assumptions through three sub-questions. Lastly, the silences and unaddressed problems are discussed by scrutinising the constraints and oversimplifications that conceptualise the problem representations.

6.1. What is the problem represented to be in the specific policy?

6.1.1. What is the problem represented to be in the restitution guideline?

The guidelines provide distinct perspectives on the problematization of restituting cultural artefacts. The 1954 Hague Convention problematise the role of armed conflicts when it comes to the protection of artefacts. During armed conflicts, there is an increased vulnerability of cultural heritage and thus a necessity for international cooperation to safeguard it. The Convention acknowledges that destruction of artefacts often takes place during times of war, leading to irreparable loss and damage to cultural heritage. As such, the main concern of the Convention is the lack of adequate protection of cultural property during times of conflicts. However, this representation avoids the issue of historical injustice and the colonial context that often precedes such conflicts. It ignores that the Convention does not classify colonial and imperial expansion as war, which frequently led to looting of artefacts. This implies that appropriation of cultural heritage during these periods are disregarded, and artefacts remain in the possession of former colonial powers without the same scrutiny as applied to wartime looting. Emphasising the protection of artefacts without addressing their provenance or rightful owner perpetuates testimonial injustice, as it fails to acknowledge the historical and cultural significance these artefacts or communities retain (Fricker, 2013).

The 1970 Convention focuses on the illicit import, export and transfer of ownership of artefacts as the central problem, and presents it as the cause of the impoverishment of nations' cultural heritage. The Convention recognises illicit activities as the cause depriving peoples of valuable artefacts, thus undermining their cultural identity. Similar to the 1954 Hague Convention, the 1970 Convention highlights the importance of international cooperation to address the problem, through the establishment of regulations preventing the

unauthorised removal and trafficking of artefact. Yet, this representation fails to see how exploitation of cultural heritage has historically been done towards communities which powerful groups have deemed inferior (Radzilowski, 2016; Hicks, 2020). By framing the problem as illicit trade, the Convention ignores the historical context of colonialism and imperialism that facilitated the initial removal of these artefacts. The focus on contemporary illicit activity serves to divert attention from the systemic injustices that initially allowed such exploitation to occur. By not engaging with the restitution of colonial-era artefacts, the Convention allows former colonial powers to maintain their dominance over cultural narratives and heritage, perpetuating neocolonial dynamics.

SHURCWA propose a law for the restitution of African cultural heritage and identified the retention of artefacts in France as a fundamental problem. It acknowledges the denial of access to one's cultural heritage when artefacts are kept in foreign institutions, which is the case with African artefacts found in French cultural institutions. This problem representation emphasises the importance of rectifying historical injustices by returning artefacts to their places of origins and, with that, reinstate the rights of communities to their cultural heritage. Additionally, the guideline highlights the concept of inalienability, which protects French collections since "[...] the assets constituting the collections of the museums of France belong to a public entity, are part of their public domain and are as such inalienable" (SHURCWA, Martinez, 2023: 26), recognising the incapability of French laws to facilitate restitution. The tension between the guideline and inalienability reflects the conflict between maintaining national sovereignty over cultural artefacts and admitting colonial injustices.

While the 1954 Hague Convention singled out the possibility of destruction of cultural artefacts as the main problem, both the 1970 Convention and SHURCWA regard the problem to be the inability to access one's cultural heritage. However, the 1970 Convention focuses on the illicit import, export and transfer of ownership as the cause of this issue, whereas France sees their role in depriving communities of their cultural heritage by continued retention of artefacts for decades after its acquisition.

6.2. What presuppositions or assumptions underlie this representation of the problem?

Following Bacchi's (2009: 4-5) second question, this section examines the underlying presuppositions and assumptions in the problem representation by addressing three sub-questions on recurring categories, dichotomies and keywords.

6.2.1. What are the recurring categories in the guideline and what meaning do they convey?

The categories in this question refer to how people are grouped together. The construction of groups fosters the development of collective identities, and the way these identities are framed in the guidelines convey specific meanings and produce subjectification effects. This framing establishes both the characteristics and boundaries of these groups, affecting how members perceive themselves and are perceived by others, thereby shaping their social and cultural identities (Bacchi, 2009: 40).

Both UNESCO Conventions main categories refer to the state-parties that have either ratified or acceded to the Convention. This category highlights the sovereignty and voluntary commitment of nation-states to protect cultural heritage, reinforcing a state-centric view of heritage protection. Underscoring the power and responsibility of states, this categorisation may overlook the historical injustices that contribute to the current distribution of artefacts. Accordingly, the voluntary approach may result in inconsistent and insufficient responses to restitution requests, allowing states to evade their responsibilities and maintain control over cultural heritage, compromising efforts to achieve rectificatory justice (Ohlsson & Mitchell, 2023: 99-101).

The 1970 Convention attributes the responsibilities of preventing illicit export, import and transfer of ownership to the states themselves so that the other State-Parties can benefit, whereas the 1954 Hague Convention sees that states are to prevent the destruction of artefacts as a responsibility to mankind. The use of mankind as a homogenous category suggests a universalistic approach to cultural heritage, implying that artefacts belongs to all of humanity which is similar to the standpoint of ethnographic museums, whose aim is to showcase civilisations from around the world to the broadest audience (Goldsleger, 2005). This universalistic approach can obscure the specific historical and cultural content of artefacts by continuously placing ownership in other hands than the communities from which they were

taken. Not only does this equate the loss of cultural identity, but the erosion of heritage from the affected communities. The physical separation from these objects can weaken the cultural continuity and disrupt traditional practices and knowledge systems. As the affected communities' knowledge and interpretation of their own cultural heritage are devalued and misrepresented, Western epistemic dominance is reinforced. Thus, framing the beneficiaries this way rather perpetuates a continuation of injustice and Western-centric museum practices, where cultural centres can base arguments for non-restitution on the fact that the items belong to all of humanity, including them.

SHURCWA places a geographical limit to whom the recipients of restitution would be: Africa. By naming the region of origin explicitly, the guideline recognises the historical context of colonialism and the communities which were affected by looting. But viewing Africa as a homogenous group oversimplifies the diverse identities on the continent. Driven by imperialist ambitions and economic interest, European nations divided the continent by drawing borders that disregarded cultural, ethnic and linguistic boundaries, resulting in the fragmentation of African societies (Aguigah, 2023; Hicks, 2020, 53-55). Not only does this mean that cultural heritage can belong to several nations, but that the guideline does not fully acknowledge the injustices and cultural losses suffered by African communities. By not differentiating between cultures within Africa, the guideline perpetuates marginalisation and silencing. This oversight fails to dismantle the colonial legacy that devalued and homogenised Africa.

Another feature of SHURCWA is the establishment of bilateral scientific commissions, where study and dialogue between the country in possession of the artefacts, France, and the state requesting the restitution is endorsed (SHURCWA, Martinez, 2023: 24). The involvement of bilateral scientific commissions indicate a shift where non-Western perspectives are included in the conversation, allowing affected communities to see reconciliation as a possibility. Recognising past wrongs committed by France enables the consideration of affected communities' past suffering and fosters the opportunity for a new relationship to build between the two parties, based on peace. While the goal of these commissions is to offer unbiased evaluation, they are often dominated by scholars and experts trained in Western traditions of knowledge production. This may bring about an imbalance in perspective, where narratives of former colonial powers take precedence over those of the impacted community.

The 1954 Hague Convention makes a distinction between times of conflict versus peace. This dichotomy emphasises the constant risk and heightened vulnerability to artefacts during conflicts, necessitating specialised measures and international cooperation. The Convention suggest that cultural heritage require continuous vigilance and preparedness from states and that "The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict [...]" (UNESCO, n.d.b: 10), implying that cultural heritage is not under any risk while states are at peace. With the emergence of the 1970 Convention, there is a recognition that cultural heritage is at risk during times of peace as well, and can be objects of trafficking. Incorporating both Conventions, SHURCWA includes artefacts stolen during both times of conflict and peace as objects for possible restitution.

In the 1970 Convention and SHURCWA there is a continuous sorting of the illegal, illicit and legal dimensions of artefacts and its movements. The dichotomy appears in discussions relating to the import, export or the legality of how the artefact was acquired and how the transfer of ownership took place. The distinctions emphasise the need to differentiate between actions explicitly prohibited by law – illegal, those that may involve unethical practices – illicit, and those that are permitted by law – legal. This demonstrates the intricate balance between legality and ethics in the preservation of artefacts, showcasing their significance in decision-making processes. The dichotomy reflects the complexity of regulating the movement of artefacts, and the necessity for legal and ethical standards for the protection of cultural heritage. The 1970 Convention underscores the importance of international legal frameworks, and SHURCWA the relevance of national legal frameworks, in ensuring that artefacts are acquired, exported and transferred legitimately. Further, the inclusion of 'illicit' bears the ethical imperatives of returning artefacts to its rightful owners, suggesting that legal frameworks must be accompanied by a commitment to rectifying historical injustices and acknowledging the moral claims of countries of origin.

Regardless of the moral imperative that comes with 'illicit', the 1970 Convention does not explicitly mention on what moral ground restitution may be made on but refer this responsibility to state-parties themselves (UNESCO, n.d.d: 14). SHURCWA includes a consideration of the historical context and previous attempts of restitution (SHURCWA, Martinez, 2032: 11-25). This introspection acknowledges the shortcomings of previous

restitution efforts and the historical imperative of restitution to be successful, reinforcing France's moral obligation to return artefacts. By learning from past experiences, the guideline emphasises the importance of addressing injustices, ensuring more effective and ethical restitution processes and fostering reconciliation with the countries of origin. Despite this, final decisions on restitution claims will be based upon law and need to fulfil nine criterias suggested by Martinez (SHURCWA, 2023: 5). It is important to note, that compared to both UNESCO Conventions, SHURCWA still applies a broader scope of protection, consequently applying to a wider range of restitution claims.

6.2.3. What are the recurring keywords in the guideline and what meaning do they convey?

All three guidelines refer to 'cultural property' when discussing artefacts of cultural heritage. Naming cultural artefacts as 'property' imposes a commodified view on items that hold deep cultural, historical and spiritual significance for the communities from which they originated. During the colonial and imperial-era, looted artefacts became commodities whose value was determined by mercantile intentions, patriotic inclinations or the pursuit of fame as ethnographic museums in Europe gained popularity (Aguigah, 2023). Further, Western collectors exploited members of the community who had to sell their cultural heritage to make ends meet, which ultimately resulted in the destruction of their cultural identity (Clark, 2021). In the governmental report, Sarr & Savoy (2018) place a connection between theft, museums and the art market, suggesting that the violent acquisition of artefacts, the economic and symbolic capitalism of African and Asian artefacts of cultural heritage found in museums goes hand in hand.

Accordingly, this terminology reflects colonial legacies where artefacts were often seized as spoils of curiosities, decontextualized from their indigenous significance. Such a perspective maintains a sense of ownership and control by the possessor, typically former colonial powers, on the cultural heritage of subjugated peoples. The deliberate silencing of marginalised voices by the removal and commodification of their cultural heritage perpetuates Western domination by reinforcing historical power imbalances and sustaining a narrative in which Western institutions and collectors are the primary determiner of cultural value and significance. For reconciliation to prevail, a shift from viewing cultural artefacts merely as property to recognising them as essential to cultural identity and heritage is needed (Brounéus, 2003). Reconciliation requires acknowledging the intrinsic value of these items

beyond their material worth and returning them to their rightful communities to heal historical wounds, restore cultural integrity and foster a sense of mutual respect. This shift would promote more equitable dialogue and relationship between nations, facilitating a more profound understanding and respect for cultural diversity and historical injustices.

6.3. What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought about differently?

This section aims to understand which perspectives have been omitted. By answering *where are the silences?* and *what is left unproblematic in this problem representation?,* this section both scrutinises the problem representation and identifies their limitations.

6.3.1. Where are the silences?

When examining both UNESCO Conventions, one critical silence is evident – the procedure of restitution. The 1954 Hague Convention's focus is preventing the destruction of cultural artefacts during times of conflicts, and only refers to restitution as a responsibility of state-parties at the cessation of conflict. The absence of procedures and guidance on identification, legal mechanisms and responsibilities impede efforts to return items to their rightful owners. Likewise, the 1970 Convention recognises the importance of preventing the illicit trade of artefacts, without detailing how items that have been displaced should be restituted. The Convention assigns the state-parties responsibility for regulating restitution, but does not mandate specific procedures to follow. These ambiguities in how to restitute artefacts leave a gap between international norms and national actions, allowing states to regulate restitution in accordance with Western practices that prioritise state sovereignty and control, sidelining the rights of the communities from whom these artefacts were taken. The lack of comprehensive procedures complicates efforts to recover and return unlawfully displaced artefacts, along with undermining principles of justice and the possibility for reconciliation. The restitution process remains in the hands of the oppressor, who can control the narrative and terms of the return, thus maintaining their dominance over the cultural heritage of colonised peoples. In the absence of defined procedures, the risk of prolonging disputes, perpetuating historical injustices and hindering the process of healing are increased.

SHURCWA includes nine criteria which need to be fulfilled for successful restitution claims, one which mandates that requests originate from nation-states. This is also the case

with both Conventions, consequently maintaining the state as a key player and effectively excluding communities of non-state origin from independently pursuing restitution. As stated in SHURCWA (Martinez, 2023: 54), "For all these requests from private individuals, the request should only be admissible if the State endorses the claim. In fact, French law does not grant legal recognition to communities.", accentuating the exclusion and significant limitation of the proposed guideline. There are several implications from this state-centric view of restitution. Firstly, by denying people direct agency in reclaiming their heritage, it marginalise communities that have experienced historical injustices like colonialism and cultural appropriation. The communities depend on state authorities to represent their interest, which might not coincide with their cultural and historical claims. This can cause bureaucratic delays and political complications, further impeding timely and just restitutions. Secondly, the requirement for state endorsement raises concerns about the legitimacy and rights of non-state communities. Many of these communities may reside in regions where national borders do not correspond to historical territories, reducing their ability to pursue restitution through state channels. Hence, relying on state endorsement can perpetuate existing power imbalances while ignoring the needs and rights of marginalised communities (Ohlsson & Mitchell, 2023). Lastly, this division may create conflict between state authorities and diaspora communities. Divergent views on restitution practices are likely when diasporic communities have different perspectives than their national governments. This dynamic has the potential to impede the process of reconciliation and make restitution more difficult.

Another identified silence is that SHURCWA is aimed at artefacts held within public collections, effectively excluding artefacts acquired by private individuals or entities. This distinction restricts the scope of restitution efforts to those artefacts maintained in public museums, galleries and institutions, while ignoring the significant number that reside in private hands. Artefacts obtained through questionable means, such as looting, illicit trade and unauthorised excavations are frequently found in private collections (Adewumi, 2015; Aguigah, 2023; Kamardeen & Beurden, 2022). By excluding these artefacts from restitution efforts, the guidelines fall short in providing a solution to the historical injustices associated with looting. Further, the omission of private collections perpetuates a selective approach to justice. Privately held artefacts remain in the hands of collectors, often from the global North who retained them through colonial practices. This results in inaccessibility to the communities from whom they were taken, thereby continuing the cycle of marginalisation and cultural loss. The selective restitution efforts can be seen as a form of partial justice, since it does not adequately address the problem. This allows hermeneutic injustices to

persist, depriving marginalised peoples of the necessary conceptual resources to make sense of their social experiences (Fricker, 2013). Only a fraction of the affected communities' cultural heritage is potentially restituted, which has the potential to reinforce practices of othering and pit groups against each other. By acknowledging public collections and excluding private ones, the guidelines inadvertently create a hierarchy of cultural significance. This may exacerbate feelings of marginalisation by fostering a sense of inequality among different communities. Besides, it upholds a narrative that prioritises the perspectives of former colonial powers over the affected communities. Selective restitution reinforces dominant power structures by maintaining the status quo and ensuring substantial amounts of cultural heritage remain under the control of private collectors in the global North. This not only devalues non-Western communities' right to cultural self-determination and rectifying justice, but maintains historical exploitation.

6.3.2. What is left unproblematic in this problem representation?

All three guidelines leave significant considerations unproblematic, with far-reaching implications for the equality of restitution. Both Conventions lack enforcement mechanisms, meaning there are no legally-binding procedures to guarantee state-parties' compliance. State-parties are tasked with imposing and following restitution regulations, but since there is no universal obligation to honour each other's legislations, inconsistencies in the implementation arise (Goldsleger, 2005). These inconsistencies reveal deep-seated power dynamics and systemic injustices, allowing powerful nations to dominate the outcomes of restitution processes. Powerful nations can navigate or resist compliance with international norms, while weaker nations, typically those subjugated to colonialism, lack the leverage to assert their restitution claims effectively. By retaining the historical advantage of former colonial powers and continuing the marginalisation of formerly colonised, the status quo is reinforced (Ohlsson & Mitchell, 2023).

Both UNESCO Conventions lack retroactive effect, reinforcing the state-centric nature of international law that neglects indigenous rights (Adewumi, 2015; Kamardeen & Beurden, 2022; Clark, 2021). Artefacts taken during the colonial-era are left outside the scope of these agreements, leaving claimants reliant on the goodwill of states (Carpenter, 2022; Radzilowski, 2016; O'Donnell, 2011). Kamardeen & Beurden (2022) and Gates (2020) attribute the lack of retroactive effect on the Eurocentric disposition of international law. International law governing property originates from Eurocentric frameworks that emerged

during the 15th and 16th centuries, aligning with the era of European empire-building. This basis shaped Western understandings of ownership, which include distinct rights like the use, enjoyments of benefits and destruction. Thus, indigenous communities may not be able to benefit from the Eurocentric notion of property as an individualised right, revealing inherent cultural biases in international legal frameworks.

The Eurocentric bias in legal frameworks is further evident in SHURCWA. One of the requirements for restitution is to assess the illegality of cultural artefact acquisition based on the laws in force in France and/or the territory of origin at the time of acquisition. This requires assessing legality through historical laws, which inherently favours the legal norms and practices of colonial powers at the time of acquisition. Hence, the values and norms of indigenous communities where the artefact originates tend to be disregarded. Indigenous notions of ownership and property rights, often collective and intertwined with cultural and spiritual significance, are marginalised by a guideline that values individualistic and Western legal principles (Panga, 2023). Rather than giving equal weight to the laws of colonised peoples, the emphasis on French laws during times of acquisition centres the narrative around the colonisers. The enforcement of historically biassed criteria for proving illegality complicates the process of returning artefacts, since it places an unfair burden of proof on the communities seeking the return of their cultural heritage. While SHRUCWA provides a basis for restitution, the Eurocentric approach, just like the UNESCO Conventions, places a significant limit on the scope and effect of the guidelines. Rather, one can question their intentions and whom they ultimately wish to benefit from restitution.

Duhennois (2020) argues that restitution can reshape a country's postcolonial identity, but also be manipulated for political agendas. French identity is deeply linked to the Franco-African relationship, where Africa played the 'other', a position that governments are willing to keep despite racist projections. This dynamic is further complicated by the stipulation that "the restitution project must be accompanied by a desire for partnership of the requesting State." (SHURCWA; Martinez, 2023: 56), effectively making restitution conditional and reinforcing a partnership logic that perpetuates France's influence and control over the process. Instead of allowing a new relationship to flourish, this conditionality indicated that France wishes to maintain the status quo. Restitution, while necessary for justice to the affected communities, hinders France from genuine introspection into its colonial past and lets them maintain their dominance through cultural constructs. The politics of artefact management suggest that the French government is reluctant to shoulder the political cost of fully decolonising the Republic. Macron's strategy reflects this reluctance,

aiming to respond to postcolonial critiques without completely confronting their colonial past. The reluctance to engage in a deep reconciliation process bypasses a reckoning with the past, highlighting the tensions between surface-level concessions to postcolonial criticism and the deeper, unaddressed need for a comprehensive reconciliation with historical injustices.

7. Conclusion

The aim of this research was to examine the complex landscape of cultural heritage restitution and its discourse within two international guidelines, the 1954 Hague Convention and the 1970 Convention, and the French guideline, SHURCWA, and compare these. In doing so, three of Bacchi's (2009) WPR questions were adapted to systematically explore the problem representations within restitution guidelines. The analysis, rooted in postcolonial theory and the conceptual understanding of reconciliation, has revealed several findings.

Different perspectives on the problematization of restitution are offered by the guidelines. The 1954 Hague Convention emphasises the role of conflicts and war on the protection and preservation of artefacts. The 1970 Convention refers to the movement – import, export and transfer of ownership – as the issue, resulting in the populations being deprived of their cultural heritage. Alternatively, SHURCWA sees the retention of artefacts in places that are not their origins as the cause of the deprivation. Based on these problem representations, values and underlying assumptions emerged.

Common for all guidelines is the state-centric nature, focusing on the roles and responsibilities of nation-states in the protection and restitution of cultural heritage. Both UNESCO Conventions assign the responsibility of regulating the protection of artefacts on the state-parties, placing the burden on national authorities without mandating specific procedures. SHURCWA includes criteria for the restitution of artefacts, but excludes artefacts that are held in private hands. By predominantly focusing on state-actors, these guidelines may overlook local and indigenous communities, inevitably reinforcing the status quo, limiting the scope of restitution and hindering broader efforts towards reconciliation and justice.

The depiction of the recipients of restitution as homogeneous groups, such as 'mankind' or 'Africa', draws attention to how undifferentiated groups contribute to the silencing and identity loss of impacted communities. By categorising various cultures and

peoples into a single group, these guidelines reduce the value of non-Western perspectives, neglecting the unique histories, meaning and significances associated with each artefact. Additionally, referring to cultural artefacts as 'property' commodifies them, further disregarding their indigenous meanings. Neo-colonial practices are sustained by this commodification, which upholds Western institutions' control of the artefacts. Consequently, attempts towards restitution, reconciliation or justice for the affected communities are undermined by these guidelines which continue to favour Western narratives and control over cultural heritage.

While France has taken a step forward with SHURCWA by beginning to acknowledge how their colonial past have repercussions lasting until present-day, the guidelines, just like both UNESCO Convention, does not fully explore how looted artefacts can be restituted to their places of origins. The narrow scope and procedural uncertainties of each guideline highlight the persistent challenges in achieving comprehensive and just restitution, reflecting underlying problems of power dynamics and historical injustices in the discourse of cultural heritage restitution. Whilst restitution is an important element of reconciliation with the past, addressing the silences and problems brought to light in this study is crucial to ensure the possibilities of successful restitution claims in the future.

Since this research has focused on the representations within restitution guidelines, the findings cannot draw any definitive conclusion if this is the lived experiences of the affected communities. Research based on interviews would be necessary for this kind of evaluation. Thus, building upon this research, some additional avenues for future studies is: the involvement of local communities and indigenous groups in the restitution process, examining how community-led restitution efforts can be supported by national and international guidelines; post-restitution impact studies focusing on the effect on communities that have successfully recovered their cultural heritage, and the economic implications of restitution for both the country restituting and receiving these artefacts, since they have become objects of monetary value.

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