

THE COMPLEXITIES OF CULTURAL PROPERTY RESTITUTION: THE CASE OF THE LEWKE CANNON IN SRI LANKA

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ABSTRACT

This paper investigates the legal intricacies surrounding the removal and restitution of Lewke's Cannon from Kandy, an artifact housed in the Rijksmuseum since 1875 following its confiscation by the Dutch during their 1765 conquest of Kandy. Despite persistent Sri Lankan efforts to secure its return, recent years have witnessed a shift in Dutch policy, culminating in the restitution of selected colonial-era artifacts, including the Cannon. The analysis is grounded in the diverse legal frameworks that governed Sri Lanka at the time of the incident, notably the imposition of Roman-Dutch Law in coastal areas under Dutch control and Kandyan Law in the interior. The latter vested ultimate authority in the King, thereby classifying royal artifacts such as the Cannon as expressions of regal ownership. In contrast, Roman-Dutch Law, shaped by the Roman principle of occupancy and the concept of *res nullius*, has implications for interpreting war spoils in both historical and international legal contexts. Using a qualitative, doctrinal methodology, this paper assesses key international conventions—including the UNESCO Convention, the UNIDROIT Convention, and the 1954 Hague Convention—while also evaluating domestic legal instruments like the Antiquities Ordinance of 1940 and the Cultural Property Act of 1988, both of which reveal critical limitations. By interrogating the classification of the cannon as war booty and examining the ethical and legal constraints surrounding its restitution, the study highlights the challenges Sri Lanka faces in asserting ownership within existing legal regimes. Ultimately, this paper concludes that ethical considerations increasingly influence restitution practices, revealing a paradigm shift beyond strict legal formalism

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1. INTRODUCTION

Sri Lanka (formerly known as “Ceylon”) had a lengthy history of self-governing kingdoms before being conquered in sequence by the Portuguese, Dutch, and British over nearly four centuries. In 1948, the country obtained independence. During the colonial period, certain artefacts were taken away from the country, and some have been displayed in national museums of the seized nations, which are visited by millions of people each year. According to de Silva (1975),¹ the Dutch removed more cultural property from the country than the Portuguese did, but less than the British.

Amsterdam's Rijksmuseum² in the Netherlands showcases various artifacts removed by the Dutch during their colonial rule, among which, until 2023, was the renowned Lewke Cannon³ from Kandy, Sri Lanka.

In recent years, there has been a noticeable shift towards the restitution of cultural properties by transferring legal ownership of cultural artifacts taken during the colonial era, including the cannon, to Sri Lanka.

2. METHODOLOGY

This paper employs a qualitative, doctrinal analysis to explore the legal complexities and ethical dimensions of cultural property restitution. The doctrinal approach examines relevant legal texts, case law, and international conventions, providing a foundation for understanding the principles governing restitution claims.

Additionally, this study integrates ethical perspectives by reviewing recent policy shifts, such as those in the Netherlands, to highlight evolving

¹ PHDH de Silva, *A Catalogue of Antiquities and Other Cultural Objects from Sri Lanka (Ceylon) and Abroad* (National Museum of Sri Lanka 1975).

² The Rijksmuseum, founded in 1798, includes a large collection of colonial treasures from Sri Lanka and Indonesia. As of 2023, entrance is €22.50 for adults and €11.25 for European Youth Card Association (EYCA) holders. See: ‘Tickets and Visitor Information’ (*Rijksmuseum*) <https://www.rijksmuseum.nl/en/tickets/articles> accessed 22 October 2023.

³ ‘Made out of bronze, silver, gold, rubies, wood, h c.54cm × w c.181cm × d c.77cm × l c.98cm xc.43cm.’ See: G Dissanayaka, ‘Lewke’s Cannon: A Visual and Political Dialogue Captured in Gold and Silver’ [2022] 70(4) *The Rijksmuseum Bulletin* <https://www.rijksmuseum.nl/en/collection/NG-NM-1015> accessed 22 October 2023.

standards in restitution. To address the challenges of colonial-era restitution, compensation models are also evaluated as supplementary mechanisms, particularly in cases where returning artifacts may not fully redress cultural and economic losses. Together, these methodologies aim to construct a balanced framework that considers both legal standards and ethical obligations in restitution practices.

3. LIMITATIONS

While this study provides a detailed analysis of cultural property restitution, it is important to recognize certain limitations. First, the research focuses specifically on the case of Lewke's Cannon. As such, the findings may not be fully generalizable to other types of cultural property restitution cases, particularly those involving different historical, legal, or geopolitical contexts.

Second, the study is based on current international legal frameworks, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and International Institute for the Unification of Private Law (UNIDROIT) Conventions. These frameworks are subject to change, and any future modifications could alter the relevance or applicability of the findings presented here.

Finally, ethical considerations, such as compensation for lost economic and cultural value, are inherently subjective and vary across cultural and national perspectives. This variability in ethical standards may limit the universal applicability of the recommendations.

4. HISTORICAL BACKGROUND OF THE ISSUE

Several times during the Dutch occupation, the people of Sri Lanka rose against exploitation and enslavement. Kirthi Sri Rajasingha, King of Kandy, officially supported the famous rebellion of 1761, beginning in a years-long guerilla struggle. VOC troops commanded by Governor Van Eck briefly governed Kandy after seizing the King's palace in 1765. The Dutch took or destroyed everything valuable.⁴ Among the removed items are an invaluable gold kastane (ceremonial sword or sabre), a Sinhalese

⁴ Paulus Edward Pieris, *Ceylon and the Dutch, 1600–1800* (American Ceylon Mission Press 1918) 115.

dagger, a silver kastane, two wall guns, and the Cannon.^{5,6} These have been elaborately decorated in silver, gold, jewels, and royal blue with Kandyan themes and have been displayed in the Rijksmuseum since 1875.



Figure 1. The Canon's image appears on the Rijksmuseum Museum website
Source:RijksmuseumMuseum©(<https://www.rijksmuseum.nl/en/collection/NG-NM-1015>)

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- ⁵ When the Cannon was brought to the Netherlands, it was first assigned to Stadholder William V's collection. When most of the collection was hauled away and transferred to Paris by French revolutionary forces in 1795, it was left behind. It was added to the inventory of the Royal Cabinet of Rarities, which was maintained at the Mauritshuis until 1825 before it was transported to the Rijksmuseum in Amsterdam. See: 'Lewke's Cannon' (*Rijksmuseum*) The Canon's image appears on the Rijksmuseum Museum website accessed 28 October 2023.
- ⁶ Alicia Schrikker, 'History in Layers and Across Borders: Six Sri Lankan Objects from the Rijksmuseum' in Jona Mooren and others (eds), *Clues: Research into Provenance History and Significance of Cultural Objects and Collections Acquired in Colonial Situations: Final Report – Pilotproject Provenance Research on Objects of the Colonial Era* (1st edn NIOD, Rijksmuseum, Nationaal Museum van Wereldculturen 2020) 77 https://divtprfbgt2m.cloudfront.net/2022-03/Clues_Final_Report_PPR_OCE.pdf accessed 28 October 2023. The author states that: 'The Cannon was originally cast as a gift from the Verenigde Oostindische Compagnie (VOC, the Dutch East India Company) to or by order of the king of Kandy' because it was adorned initially with familiar European themes, which is an exceptionally unusual discovery. However, the study reveals that it also bore several Sri Lankan design components and then acquired additional rich local decorative elements peeling through its research layers'.

5. THE LEGAL IMPLICATIONS OF THE ISSUE

5.1 Domestic Law

During the time that this incident occurred in 1765, the country ruled under different political and legal systems. During their reign, the Dutch introduced Roman-Dutch Law to the areas under their authority. The Kandyan Law, which is still a personal and customary law, is applicable in the Kandyan Region where this incident occurred.

5.1.1 Kandyan Law

Under Kandyan law at the time, the King held ultimate jurisdiction over all matters, including cases involving royal properties and so on.⁷ In that era,⁸ Lewke Dissawe was in charge of *Sathara Korale* (Four Districts). The objects⁹ in the Kandyan era were classified into categories such as movable and immovable, animate and inanimate, material and non-material as per the *Niti Nighantuwa*¹⁰ and Armour.¹¹ Property is generally distinguished by its ownership or mode of acquisition, which could be acquired through fatherhood, maternity, or right of acquisition. It was customary for Dissawes to present gifts to the King on New Year's and other occasions.¹² The Lewke's Cannon is a royal property since it is believed to have been

⁷ FA Hayley, *A Treatise on the Laws and Customs of the Sinhalese* (2nd edn Navrang 1993) 226–235.

⁸ A de Silva Ekanayaka, 'Art. IX.-On the Form of Government under the Native Sovereigns of Ceylon' (1876) 8(2) *Journal of the Royal Asiatic Society of Great Britain and Ireland* 297–304: The Kandyan Kingdom was divided into 21 regions, nine of which were known as "Disawa". It was managed by officials known as "Disawe" or Great Officers, who were members of the Sinhalese Council of State and had executive and judicial authority within that territory.

⁹ *ibid* 218.

¹⁰ This publication is also known as the 'Vocabulary of Law as it existed in the last days of the Kandyan Kingdom': HW Tambiah, *Sinhala Laws and Customs* (1st edn Lake House Investment Limited Publishers 1968) 28.

¹¹ His works are regarded as a primary source of Kandyan law because he wrote *Grammar of Kandyan Law* and translated a portion of *Niti Nighantuwa* See: n 11.

¹² FA Hayley, *A Treatise on the Laws and Customs of the Sinhalese* (2nd edn Navrang 1993) 226–235.

gifted to the King of Kandy in 1745–1746 by Lewke Disava.¹³ As a result, the removed object was considered royal property under Kandyan law at the time.

5.1.2 Roman-Dutch Law

When the Dutch ruled the country, they administered justice following the rules of the fatherland and the Statutes of Batavia.¹⁴ However, the natives lived under the country's laws, he adds, in so far as the customs are clear and reasonable.

Roman-Dutch Law describes *Things* as objects of ownership.¹⁵ Again, the things are divided into movables and immovables.¹⁶ Acquiring property described under the Law of Nature (*Jus Gentium*) was common to all nations,¹⁷ as *res nullius* are movables that do not have or have never had an owner, including the property of an enemy.¹⁸

This legal framework was transplanted into the maritime provinces of Sri Lanka under Dutch colonial rule, superseding existing customary laws in

¹³ The following events in the cannon's history are described in Alicia Schrikker, *Provenance Report Regarding Singalees Kanon of Lewuke's Kanon* (1st edn, NIOD, Rijksmuseum, Nationaal Museum van Wereldculturen 2022) 2:

- a) Gifted to Kandy's King in the late 17th century;
- b) Re-gifted to King Srivijaya Rajasinhe by Lewke in 1745/56;
- c) Taken as war booty from Kirti Sri Rajasinha's palace in 1765;
- d) Displayed as a war trophy in the Dutch Stadtholder's oddities collection after 1769;
- e) Became a Dutch national symbol during the French Revolution;
- f) Attributed in the 19th century to Dutch national hero Michel de Ruyter (1607–1676);
- g) Although various interpretations continued, Sri Lankan origin was rediscovered in the 1880s.

¹⁴ HW Tambiah, *Sinhala Laws and Customs* (1st edn Lake House Investment Limited Publishers 1968) 28.

¹⁵ 'Justinian distinguishes things as (a) *res communes*, (b) *res publicae*, (c) *res universitatis*, (d) *res nullius*, and (e) *res singulorum*': DW Lee, *An Introduction to Roman-Dutch Law* (4th edn, Oxford University Press 1946) 234.

¹⁶ *ibid* 234.

¹⁷ H S Maine, *Ancient Law*, (1st edn, Beacon Press, 1963) 237–440.

¹⁸ *ibid* 236.

those regions. While the Kandyan Kingdom maintained its sovereignty inland, the Dutch codified Roman-Dutch principles in the coastal territories they controlled. These principles governed ownership rights in a colonial context and were used to justify the appropriation of local assets as colonial property.

According to Maine, the Roman Principle of Occupancy has become the source of all modern International Law on Capture in War and the establishment of sovereign rights in newly discovered countries. He claims that during the Empire, the commanding officer could distribute booty as he deemed fit, but plunder for the advantage of individual soldiers or subsequent private appropriation was strictly prohibited.¹⁹ Hugo Grotius, in his book *De Jure Belli ac Pacis*, supported this viewpoint, believing that a conqueror had absolute and unrestricted powers over the conquered.²⁰

This doctrine provided colonial powers, such as the Dutch, with a legal rationale to seize and redistribute war booty—including cultural artifacts like the Lewke Cannon. However, the imposition of this legal system on non-consenting local populations raises questions about its legitimacy in determining ownership of culturally significant items. In the case of the Lewke Cannon, such legal justifications must be critically examined in light of contemporary ethical and legal standards.

This legal system's applicability stemmed from the Dutch colonial administration's enforcement of Roman-Dutch Law in the maritime provinces of Sri Lanka under their control, replacing or marginalizing local legal traditions in those areas. This creates a historical legal context in which the Dutch could claim ownership over captured property, even if it had symbolic and sovereign significance to the Kandyan Kingdom. It is also important to differentiate between the notions of 'object' and 'property' in legal discourse. An 'object' may hold symbolic or cultural significance, whereas 'property' is a legal construct that implies enforceable rights of ownership. In the case of the Lewke Cannon, recognizing it merely as a transferable object overlooks its historical identity as royal property, thereby complicating restitution under current legal frameworks.

¹⁹ *ibid* 434.

²⁰ Hugo Grotius, *The Law of War and Peace* (Louise R Loomis tr, Walter J Black 1949), supported this viewpoint, believing that a conqueror had absolute and unrestricted powers over the conquered.

5.2 Cultural Property Law

Cultural property law is a relatively new area. Moreover, specialised topics of international law emerged. It is a hybrid area of law that includes public international law, private law, and private international law, among other things. Stamatoudi (2011) explains that matters related to cultural law are "legal; on the other hand, this area of law depends heavily on ethics, morality and personal convictions, which, by definition, do not involve pure objectivity, unaffected by emotion". Cultural property is defined as any item that a country regards 'as being of importance for archaeology, prehistory, history, literature, art or science on religious or secular grounds. 'However, there is no universally accepted definition of cultural property' says Stamatoudi (2011). 'It is also a concept that is subject to evolve', he adds. Although the terms cultural property and 'cultural heritage' are not synonymous, the former has evolved towards cultural heritage law. Cultural property law, both at the national and international levels, focuses primarily on the protection of tangible cultural assets.

5.2.1 International Law on Cultural Property

This section examines essential international law on the specific cultural property issue.

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (UNESCO Convention) attempts to forestall illegal cultural property export and import. This agreement was signed on November 18, 1970, by Sri Lanka and the Netherlands; nevertheless, the treaty will only apply to goods transported after 1970, rendering it inapplicable to the specific cultural property issue during the colonial era.

The 1995 Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT Convention)²¹ is deemed an advancement over the UNESCO Convention; however, it imposes a time limit for bringing claims for the recovery of stolen property and hence does not apply to the issue.

²¹ UNIDROIT, *Convention on Stolen or Illegally Exported Cultural Objects (1995)* <https://www.unidroit.org/instruments/cultural-property/1995-convention/> accessed 28 October 2023.

Furthermore, resolutions passed by the Non-Aligned Movement (NAM)²² and the United Nations General Assembly (UNGA)²³ are not qualified to apply for the issue. There is primary and secondary European Union legislation²⁴ on Cultural Property, although it is restricted to the territory of the European Union (EU). The UN Charter,²⁵ however, pertinent as a general rule, but the legally binding effect on the two nations is more indirect.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention) and its two Protocols (1954 and 1999) govern the return of cultural property acquired during wartime or from occupied territory. Article 4(3) of the Hague Convention states that ‘The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party’. The Netherlands signed this instrument on May 14, 1954, but Sri Lanka only acceded to it on May 11, 2004. Therefore, Sri Lanka does not meet the temporal requirements for claiming property under this convention.

²² Protts and O’Keefe highlight international efforts such as Resolution 17, *Restitution of Art Treasures and Ancient Manuscripts to the Countries from Which They Have Been Looted*, and Resolution 24, *Resolution and Explanatory Note on Restitution of Works of Art to the Countries from Which They Have Been Expropriated*, adopted at the Non-Aligned Movement Summit, Colombo, 1976: Lyndel V Protts and Patrick J O’Keefe, *Law and the Cultural Heritage: Discovery and Excavation* (Vol. 1, Professional Books 1984).

²³ UN General Assembly, *Resolution 3187 on the Restitution of Works of Art to Countries Victims of Expropriation*, UN GAOR, 28th Session, Supp No 30, UN Doc A/RES/3187 (1973).

²⁴ Council Directive 93/7/EEC of 15 March 1993 on the *Return of cultural objects unlawfully removed from the territory of an EU country* OJ L 74 of 27.3.1993 <https://eur-lex.europa.eu/EN/legal-content/summary/return-of-cultural-objects-unlawfully-removed-from-the-territory-of-an-eu-country.html> accessed 28 October 2023.

²⁵ With the establishment of the United Nations (UN), the use of force as a means of obtaining territory is now prohibited. Chapter VI of the United Nations Charter forbids the use of force in any circumstances. This is supported by Chapter VII, which encourages pacific dispute settlement. See Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, arts 2(4), 33.

The overarching purpose of these international instruments is to establish norms and mechanisms for the protection and repatriation of cultural property, particularly in times of armed conflict or unlawful removal. However, many of these legal frameworks were created long after colonial acquisitions such as the Lewke Cannon occurred. As a result, they cannot be applied retroactively, leaving significant restitution claims—especially those from formerly colonized nations—outside their scope.

In this context, it is essential to refer to the 1998 Washington Principles on Nazi-Confiscated Art, which encouraged just and fair solutions even in cases where legal ownership was complex or undocumented. Similarly, the Intergovernmental Committee for Promoting the Return of Cultural Property (ICPRCP), established by UNESCO, facilitates bilateral negotiations for the return of illicitly taken cultural property. While neither the Washington Principles nor the ICPRCP has binding authority, they reflect a growing emphasis on ethical responsibility and cooperation in restitution cases, which may inform future approaches to artifacts like the Lewke Cannon.

5.2.2 Domestic Law on Cultural Property

The 1940 Antiquities Ordinance and the 1988 Cultural Property Act No. 73 constitute the main legislative instruments governing Sri Lanka's cultural heritage. While the Antiquities Ordinance was designed to improve the regulation of antiquities, its definitions are outdated and insufficient to cover colonial-era removals²⁶. The 1988 Cultural Property Act, although more recent, does not operate retroactively, meaning it cannot be applied to artifacts taken before its enactment²⁷. As Kamardeen notes²⁸, the absence of retroactivity in these laws creates a significant legal gap for restitution claims, particularly in cases such as the Lewke Cannon, which was removed in the 18th century. Thus, neither act provides a viable legal mechanism for recovering artifacts removed during colonial

²⁶ The Ordinance defines "antiquity" as any object that predates March 1815, such as a statue, carving, or other mobile object.

²⁷ The Cultural Property Act regulates the export of cultural property and establishes a licencing framework for dealing in cultural property: Cultural Property Act, s 2.

²⁸ Naazima Kamardeen, 'The Protection of Cultural Property: Post-Colonial and Post-Conflict Perspectives from Sri Lanka' (2017) 24 *International Journal of Cultural Property* 429, 447 <https://doi.org/10.1017/S094073911700025X>.

occupation. This legal vacuum highlights the need for specific legal reforms that address restitution of historically displaced cultural property and allow for the recognition of such items as part of Sri Lanka's ongoing cultural identity and legal rights.

5.3 Which Legal System is in Force?

According to Beurden's categorisation, this cultural property item can be recognised as 'Objects collected during military expedition' because the records show that it was acquired during a military expedition. According to Raven-Hart in his work, *The Plundering of the Palace of Kandy, in 1765*, VOC soldiers looted the palace, main temple, and city of Kandy in Sri Lanka. He describes that "certain objects were taken over from van Eck's executors and are in the Treasury, including ... one-third gold and two-thirds copper; a little cannon inlaid with silver; ..." The cannon was promised to Duke Louis of Brunswick. According to this information, the Dutch looted this object during the war. Furthermore, following the battle on February 14, 1766, a treaty was signed between the Dutch and the local rulers. However, no records exist regarding the artefacts that were removed. The Dutch seized the splendid Cannon as booty during a military campaign in 1765. They presented it to Stadholder-Prince William V for his Cabinet of rarities in The Hague. It is a 'war booty and stolen from King palace' as per the audio description given in Rijksmuseum.

If the act was "stolen as a war booty," then specific legal problems might need to be resolved.

They are as follows;

- What were the conqueror's rights to the captured enemy's movable property?
- If rights existed back then, how are they protected in the current situation?

When this incident occurred, there was nothing known as Cultural Property Law. We must decide whether to apply the law in effect at the time or the present law. When considering the decisions of the Permanent Court of International Justice and the International Court of Justice in the cases of

*the Island of Palmas*²⁹ and *Right of Passage over Indian Territory*³⁰, the applicable law is not that of today but that of the eighteenth century when this incident occurred.

According to Roman-Dutch law principles, the incident that occurred during the colonial era is valid under the law that was in effect. As previously stated, the conqueror had 'Absolute and unlimited authority' over the enemy's acquired property and 'the commanding officer could distribute booty as he deemed fit'.³¹ Since the action was valid before, it is necessary to determine whether it is still valid now.

Later, in 1949, the Geneva Convention IV³² was adopted, outlawing³³ the plunder of civilian property during times of war. To prevent looting, unclaimed property is entrusted to the custody of the Custodian of Enemy Property and handled until it is returned to its owners.

According to cultural internationalism, (the international form of which, according to one view, is found in the 1954 Hague Convention), cultural property does not belong to a state or nation or a geographical location. It is part of the global cultural heritage and belongs to all humanity. As a result, unless the objects in question were obtained by theft, claims for restitution and return are unreasonable. Unlike the preceding notion, cultural nationalism strives to conserve cultural resources within their territory as part of their national cultural inheritance and favour restitution to the original owners. Cultural nationalism emphasizes the intrinsic link between cultural artifacts and national identity, heritage, and pride. In the case of the Lewke Cannon, this perspective highlights the cannon not merely as an object of historical interest, but as a symbol of Sri Lankan sovereignty and cultural resilience. The return of such artifacts is viewed as essential to restoring historical justice and reaffirming cultural continuity, particularly in formerly colonized nations. Therefore, cultural nationalism provides strong moral and symbolic justification for restitution

²⁹ *Netherlands v United States of America* (1932) 2 *Hague Court Reports* 83.

³⁰ *Portugal v India* [1960] ICJ Rep 6, ICGJ 174.

³¹ Hugo Grotius, *The Law of War and Peace* (Louise R Loomis tr, Walter J Black 1949).

³² The IVth Geneva Convention of 1949 prohibits looting during wartime: see *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 33. The Netherlands and Sri Lanka both signed on 8 December 1949.

³³ Hugo Grotius, *The Law of War and Peace* (Louise R Loomis tr, Walter J Black 1949).

claims, complementing legal arguments and reinforcing the urgency of decolonizing museum collections.

According to the provenance study, 'violent context of colonialism: it was probably taken during the Dutch campaigns against the king of Kandy in 1762-1765 and subsequently gifted as spoils of war'.³⁴ However, the word "looting" does not appear in the text.

The findings of the provenance research, Raven-Hart's work, and information provided by Rijksmuseum Museum on the motives for the property's acquisition in 1765 are substantially different. The provenance study is silent, indicating only that it was 'taken probably' under the 'violent context of colonialism'. It is unclear whether the intentions were withheld purposefully or unintentionally in this study. However, as previously noted, Sri Lanka cannot claim under the Hague Convention. The country attempted to reclaim this property multiple times.³⁵

One might wonder why the Dutch are now choosing to return these artifacts after so many years. While finding a clear answer is complex, this decision appears to align with the Dutch restitution policy, which increasingly emphasizes ethical obligations³⁶ over purely legal

³⁴ Alicia Schrikker, 'History in Layers and Across Borders: Six Sri Lankan Objects from the Rijksmuseum' in Jona Mooren and others (eds), *Clues: Research into Provenance History and Significance of Cultural Objects and Collections Acquired in Colonial Situations: Final Report – Pilotproject Provenance Research on Objects of the Colonial Era* (1st edn NIOD, Rijksmuseum, Nationaal Museum van Wereldculturen 2020) 76-78 [https://divtprfbg2m.cloudfront.net/2022-03/Clues_Final_Report_PPPO CE.pdf](https://divtprfbg2m.cloudfront.net/2022-03/Clues_Final_Report_PPPO_CE.pdf) accessed 28.

³⁵ *ibid* 78 states that:

According to the provenance research, Sri Lankan interest in the Cannon grew in the 1930s when Britishers returned several cultural treasures to the country. 'Sri Lanka also made a series of applications to the Netherlands for restitution of the cannon after attaining independence in 1947, but the Netherlands never treated these pleas seriously,' it adds.

³⁶ Prof. Dr. Wouter Veraart during an online lecture for LLM students of University of Colombo (30 July 2023) stated that:

'The notion that international, "European" law was never intended to apply in colonial contexts or to wars against "uncivilised nations" underscores the systemic exclusion embedded in colonial legal frameworks. These systems were constructed on assumptions of legal inferiority, deliberately excluding specific groups and often reinforced by racial ideologies. Extra-legal remedies, therefore, cannot fully redress a legacy of legal exclusion and

considerations. This shift suggests a commitment to addressing historical injustices beyond the letter of the law. The Dutch Restitution Policy operates through an ethics-driven mechanism that privileges historical and moral reasoning over strict legal entitlements. As per the 2023 Procedural Regulations, decisions are issued only if both parties consent to accept the Committee's opinion as binding.³⁷ This underscores a non-judicial, discretionary process guided by fairness and expert evaluation. Notably, the 2020 Evaluation Report also reaffirms that the Committee prioritises yardsticks of reasonableness and fairness and does not offer a legal remedy in the traditional sense.³⁸ This policy illustrates a broader international shift toward restorative justice rather than legal restitution.

On the other hand, if Sri Lanka cannot lay claim to these artifacts, will mere restitution³⁹ compensate for all of Sri Lanka's losses? These questions are difficult to answer but warrant thorough investigation.

6. THE EFFECTS OF THE INCIDENT

The Cannon is regarded as a valuable and iconic cultural property (a term denoting objects, collections, or properties that hold cultural, historical, or

injustice. Consequently, recent acts of ownership transfer may be viewed as a partial, retrospective legal repudiation of the profoundly unjust and racially biased legal regimes that underpinned European colonialism'.

³⁷ Restitutions Committee, *Procedural Regulations 2023*, arts 2(2), 3, 7–8 [https://www. Res titutie commissie.nl/en/](https://www.Res titutie commissie.nl/en/) accessed 4 April 2025.

³⁸ Council for Culture, *Evaluation of the Dutch Restitution Policy and the Restitutions Committee* (July 2020) 26–27 <https://www.restitutiecommissie.nl> accessed 4 April 2025

³⁹ There are different meanings to restitution. According to W Kowalski, "Restitution": Art Treasures and War' (extract from Académie de Droit International, *Recueil des Cours: Collected Courses of the Hague Academy of International Law*, vol 288 (2001)) 80–90, the term 'restitution', as usually used for the return of property looted in times of war, should be distinguished from the term 'reparations'. The latter is only used to compensate for the loss approximately, and is usually accomplished by handing over money or goods of equivalent value. On the other hand, E Barkan, 'The Guilt of Nations: Restitution and Negotiating Historical Injustices' in L V Prott (ed), *Witnesses to History: Documents and Writings on the Return of Cultural Objects* (UNESCO 2009) 78, describes restitution not just as a legal but also as a cultural concept.

scientific significance) that reflects the ingenuity of Sri Lankan artisans of yesteryear. Numerous people have been affected by this incident.

If it had belonged to the original country, it would have been shown in the national museum, where both locals and foreign tourists could admire the works. Over the period, the particular museum in the Netherlands⁴⁰ where the artefacts were displayed generated income from visitor fees, resulting in a loss of income⁴¹ to the country it truly owns.

Sri Lankan artisans may have done more research on the artefact's designs and honed their skills over time. The original IP rights were not preserved while the items were presented in a foreign country, which would have resulted in infringement.

With the catastrophe, there is a loss of dignity and a dehumanising or infantilisation effect,⁴² and the country has lost its pride due to their estrangement from their birthplace.

Another critical effect of the incident lies in the legal and temporal barriers to restitution, particularly the lack of retroactive application in current international conventions. Instruments such as the 1970 UNESCO Convention and the 1995 UNIDROIT Convention do not apply to cultural property taken before their enactment. As such, despite the symbolic importance and historical injustice of the Lewke Cannon's removal, Sri Lanka cannot pursue a legal claim under these frameworks. This limitation reveals how post-colonial nations are systematically disadvantaged in reclaiming looted cultural property, as the legal tools available to them exclude the colonial context by design. Therefore, the failure to recognize

⁴⁰ The *Rijksmuseum Museum Brochure* highlights this artefact as one of the museum's unique items; this marketing strategy increases its visibility and income, resulting in a loss of opportunity for the original country. See *Rijksmuseum Museum Brochure* (Rijksmuseum 2025) <https://www.rijksmuseum.nl> accessed 4 April 2025.

⁴¹ 'Cultural property is occasionally classified according to periods (cut-off dates in history), monetary values, types of use, types of material and so on' — Irini Stamatoudi, *Cultural Property Law* (Edward Elgar Publishing 2011).

⁴² Amadou-Mahtar M'Bow, *Speech by Mr Amadou-Mahtar M'Bow, Director-General of UNESCO* (UNESCO 1978) <https://unesdoc.unesco.org/ark:/48223/pf0000034447> accessed 18 July 2025: ('The peoples who were victims of this plunder, sometimes for hundreds of years, have not only been despoiled of irreplaceable masterpieces but also robbed of a memory which would doubtless have helped them to greater self-knowledge and have enabled others to understand them better...').

retroactive claims not only hinders restitution but perpetuates the historical marginalization embedded in international legal structures.

7. RECOMMENDATIONS

The following suggestions could be made to lessen the negative impacts of the incident or to prevent such events in the future.

7.1 Policy and Mechanism to Safeguard

In terms of Sri Lanka's culture and value, the Dutch restitution is noteworthy. On the other side, the country's lack of sufficient policies on conservation, preservation, and management practices on cultural property is a critical concern that requires proper action. The National Museums are currently funded by a consolidated fund from the Government Treasury, with limited budgets, and manning the items in the same way that the seized countries did is a question. As a solution, one may ask whether they could return the income earned over time or compensate the country for missed opportunities, but such legal measures need to be devised.

7.2 Build a Unified, Forceful Voice

Various artefacts were removed from their native countries and are now housed in foreign museums worldwide. A proper mechanism for returning these items to their owners should be in place. Most of them are former Asian, African, and Latin American colonies in poorer political and economic situations than the seized countries. All conquered countries should speak with one powerful voice in this regard. The majority of them already collaborate in other forums, such as the United Nations, Commonwealth Organisation and the Non-Aligned Movement, but have yet to be stronger in this subject area than in the past.

7.3 More Awareness and Strong Legal Mechanism

Cultural Property Law is a relatively new issue with limited public knowledge. Political leaders, government officials, including those in charge of national institutions for cultural, tourism, and foreign affairs, and legal practitioners all need to be more aware of this issue. More researchers, particularly those from academic institutions, should be

involved in this area to improve knowledge. Appropriate legal mechanisms⁴³ must be established to preserve the rights of the original owners.

From a critical legal perspective, particularly through the lens of Third World Approaches to International Law (TWAIL),⁴⁴ the current restitution frameworks reflect the continuation of unequal global power dynamics. TWAIL scholars critique how international legal norms have historically marginalized former colonies, both in substance and in access to justice. In the case of the Lewke Cannon, this perspective underscores that the lack of binding legal recourse is not a legal coincidence, but a systemic outcome rooted in colonial legacies. Therefore, restitution should not merely rely on goodwill or voluntary ethics but be reframed as part of a broader movement to decolonize international cultural heritage law. Integrating TWAIL perspectives into policy advocacy can empower affected states to challenge existing legal norms and push for more equitable, historically conscious frameworks.

8. AREAS FOR FUTURE RESEARCH

Several areas warrant further research to enhance understanding and effectiveness in the field of cultural property restitution. One important avenue is the comparative analysis of compensation models used in different contexts, which can help assess how well these approaches address both economic and cultural losses. Additionally, studying the impact of restitution on source countries can offer insights into how returning artifacts influences national identity, tourism, education, and collective memory. Research into legal and policy reform is also needed, especially concerning the creation of mechanisms that support retroactive claims for colonial-era acquisitions. Moreover, exploring the ethical foundations of restitution could help develop more balanced frameworks

⁴³ ‘Cultural property claims dispute resolution is another important field that has been extensively researched’: Irini Stamatoudi, *Cultural Property Law* (Edward Elgar Publishing 2011). Because of the particularities and sensitivities they raise, disputes in this sector are resolved by alternative dispute resolution, such as arbitration, mediation, and mainly through discussions, more so than in any other area of law according to her. As a result, it may continue to advance mechanisms in this field while making the necessary legislative changes.

⁴⁴ Larissa Ramina, ‘Framing the Concept of TWAIL: “Third World Approaches to International Law(2018)32 *Revista Justiça do Direito* 5, DOI:10.5335/rjd.v32i1.8087 <https://www.researchgate.net/publication/325197598> accessed 14 August 2025.

that integrate both legal obligations and moral imperatives. Underpinning all of these areas is the issue of international power dynamics, where wealthier former colonial powers often control the legal and institutional processes of restitution. Future research should critically assess how this imbalance affects negotiation outcomes and the autonomy of source countries in reclaiming their heritage. Such inquiry can contribute to more just and equitable restitution practices globally.

These areas for future research would not only advance academic discourse but also support the development of more comprehensive and equitable restitution practices.

9. CONCLUSION

This study underscored the complex legal and ethical dimensions of cultural property restitution, particularly for artifacts removed during colonial periods. Through the case of Lewke's Cannon, it becomes evident that current international and domestic legal frameworks, with their limited retroactive application, often fall short in supporting restitution claims for colonial-era artifacts. These limitations reveal substantial gaps in international law, highlighting the need for frameworks that consider both historical injustices and evolving concepts of cultural ownership and sovereignty.

A balanced approach, combining ethical imperatives with legal standards, is essential for meaningful restitution practices. Beyond the return of physical artifacts, restitution efforts should recognize the broader implications for justice, national identity, and the reparation of historical wrongs. Future legal reforms that support retroactive claims and establish comprehensive international policies could pave the way for more equitable and effective restitution frameworks, bridging the divide between past injustices and modern legal principles.